

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2015

Volume I
Chapters 1 - 108



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WEST VIRGINIA HOUSE OF DELEGATES
HONORABLE TIM ARMSTEAD
SPEAKER OF THE HOUSE

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CLERK OF THE HOUSE



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FOREWORD

These volumes contain the Acts of the First Regular Session of the 82nd Legislature, 2015.

First Regular Session, 2015

The First Regular Session of the 82nd Legislature convened on January 14, 2015. The Constitutional sixty-day limit on the duration of the session was midnight, March 14, 2015. The Governor issued a proclamation on March 12, 2015 extending the session for a period not to exceed four days for the purpose of considering the Budget and supplementary appropriation bills, and the Legislature adjourned *sine die* on March 18, 2015.

Bills totaling 1,607 were introduced in the two houses during the session (1022 House and 585 Senate). The Legislature passed 262 bills, 127 House and 135 Senate.

The Governor vetoed thirty-one bills (**Com. Sub. for H. B. 2010**, Requiring the elections of justices of the West Virginia Supreme Court of Appeals, circuit court judges, family court judges and magistrates be nonpartisan and by division; **Com. Sub. for H. B. 2160**, WV Schools for the Deaf and Blind eligible for School Building Authority funding; **H. B. 2161**, Adopting the Uniform Act on Prevention of and Remedies for Human Trafficking; **Com. Sub. for H. B. 2187**, Encouraging public officials to display the national motto on all public property and public buildings; **H. B. 2201**, Requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards; **Com. Sub. for H. B. 2240**, Providing that an act of domestic violence or sexual offense by strangling is an aggravated felony offense; **Com. Sub. for H. B. 2568**, The Pain-Capable Unborn Child Protection Act; **Com. Sub. for H. B. 2571**, Creating a fund for pothole repair contributed to by private businesses or entities; **H. B. 2576**, Creating new code sections which separate the executive departments; **H. B. 2627**, Providing protection against property crimes committed against coal mines, utilities and other industrial facilities; **Com. Sub. for H. B. 2648**, Allowing authorized entities to maintain a stock of epinephrine auto-injectors to be used for emergency; **H. B. 2664**, Creating “Andrea and Willy’s Law”; increasing certain penalties

for driving under the influence of alcohol, controlled substances or drugs; **Com. Sub. for H. B. 2674**, Making home schooled students eligible for a PROMISE scholarship without taking the GED test; **H. B. 2776**, Relating to prescribing hydrocodone combination drugs for a duration of no more than three days; **Com. Sub. for H. B. 2793**, Relating to exemptions from mandatory school attendance; **Com. Sub. for H. B. 2840**, Providing an alternative plan to make up lost days of instruction; **H. B. 2880**, Creating an addiction treatment pilot program; **Com. Sub. for S. B. 6**, Relating to medical professional liability; **Com. Sub. for S. B. 19**, Specifying minimum early childhood education program instruction days; **Com. Sub. for S. B. 30**, Permitting shared animal ownership agreement to consume raw milk; **Com. Sub. for S. B. 286**, Relating to compulsory immunizations of students; exemptions; **Com. Sub. for S. B. 287**, Providing posthumous high school diplomas; **Com. Sub. for S. B. 335**, Creating Access to Opioid Antagonists Act; **Com. Sub. for S. B. 347**, Creating Firearms Act of 2015; **S. B. 389**, Relating to Board of Registration for Professional Engineers license renewals and reinstatements; **Com. Sub. for S. B. 435**, Creating WV Sheriffs' Bureau of Professional Standards; **S. B. 445**, Relating to investment of RJCFA funds; **Com. Sub. for S. B. 529**, Relating to PERS, SPRS and TRS benefits and costs; **S. B. 549**, Establishing classifications and salary schedules for State Police forensic lab civilian employees; **S. B. 582**, Relating to Herbert Henderson Office of Minority Affairs; and **S. B. 584**, Transferring Cedar Lakes Camp and Conference Center to private, nonstock, not-for-profit corporation). The Legislature amended and again passed Com. Sub. for H. B. 2010, H. B. 2201, Com. Sub. for H. B. 2648, H. B. 2664, H. B. 2880, Com. Sub. for S. B. 6, Com. Sub. for S. B. 286, Com. Sub. for S. B. 287, Com. Sub. for S. B. 335, S. B. 389, S. B. 435 and S. B. 529. The Governor again vetoed S. B. 389, which the Legislature amended and again passed. Notwithstanding the objections of the Governor, the Legislature again passed Com. Sub. for H. B. 2568. During the compilation of these Acts, it was discovered that H. B. 2607, originally styled as Chapter 76, was enrolled and signed by the Governor in an incorrect form, and therefore, omitted from the Acts of the Legislature, leaving a total of 243 bills, 115 House and 128 Senate, which became law.

There were 224 Concurrent Resolutions introduced during the session, 156 House and 68 Senate, of which 32 House and 36 Senate were adopted. There were 26 House Joint Resolutions and 6 Senate Joint Resolutions introduced, none of which were adopted by the Legislature. The House introduced 22 House Resolutions, and the Senate introduced 59 Senate Resolutions, of which 17 House and 58 Senate were adopted.

The Senate failed to pass 43 House bills passed by the House, and 47 Senate bills failed passage by the House. One House bill died in conference: H. B. 2646, Legalizing and regulating the sale and use of fireworks.

STEPHEN J. HARRISON
*Clerk of the House and
Keeper of the Rolls.*

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2015

OFFICERS

Speaker – Tim Armstead, Elkview
Clerk – Stephen J. Harrison, Cross Lanes
Sergeant-at-Arms – Marshall Clay, Fayetteville
Doorkeeper – Frank Larese, Belle

District	Name	Address	Occupation or Profession	Legislative Service
First.	Pat McGeehan (R)	Chester	Business Sales/Author	79 th ; 82 nd
	Mark Zatezalo (R)	Wierton	Hydrogeologist	82 nd
Second.	Ryan W. Weld (R)	Wellsburg	Legal Assistant	82 nd
Third.	Shawn Fluharty (D)	Wheeling	Attorney	82 nd
	Erikka Storch (R)	Wheeling	Businesswoman	80 th - 82 nd
Fourth.	David A. Evans (R)	Cameron	Retired Teacher	81 st - 82 nd
	Michael T. Ferro (D)	McMechen	Retired Educator/Coach	79 th - 82 nd
Fifth.	Dave Pethel (D)	Hundred	Retired Teacher	69 th - 71 st ;
				74 th - 82 nd
Sixth.	William Roger Romine (R)	Sistersville	Retired School Administrator	75 th - 82 nd
Seventh.	Lynwood "Woody" Ireland (R)	Pullman	Retired Chemical Engineer/Farmer	78 th - 82 nd
				71 st - 82 nd
Eighth.	W. "Bill" Anderson, Jr. (R)	Williamstown	Educator	71 st - 82 nd
Ninth.	Anna Border Sheppard (R)	Davisville	Educator	Appt. 6/21/11, 80 th - 82 nd
Tenth.	Mike Azinger (R)	Parkersburg	Manager	82 nd
	Frank Deem (R)	Vienna	Businessman	52 nd - 58 th ; 82 nd
	John R. Kelly (R)	Parkersburg	Retired	82 nd
Eleventh.	Bob Ashley (R)	Spencer	Insurance Agent	67 th - 73 rd ;
				75 th - 82 nd
Twelfth.	Steve Westfall (R)	Ripley	Insurance Agent	81 st - 82 nd
Thirteenth.	Scott Cadle (R)	Letart	Trucking/Excavating	81 st - 82 nd
	Michael Ihle (R)	Ravenswood	Mayor	82 nd
Fourteenth.	Jim Butler (R)	Henderson	Excavating Contractor	81 st - 82 nd
Fifteenth.	Geoff Foster (R)	Winfield	Construction Supply	82 nd
Sixteenth.	Sean Hornbuckle (D)	Huntington	Financial Services Broker	82 nd
				Small Business Owner/ Buffalo Farmer
	Jim Morgan (D)	Huntington	Retired	69 th - 70 th ; Appt. 2/23/2001, 75 th ;
	76 th - 82 nd			
Seventeenth.	Doug Reynolds (D)	Huntington	Engineering and Construction Executive	78 th - 82 nd
			Physician	82 nd
	Matthew Rohrbach (R)	Huntington		

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Eighteenth...	Kelli Sobonya (R)	Barboursville	Realtor	76 th - 82 nd
Nineteenth...	Kenneth Paul Hicks (D)	Kenova	Attorney	82 nd
	Don C. Perdue (D)	Prichard	Pharmacist	74 th - 82 nd
Twentieth...	Justin J. Marcum (D)	Williamson	Attorney	Appt. 1/18/12, 80 th - 82 nd
Twenty-first..	Harry Keith White (D)	Gilbert	Businessman	Appt. 9/11/1992, 70 th ; 71 st - 82 nd
Twenty-second.	Jeff Eldridge (D)	Alum Creek	Self Employed	77 th - 79 th - 82 nd
	Michel Moffatt (R)	Hurricane	Former Manufacturing Manager	82 nd
Twenty-third..	Joshua Nelson (R)	Danville	Coal Miner	81 st - 82 nd
Twenty-fourth.	Rupert Phillips, Jr. (D)	Lorado	Sales Manager	80 th - 82 nd
	Ralph Rodighiero (D)	Logan	UPS Delivery Driver	78 th - 80 th ; 82 nd
Twenty-fifth..	Linda Goode Phillips (D)	Pineville	Retired Elementary School Counselor	79 th - 82 nd
Twenty-sixth..	Clif Moore (D)	Thorpe	Administrator	77 th - 82 nd
Twenty-seventh.	Joe Ellington (R)	Princeton	Physician	80 th - 82 nd
	Marty Gearheart (R)	Bluefield	Businessman	80 th - 82 nd
	John H. Shott (R)	Bluefield	Attorney	79 th , Resigned 5/ /2010; 82 nd
Twenty-eighth.	Roy G. Cooper (R)	Wayside	Retired U. S. Navy	81 st - 82 nd
	John D. O'Neal, IV (R)	Beckley	Businessman	80 th - 82 nd
Twenty-ninth..	Ricky Moye (D)	Crab Orchard	Businessman/School Bus Operator	78 th - 82 nd
Thirtieth....	Mick Bates (D)	Beckley	Physical Therapist	82 nd
Thirty-first...	Karen "Lynne" Arvon (R)	Beckley	Businesswoman	81 st - 82 nd
Thirty-second.	Tom Fast (R)	Fayetteville	Attorney	82 nd
	Kayla Kessinger (R)	Mount Hope	Director of Human Resources	82 nd
	David G. Perry (D)	Oak Hill	Educator	75 th - 82 nd
Thirty-third...	Roger Hanshaw (R)	Wallback	Attorney	82 nd
Thirty-fourth..	Brent Boggs (D)	Gassaway	Railroad Engineer	73 rd - 82 nd
Thirty-fifth..	Andrew D. Byrd (D)	South Charleston	Attorney	82 nd
	John B. McCuskey (R)	Charleston	Attorney	81 st - 82 nd
	Eric Nelson (R)	Charleston	Businessman	80 th - 82 nd
	Chris Stansbury (R)	Charleston	Doctor of Optometry	82 nd
Thirty-sixth ...	Nancy Peoples Guthrie (D)	Charleston	Former Small Business Owner	78 th - 82 nd
	Larry L. Rowe (D)	Charleston	Attorney	73 rd - 75 th ; 82 nd
	Brad White (R)	Charleston	Insurance Agent	82 nd
Thirty-seventh..	Mike Pushkin (D)	Charleston	Taxi Driver / Musician	82 nd
Thirty-eighth..	Patrick Lane (R)	Cross Lanes	Attorney/Entrepreneur	77 th - 82 nd
Thirty-ninth..	Ron Walters (R)	Charleston	Insurance Executive/ President	71 st - 73 rd ; 75 th - 82 nd

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Fortieth.	Tim Armstead (R).	Elkview.	Attorney.	Appt. 9/5/98, 73 rd ; 74 th - 82 nd
Forty-first.	Jordan Hill (R).	Mt. Nebo.	Human Resources.	82 nd
Forty-second.	George "Boogie" Ambler (R).	Fort Springs.	Businessman/ Educator/Farmer	81 st - 82 nd 75 th - 82 nd
	Ray Canterbury (R).	Ronceverte.	Internet Entrepreneur.	75 th - 82 nd
Forty-third.	Denise L. Campbell (D).	Elkins.	Licensed Nursing Home Administrator.	80 th - 82 nd
	William G. Hartman (D)	Elkins.	Retired Independent Insurance Agent.	76 th - 82 nd
Forty-fourth.	Dana L. Lynch (D).	Webster Springs.	Retired.	81 st - 82 nd
Forty-fifth.	Bill Hamilton (R).	Buckhannon.	Independent Insurance Agency Owner.	76 th - 82 nd
Forty-sixth.	Peggy Donaldson Smith (D).	Weston.	Attorney.	79 th - 82 nd
Forty-seventh.	Danny Wagner (R).	Philippi.	Retired Educator.	82 nd
Forty-eighth.	Danny Hamrick (R).	Clarksburg.	Consulting / Media Production.	81 st - 82 nd
	Tim Miley (D).	Clarksburg.	Attorney.	77 th - 82 nd
	Patsy Samuel Trecost II (D).	Clarksburg.	Frontier Communications.	82 nd
	Theresa Waxman (R).	Bridgeport.	Homemaker.	82 nd
Forty-ninth.	Amy Summers (R).	Flemington.	Registered Nurse.	82 nd
Fiftieth.	Mike Caputo (D).	Fairmont.	UMWA, District 31 Vice-President.	73 rd - 82 nd
	Linda Longstreth (D).	Fairmont.	Administrator/Educator.	77 th - 82 nd
	Tim Manchin (D).	Fairmont.	Attorney.	76 th - 82 nd
Fifty-first.	Barbara Evans Fleischauer (D).	Morgantown.	Attorney/Small Business Owner.	72 nd - 75 th ; 78 th - 82 nd
	Cindy Frich (R).	Morgantown.	Sales/Writer/Consultant.	76 th - 77 th ; 81 st - 82 nd
	Brian Kurcaba (R).	Morgantown.	Financial Advisor.	82 nd
	Amanda Pasdon (R).	Morgantown.	Business Development Director.	80 th - 82 nd
	Joe Statler (R).	Core.	Retired.	82 nd
Fifty-second.	Larry A. Williams (D).	Tunnelton.	Businessman/Farmer.	Appt. 10/8/1993, 71 st ; 72 nd - 82 nd
Fifty-third.	Randy E. Smith (R).	Terra Alta.	Coal Miner.	81 st - 82 nd
Fifty-fourth.	Allen V. Evans (R).	Petersburg.	Poultry Producer/Farmer.	70 th - 82 nd
Fifty-fifth.	Isaac Sponaugle (D).	Franklin.	Attorney.	81 st - 82 nd
Fifty-sixth.	Gary G. Howell (R).	Keyser.	Small Business Owner.	80 th - 82 nd
Fifty-seventh.	Ruth Rowan (R).	Points.	Retired Educator.	77 th - 82 nd
Fifty-eighth.	Daryl E. Cowles (R).	Berkeley Springs.	Businessman.	78 th - 82 nd
Fifty-ninth.	Saira Blair (R).	Martinsburg.	Student.	82 nd
Sixtieth.	Larry W. Faircloth (R).	Inwood.	Small Business Consulting.	81 st - 82 nd

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Occupation or Profession	Legislative Service
Sixty-first. . . .	Walter E. Duke (R).	Martinsburg.	Retired Educator.	76 th - 80 th ; 82 nd
Sixty-second..	John Overington (R).	Martinsburg.	Public Relations/ Former Educator.	67 th - 82 nd
Sixty-third. . . .	Michael "Mike" Folk (R).	Martinsburg.	Airline Pilot; Farmer.	81 st - 82 nd
Sixty-fourth. . .	Eric L. Householder (R).	Martinsburg.	Small Business Owner.	80 th - 82 nd
Sixty-fifth. . . .	Jill Upson (R).	Charles Town.	Former Retail Manager / Student.	82 nd
Sixty-sixth. . . .	Paul Espinosa (R).	Charles Town.	General Manager, Frontier Communications.	81 st - 82 nd
Sixty-seventh.	Stephen Skinner (D).	Shepherdstown.	Attorney.	81 st - 82 nd

MEMBERS OF THE SENATE

REGULAR SESSION, 2015

OFFICERS

President – William P. Cole, III, Bluefield

Clerk – Clark S. Barnes, French Creek

Sergeant-at-Arms – Howard L. Wellman, Bluefield

Doorkeeper – Anthony Gallo, Charleston

District	Name	Address	Occupation or Profession	Legislative Service
First.	Ryan Ferns (R)	Wheeling.	Physical Therapist.	82 nd
	Jack Yost (D)	Wellsburg.	Retired.	(House 76 th - 78 th); 79 th - 82 nd
Second.	Jeffrey V. Kessler (D)	Glen Dale.	Attorney.	Appt. 11/1997, 73 rd ; 74 th - 82 nd
	Kent Leonhardt (R)	Fairview.	Retired USMC/ farmer..	82 nd
Third.	Donna J. Boley (R)	St. Marys.	Retired.	Appt. 5/14/1985, 67 th ; 68 th - 82 nd
	David C. Nohe (R)	Vienna.	Businessman/Contractor/ Real Estate Broker.	80 th - 82 nd
Fourth.	Mitch B. Carmichael (R)	Ripley.	Director of Commercial Sales.	(House 75 th - 80 th); 82 nd
	Mike Hall (R)	Winfield.	Businessman.	(House 72 nd - 74 th); 78 th - 82 nd
Fifth.	Robert H. Plymale (D)	Huntington.	Businessman.	72 nd - 82 nd
	Mike Woelfel (D)	Huntington.	Lawyer.	82 nd
Sixth.	Bill Cole (R)	Bluefield.	Automobile Dealer.	(House Appt. 5/28/10, 79 th); 82 nd
	Mark R. Maynard (R)	Genoa.	Automobile Dealer.	82 nd
Seventh.	Art Kirkendoll (D)	Chapmanville.	Self Employed.	Appt. 11/14/11, 80 th ; 82 nd
	Ron Stollings (D)	Madison.	Physician.	78 th - 82 nd
Eighth.	Ed Gaunch	Charleston.	Retired.	82 nd
	Chris Walters (R)	Nitro.	Insurance.	81 st - 82 nd
Ninth.	Daniel Hall (R)	Oceana.	Account Executive.	(House 79 th - 80 th); 81 st - 82 nd
	Jeff Mullins	Shady Springs.	Insurance.	82 nd
Tenth.	William Laird IV (D)	Oak Hill.	Retired/Self-Employed..	(House 73 rd - 75 th); 79 th - 82 nd
	Ronald F. Miller (D)	Lewisburg.	Self-Employed.	80 th - 82 nd
Eleventh.	Greg Boso (R)	Summersville.	Civil Engineer.	82 nd (appt. 1/16/2015)

MEMBERS OF THE SENATE - Continued

District	Name	Address	Occupation or Profession	Legislative Service
	Robert L. Karnes (R)	Tallmansville	Information and Technology Field Services	82 nd
Twelfth	Mike Romano (D)	Clarksburg	Attorney/ CPA	82 nd
	Douglas Facemire (D)	Sutton	Grocery Chain Owner	79 th - 82 nd
Thirteenth	Robert D. Beach (D)	Morgantown	Executive Director of College Foundation	(House, Appt. 5/1998, 73 rd ; 74 th - 79 th); 80 th - 82 nd
	Roman W. Prezioso, Jr. (D)	Fairmont	Administrator	(House 69 th - 72 nd); 73 rd - 82 nd
Fourteenth	Dave Sypolt (R)	Kingwood	Professional Land Surveyor	78 th - 82 nd
	Bob Williams (D)	Grafton	Real Estate Appraiser	79 th - 82 nd
Fifteenth	Craig P. Blair (R)	Martinsburg	Businessman	(House 76 th - 79 th); 81 st - 82 nd
	Charles S. Trump IV	Berkeley Springs	Lawyer	(House 71 st - 78 th); 82 nd
Sixteenth	Herb Snyder (D)	Shenandoah Junction	Director, Environmental Chemistry	73 rd - 76 th ; 79 th - 82 nd
	John R. Unger II (D)	Martinsburg	Businessman/ Economic Development	74 th - 82 nd
Seventeenth	Corey Palumbo (D)	Charleston	Attorney	(House 76 th - 78 th); 79 th - 82 nd
	Tom Takubo (R)	Charleston	Physician	82 nd

HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2015

STANDING

AGRICULTURE AND NATURAL RESOURCES

Evans, Chair (*Agriculture*), Hamilton, Chair (*Natural Resources*), Romine, Vice Chair (*Agriculture*), Ambler, Vice Chair (*Natural Resources*), Eldridge, Minority Chair (*Agriculture*), Lynch, Minority Chair (*Natural Resources*), Phillips, Minority Vice Chair (*Agriculture*), Guthrie, Minority Vice Chair (*Natural Resources*), Anderson, Border-Sheppard, Cadle, Canterbury, Cooper, Folk, Ireland, Miller, Smith, R., Summers, Wagner, Zatezalo, Campbell, Fluharty, Rodighiero, White, H., Williams

BANKING AND INSURANCE

Walters, Chair (*Banking*), McCuskey, Chair (*Insurance*), Frich, Vice Chair (*Banking*), Westfall, Vice Chair (*Insurance*), Moore, Minority Chair (*Banking*), Skinner, Minority Chair (*Insurance*), Morgan, Minority Vice Chair (*Banking*), Bates, Minority Vice Chair (*Insurance*), Ashley, Azinger, Deem, Kurcaba, McGeehan, Nelson, E., O'Neal, Pasdon, Shott, Upson, Waxman, White, B., Hicks, Manchin, Perdue, Perry, Rowe

EDUCATION

Pasdon, Chair, Duke, Vice Chair, Perry, Minority Chair, Moyer, Minority Vice Chair, Ambler, Cooper, Ellington, Espinosa, Evans, D., Hamrick, Kelly, Kurcaba, Rohrbach, Romine, Rowan, Statler, Upson, Wagner, Campbell, Hornbuckle, Perdue, Pushkin, Reynolds, Rodighiero, Trecost

HOUSE OF DELEGATES COMMITTEES

ENERGY

Ireland, Chair, Smith, Vice Chair, Caputo, Minority Chair, Pethtel, Minority Vice Chair, Ambler, Anderson, Border, Cadle, Canterbury, Evans, D., Kessinger, McCuskey, Nelson, J., Romine, Statler, Storch, Upson, Zatezalo, Boggs, Eldridge, Lynch, Miley, Phillips, L., Reynolds, White, H.

ENROLLED BILLS

McCusky, Chair, Westfall, Vice Chair, Hanshaw, Marcum, Sponaugle

FINANCE

Nelson, Chair, Ashley, Vice Chair, Boggs, Minority Chair, Williams, Minority Vice Chair, Anderson, Butler, Canterbury, Espinosa, Evans, A., Frich, Gearheart, Hamilton, Householder, Miller, O'Neal, Storch, Walters, Westfall, Bates, Guthrie, Longstreth, Moye, Pethtel, Phillips, L., White, H.

GOVERNMENT ORGANIZATION

Howell, Chair, Arvon, Vice Chair, Morgan, Minority Chair, Smith, Minority Vice Chair, Blair, Border, Cadle, Faircloth, Hamrick, Hill, Ihle, Kessinger, McGeehan, Moffatt, Nelson, J., Smith, R., Stansbury, Zatezalo, Caputo, Eldridge, Ferro, Hartman, Marcum, Phillips, R., Sponaugle

HEALTH and HUMAN RESOURCES

Ellington, Chair, Householder, Vice Chair, Fleischauer, Minority Chair, Campbell, Minority Vice Chair, Arvon, Ashley, Cooper, Faircloth, Hill, Kurcaba, Lane, Pasdon, Rohrbach, Sobonya, Stansbury, Summers, Waxman, Westfall, Bates, Fluharty, Guthrie, Moore, Pushkin, Rodighiero, Skinner

HOUSE OF DELEGATES COMMITTEES

INDUSTRY and LABOR

Overington, Chair, Sobonya, Vice Chair, Ferro, Minority Chair, Fluharty, Minority Vice Chair, Azinger, Blair, Cowles, Ellington, Fast, Householder, Ihle, Kurcaba, McCuskey, Nelson, J., Shott, Smith, R., Statler, White, B., Byrd, Caputo, Hicks, Manchin, Pushkin, Reynolds, Rowe

INTERSTATE COOPERATION

Storch, Chair, Faircloth, Vice Chair, Ellington, Hamrick, Romine, Ferro, Smith, P.

JUDICIARY

Shott, Chair, Lane, Vice Chair, Manchin, Minority Chair, Skinner, Minority Vice Chair, Azinger, Deem, Fast, Folk, Foster, Hanshaw, Ireland, McCuskey, Overington, Sobonya, Summers, Waxman, Weld, White, B., Byrd, Fleischauer, Fluharty, Hicks, Lynch, Moore, Rowe

PENSIONS and RETIREMENT

Canterbury, Chair, Folk, Vice Chair, Pethel, Minority Chair, Hamilton, Kurcaba, Walters, Marcum

POLITICAL SUBDIVISIONS

Storch, Chair, Butler, Vice Chair, Moye, Minority Chair, Trecost, Minority Vice Chair, Anderson, Cowles, Duke, Folk, Gearheart, Hanshaw, Householder, Ihle, Lane, Moffatt, O'Neal, Sobonya, Stansbury, Weld, Boggs, Byrd, Hartman, Hornbuckle, Manchin, Morgan, Perry

HOUSE OF DELEGATES COMMITTEES

ROADS AND TRANSPORTATION

Gearheart, Chair, Hamrick, Vice Chair, Phillips, Minority Chair, Guthrie, Minority Vice Chair, Ambler, Arvon, Butler, Cadle, Espinosa, Evans, A., Evans, D., Fast, Howell, Moffatt, Rohrbach, Statler, Summers, Wagner, Boggs, Longstreth, Moye, Reynolds, Smith, P., Sponaugle, Trecost

RULE-MAKING REVIEW

Sobonya, Chair, Frich, Vice Chair, Hanshaw, Moffatt, Fleischauer, Rowe

RULES

Armstead, Chair, Anderson, Ashley, Cowles, Howell, Lane, Miller, C., Nelson, E., O'Neal, Overington, Pasdon, Shott, Sobonya, Boggs, Caputo, Guthrie, Manchin, Miley, White, H.

SENIOR CITIZEN ISSUES

Rowan, Chair, Border, Vice Chair, Larry Williams, Minority Chair, Moye, Minority Vice Chair, Canterbury, Deem, Duke, Faircloth, Hamilton, Hill, Kelly, Nelson, E., Overington, Rohrbach, Romine, Walters, White, B., Zatezalo, Campbell, Ferro, Moore, Perry, Pethtel, Phillips, R., Rodighiero

SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

Miller, Chair, Espinosa, Vice Chair, Skinner, Minority Chair, Rowe, Minority Vice Chair, Ashley, Blair, Ellington, Faircloth, Foster, Hanshaw, Hill, Kessinger, Lane, Pasdon, Stansbury, Storch, Waxman, Westfall, Bates, Hornbuckle, Manchin, Miley, Morgan, White, H., Williams

HOUSE OF DELEGATES COMMITTEES

VETERANS' AFFAIRS and HOMELAND SECURITY

Nelson, Chair (*Veterans Affairs*), Evans, Chair, (*Homeland Security*) Cooper, Vice Chair (*Veterans Affairs*), McGeehan, Vice Chair (*Homeland Security*), Longstreth, Minority Chair (*Veterans Affairs*), Smith, Minority Chair (*Homeland Security*), Hornbuckle, Minority Vice Chair (*Veterans Affairs*), Pushkin, Minority Vice Chair (*Homeland Security*), Arvon, Ashley, Foster, Frich, Howell, Ireland, Kelly, Kessinger, Rowan, Upson, Wagner, Weld, Byrd, Ferro, Fleischauer, Lynch, Trecost

SENATE COMMITTEES

COMMITTEES OF THE SENATE
Regular Session, 2015

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

Senators D. Hall (*Chair*), Trump (*Vice Chair*), Blair, Karnes, Maynard, Sypolt, Beach, Laird, Miller, Williams and Woelfel.

BANKING AND INSURANCE

Senators Nohe (*Chair*), Gaunch (*Vice Chair*), Ferns, D. Hall, M. Hall, Mullins, Trump, Facemire, Palumbo, Prezioso, Romano, Snyder and Woelfel.

CONFIRMATIONS

Senators Boley (*Chair*), Boso, Mullins, Nohe, Takubo, Kessler, Miller, Palumbo and Plymale.

ECONOMIC DEVELOPMENT

Senators Takubo (*Chair*), Ferns (*Vice Chair*), Blair, D. Hall, Leonhardt, Maynard, Mullins, Walters, Kessler, Plymale, Romano, Stollings, Woelfel and Yost.

EDUCATION

Senators Sypolt (*Chair*), Boley (*Vice Chair*), Carmichael, D. Hall, M. Hall, Karnes, Takubo, Trump, Beach, Laird, Plymale, Romano, Stollings and Unger.

ENERGY, INDUSTRY AND MINING

Senators Mullins (*Chair*), Nohe (*Vice Chair*), Blair, Boley, D. Hall, Maynard, Sypolt, Facemire, Kirkendoll, Snyder, Williams, Woelfel and Yost.

SENATE COMMITTEES

ENROLLED BILLS

Senators Maynard (*Chair*), Gaunch (*Vice Chair*), Boso, Miller and Unger.

FINANCE

Senators M. Hall (*Chair*), Walters (*Vice Chair*), Blair, Boley, Boso, Carmichael, Mullins, Sypolt, Takubo, Facemire, Kessler, Laird, Plymale, Prezioso, Stollings, Unger and Yost.

GOVERNMENT ORGANIZATION

Senators Blair (*Chair*), Walters (*Vice Chair*), Boso, Ferns, Gaunch, Leonhardt, Maynard, Mullins, Facemire, Miller, Palumbo, Snyder, Williams and Yost.

HEALTH AND HUMAN RESOURCES

Senators Ferns (*Chair*), Takubo (*Vice Chair*), Gaunch, Karnes, Leonhardt, Trump, Walters, Laird, Palumbo, Plymale, Prezioso, Stollings and Unger.

INTERSTATE COOPERATION

Senators Gaunch (*Chair*), Karnes (*Vice Chair*), Boso, Maynard, Kirkendoll, Palumbo and Unger.

JUDICIARY

Senators Trump (*Chair*), Nohe (*Vice Chair*), Carmichael, Ferns, Gaunch, D. Hall, Karnes, Leonhardt, Maynard, Beach, Kirkendoll, Miller, Palumbo, Romano, Snyder, Williams and Woelfel.

LABOR

Senators D. Hall (*Chair*), Ferns (*Vice Chair*), Blair, Gaunch, Karnes, Maynard, Laird, Prezioso, Stollings, Williams and Yost.

SENATE COMMITTEES

MILITARY

Senators Leonhardt (*Chair*), Boley (*Vice Chair*), Nohe, Sypolt, Walters, Facemire, Laird, Romano and Yost.

NATURAL RESOURCES

Senators Karnes (*Chair*), Maynard (*Vice Chair*), Boso, M. Hall, Leonhardt, Nohe, Takubo, Beach, Facemire, Laird, Miller, Snyder and Williams.

PENSIONS

Senators Gaunch (*Chair*), Trump (*Vice Chair*), M. Hall, Mullins, Kirkendoll, Plymale and Unger.

RULES

Senators Cole (*Chair*), Blair, Carmichael, M. Hall, Sypolt, Trump, Kessler, Plymale, Prezioso, Stollings and Williams.

TRANSPORTATION AND INFRASTRUCTURE

Senators Walters (*Chair*), Leonhardt (*Vice Chair*), Boley, Gaunch, Mullins, Beach, Kirkendoll, Plymale and Woelfel.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 2015

CHAPTER 1

(Com. Sub. for S. B. 423 - By Senators M. Hall, Blair, Carmichael, Facemire, D. Hall, Kirkendoll, Mullins, Plymale, Romano, Trump, Woelfel, Williams and Stollings)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to repeal §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated, §16-1-9f; to amend and reenact §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code; to amend said code by adding thereto a new section, designated §22-30-26; and to amend and reenact §22-31-2 of said code, all relating to protection of water resources and public health generally; amending the Aboveground Storage Tank Act; defining terms; requiring secretary to compile inventory of aboveground storage tanks in the state; requiring registration; authorizing certain fees; authorizing the Secretary of the Department of Environmental Protection to propose emergency and legislative rules; creating alternative regulatory program to allow permitted and otherwise regulated entities to compel permits and plans to accomplish tank and secondary containment standards under existing programs; requiring secretary to develop regulatory

program for tanks; creating a zone of peripheral concern for some; creating certain exemptions to regulation; providing factors to be considered in a program; requiring inspection and certification of tanks; requiring evidence of financial responsibility; requiring corrective action and plans; requiring spill prevention response plans; requiring notice of type and quantity of fluids stored in tanks to local water utilities and governments; requiring posting of signs at or near tanks; creating an administrative fund; creating Protect Our Water Fund; authorizing public access to certain information; authorizing inspections, monitoring and testing by secretary; authorizing secretary to issue administrative orders and seek injunctive relief; providing for civil and criminal penalties; allowing appeals to Environmental Quality Board; prohibiting duplicative enforcement; requiring interagency coordination; establishing duties of secretary upon imminent and substantial danger; providing additional duties and powers of secretary generally; providing for waiver of certain requirements; authorizing secretary to require individual NPDES permits; authorizing Secretary of Department of Health and Human Resources to inventory potential sources of significant contamination; membership of study commission; scope of study; and establishing reporting requirements.

Be it enacted by the Legislature of West Virginia:

That §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §16-1-9f; that §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22-30-26; and that §22-31-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.**ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.****§16-1-9f. Inventory of potential sources of significant contamination.**

1 (a) The secretary, working in collaboration with the
2 Department of Environmental Protection and the Division of
3 Homeland Security and Emergency Management, shall compile
4 an inventory of all potential sources of significant contamination
5 contained within a public water system's zone of critical concern
6 and identify those that are not currently permitted or subject to
7 regulation by the Secretary of the Department of Environmental
8 Protection under one or more articles of chapter twenty-two of
9 this code. In compiling the inventory, the secretary shall use
10 information provided in the registrations submitted pursuant to
11 section four, article thirty, chapter twenty-two of this code,
12 information provided to the Division of Homeland Security and
13 Emergency Management pursuant to section 312 of the federal
14 Emergency Planning and Community Right-to-Know Act, and
15 other information available to the agency.

16 (b) The department shall provide a copy of the compiled list
17 of known potential sources of significant contamination in each
18 zone of critical concern to the Department of Environmental
19 Protection and the Division of Homeland Security and
20 Emergency Management.

CHAPTER 22. ENVIRONMENTAL RESOURCES.**ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.****§22-30-2. Legislative findings.**

1 (a) The West Virginia Legislature finds the public policy of
2 the State of West Virginia is to protect and conserve the water

3 resources for the state and its citizens. The state's water
4 resources are vital natural resources that are essential to
5 maintain, preserve and promote human health, quality of life and
6 economic vitality of the state.

7 (b) The West Virginia Legislature further finds the public
8 policy of the state is for clean, uncontaminated water to be made
9 available for its citizens who are dependent on clean water as a
10 basic need for survival and who rely on the assurances from
11 public water systems and the government that the water is safe
12 to consume.

13 (c) The West Virginia Legislature further finds the public
14 policy of the state is that clean, uncontaminated water be
15 available to its businesses and industries that rely on water for
16 their economic pursuits and the well-being of their employees.
17 These include the medical industry, educational institutions, the
18 food and hospitality industries, the tourism industry,
19 manufacturing, coal, natural gas and other industries. Businesses
20 and industries searching for places to locate or relocate consider
21 the quality of life for their employees as well as the quality of
22 raw materials such as clean water.

23 (d) The Legislature further finds that large quantities of
24 fluids are stored in aboveground storage tanks within the state
25 and that emergency situations involving these fluids can and will
26 arise that may present a hazard to human health, safety, the water
27 resources, the environment and the economy of the state. The
28 Legislature further recognizes that some of these fluids have
29 been stored in aboveground storage tanks in a manner
30 insufficient to protect human health, safety, water resources, the
31 environment and the economy of the state.

§22-30-3. Definitions.

1 For purposes of this article:

2 (1) “Aboveground storage tank” or “tank” or “AST” means
3 a device made to contain an accumulation of more than one
4 thousand three hundred twenty gallons of fluids that are liquid at
5 standard temperature and pressure, which is constructed
6 primarily of nonearthen materials, including concrete, steel,
7 plastic or fiberglass reinforced plastic, which provide structural
8 support, more than ninety percent of the capacity of which is
9 above the surface of the ground, and includes all ancillary pipes
10 and dispensing systems up to the first point of isolation. The
11 term includes stationary devices which are permanently affixed,
12 and mobile devices which remain in one location on a
13 continuous basis for three hundred sixty-five or more days. A
14 device meeting this definition containing hazardous waste
15 subject to regulation under 40 C. F. R. Parts 264 and 265,
16 exclusive of tanks subject to regulation under 40 C. F. R. §
17 265.201 is included in this definition but is not a regulated tank.
18 Notwithstanding any other provision of this code to the contrary,
19 the following categories of devices are not subject to the
20 provisions of this article:

21 (A) Shipping containers that are subject to state or federal
22 laws or regulations governing the transportation of hazardous
23 materials, including, but not limited to, railroad freight cars
24 subject to federal regulation under the Federal Railroad Safety
25 Act, 49 U. S. C. §§20101-2015, as amended, including, but not
26 limited to, federal regulations promulgated thereunder at 49 C.
27 F. R. Parts 172, 173 or 174;

28 (B) Barges or boats subject to federal regulation under the
29 United States Coast Guard, United States Department of
30 Homeland Security, including, but not limited to, federal
31 regulations promulgated at 33 C. F. R. 1, *et seq.* or subject to
32 other federal law governing the transportation of hazardous
33 materials.;

34 (C) Swimming pools;

35 (D) Process vessels;

36 (E) Devices containing drinking water for human or animal
37 consumption, surface water or groundwater, demineralized
38 water, noncontact cooling water or water stored for fire or
39 emergency purposes;

40 (F) Devices containing food or food-grade materials used for
41 human or animal consumption and regulated under the Federal
42 Food, Drug and Cosmetic Act (21 U. S. C. §301-392);

43 (G) Except when located in a zone of critical concern, a
44 device located on a farm, the contents of which are used
45 exclusively for farm purposes and not for commercial
46 distribution.

47 (H) Devices holding wastewater that is being actively treated
48 or processed (e.g., clarifier, chlorine contact chamber, batch
49 reactor, etc.);

50 (I) Empty tanks held in inventory or offered for sale;

51 (J) Pipeline facilities, including gathering lines, regulated
52 under the Natural Gas Pipeline Safety Act of 1968 or the
53 Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate
54 pipeline facility regulated by the West Virginia Public Service
55 Commission or otherwise regulated under any state law
56 comparable to the provisions of either the Natural Gas Pipeline
57 Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act
58 of 1979;

59 (K) Liquid traps, atmospheric and pressure vessels, or
60 associated gathering lines related to oil or gas production and
61 gathering operations; and

62 (L) Electrical equipment such as transformers, circuit
63 breakers and voltage regulator transformers.

64 (2) “Department” means the West Virginia Department of
65 Environmental Protection.

66 (3) “First point of isolation” means the valve, pump,
67 dispenser or other device or equipment on or nearest to the tank
68 where the flow of fluids into or out of the tank may be shut off
69 manually or where it automatically shuts off in the event of a
70 pipe or tank failure.

71 (4) “Nonoperational storage tank” means an empty
72 aboveground storage tank in which fluids will not be deposited
73 or from which fluids will not be dispensed on or after the
74 effective date of this article.

75 (5) “Operator” means any person in control of, or having
76 responsibility for, the daily operation of an aboveground storage
77 tank.

78 (6) “Owner” means a person who holds title to, controls or
79 owns an interest in an aboveground storage tank, including the
80 owner immediately preceding the discontinuation of its use.
81 “Owner” does not mean a person who holds an interest in a tank
82 for financial security unless the holder has taken possession of
83 and operated the tank.

84 (7) “Person”, “persons” or “people” means any individual,
85 trust, firm, owner, operator, corporation or other legal entity,
86 including the United States government, an interstate
87 commission or other body, the state or any agency, board,
88 bureau, office, department or political subdivision of the state,
89 but does not include the Department of Environmental
90 Protection.

91 (8) “Process vessel” means a tank that forms an integral part
92 of a production process through which there is a steady, variable,
93 recurring or intermittent flow of materials during the operation

94 of the process or in which a biological, chemical or physical
95 change in the material occurs. This does not include tanks used
96 for storage of materials prior to their introduction into the
97 production process or for the storage of finished products or
98 by-products of the production process.

99 (9) “Public groundwater supply source” means a primary
100 source of water supply for a public water system which is
101 directly drawn from a well, underground stream, underground
102 reservoir, underground mine or other primary sources of water
103 supplies which are found underneath the surface of the state.

104 (10) “Public surface water supply source” means a primary
105 source of water supply for a public water system which is
106 directly drawn from rivers, streams, lakes, ponds, impoundments
107 or other primary sources of water supplies which are found on
108 the surface of the state.

109 (11) “Public surface water influenced groundwater supply
110 source” means a source of water supply for a public water
111 system which is directly drawn from an underground well,
112 underground river or stream, underground reservoir or
113 underground mine, and the quantity and quality of the water in
114 that underground supply source is heavily influenced, directly or
115 indirectly, by the quantity and quality of surface water in the
116 immediate area.

117 (12) “Public water system” means:

118 (A) Any water supply or system which regularly supplies or
119 offers to supply water for human consumption through pipes or
120 other constructed conveyances, if serving at least an average of
121 twenty-five individuals per day for at least sixty days per year,
122 or which has at least fifteen service connections, and shall
123 include:

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

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

130 (B) A public water system does not include a bathhouse
131 located on coal company property solely for the use of its
132 employees or a system which meets all of the following
133 conditions:

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

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

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

140 (iv) Is not a carrier conveying passengers in interstate
141 commerce.

142 (13) “Regulated level 1 aboveground storage tank” or “level
143 1 regulated tank” means:

144 (A) An AST located within a zone of critical concern, source
145 water protection area, public surface water influenced
146 groundwater supply source area, or any AST system designated
147 by the secretary as a level 1 regulated tank; or

148 (B) An AST that contains substances defined in section
149 101(14) of the Comprehensive Environmental Response,
150 Compensation and Liability Act (CERCLA) as a “hazardous
151 substance” (42 U. S. C. § 9601(14)); or is on EPA’s

152 “Consolidated List of Chemicals Subject to the Emergency
153 Planning and Community Right to Know Act (EPCRA),
154 CERCLA, and §112(r) of the Clean Air Act (CAA)” (known as
155 “the List of Lists”) as provided by 40 C. F. R. §§ 355, 372, 302,
156 and 68) in a concentration of one percent or greater, regardless
157 of the AST’s location, except ASTs containing petroleum are not
158 “level 1 regulated tanks” based solely upon containing
159 constituents recorded on the CERCLA lists; or,

160 (C) An AST with a capacity of 50,000 gallons or more,
161 regardless of its contents or location.

162 (14) “Regulated level 2 aboveground storage tank” or “level
163 2 regulated tank” means an AST that is located within a zone of
164 peripheral concern that is not a level 1 regulated tank.

165 (15) “Regulated aboveground storage tank” or “regulated
166 tank” means an AST that meets the definition of a level 1 or
167 level 2 regulated tank.

168 (16) “Release” means any spilling, leaking, emitting,
169 discharging, escaping, or leaching of fluids from an aboveground
170 storage tank into the waters of the state or escaping from
171 secondary containment..

172 (17) “Secondary containment” means a safeguard applied to
173 one or more aboveground storage tanks that prevents the
174 discharge into the waters of the state of the entire capacity of the
175 largest single tank and sufficient freeboard to contain
176 precipitation. In order to qualify as secondary containment, the
177 barrier and containment field must be sufficiently impervious to
178 contain fluids in the event of a release, and may include
179 double-walled tanks, dikes, containment curbs, pits or drainage
180 trench enclosures that safely confine the release from a tank in
181 a facility catchment basin or holding pond. Earthen dikes and
182 similar containment structures must be designed and constructed

183 to contain, for a minimum of seventy-two hours, fluid that
184 escapes from a tank.

185 (18) “Secretary” means the Secretary of the Department of
186 Environmental Protection, or his or her designee.

187 (19) “Source water protection area” for a public groundwater
188 supply source is the area within an aquifer that supplies water to
189 a public water supply well within a five-year time-of-travel, and
190 is determined by the mathematical calculation of the locations
191 from which a drop of water placed at the edge of the protection
192 area would theoretically take five years to reach the well.

193 (20) “Zone of critical concern” for a public surface water
194 supply source and for a public surface water influenced
195 groundwater supply source is a corridor along streams within a
196 watershed that warrants detailed scrutiny due to its proximity to
197 the surface water intake and the intake’s susceptibility to
198 potential contaminants within that corridor. The zone of critical
199 concern is determined using a mathematical model that accounts
200 for stream flows, gradient and area topography. The length of the
201 zone of critical concern is based on a five-hour time-of-travel of
202 water in the streams to the intake. The width of the zone of
203 critical concern is one thousand feet measured horizontally from
204 each bank of the principal stream and five hundred feet
205 measured horizontally from each bank of the tributaries draining
206 into the principal stream.

207 (21) “Zone of peripheral concern” for a public surface water
208 supply source and for a public surface water influenced
209 groundwater supply source is a corridor along streams within a
210 watershed that warrants scrutiny due to its proximity to the
211 surface water intake and the intake’s susceptibility to potential
212 contaminants within that corridor. The zone of peripheral
213 concern is determined using a mathematical model that accounts
214 for stream flows, gradient and area topography. The length of the

215 zone of peripheral concern is based on an additional five-hour
216 time-of-travel of water in the streams beyond the perimeter of
217 the zone of critical concern, which creates a protection zone of
218 ten hours above the water intake. The width of the zone of
219 peripheral concern is one thousand feet measured horizontally
220 from each bank of the principal stream and five hundred feet
221 measured horizontally from each bank of the tributaries draining
222 into the principal stream.

§22-30-4. Inventory and registration of existing aboveground storage tanks.

1 (a) To assure protection of the water resources of the state,
2 the secretary shall compile an inventory of all aboveground
3 storage tanks. The secretary shall prescribe a registration form
4 for this purpose.

5 (b) Each owner or operator of an aboveground storage tank
6 shall complete and submit to the secretary the registration form
7 by July 1, 2015. The owner or operator of any aboveground
8 storage tank placed into service on or after the effective date of
9 this section shall complete and submit a registration form to the
10 secretary prior to storing fluids therein. Tank registrations
11 previously submitted to the secretary pursuant to this article shall
12 constitute registration pursuant to this section.

13 (c) At a minimum, the registration form shall identify the
14 ownership of the tank, tank location, date of installation if
15 known, type of construction, capacity and age of the tank, the
16 type of fluid stored therein, and the circumstances under which
17 the registration must be updated.

18 If the registered tank is regulated under any existing state or
19 federal regulatory program, the owner of the tank shall be
20 required to provide the identifying number of any license,
21 registration or permit issued for the tank.

22 (d) The secretary shall charge a registration fee of \$40 per
23 tank for all ASTs in service prior to July 1, 2015. The
24 registration fee for ASTs placed into service on or after July 1,
25 2015, shall be \$20 per tank. Registration fees for ASTs in service
26 prior to July 1, 2015, shall be deposited such that half the
27 amount is placed into the AST Administrative Fund and half the
28 amount into the Protect Our Water Fund. Registration fees for
29 ASTs placed into service on or after July 1, 2015, shall be
30 deposited wholly into the AST Administrative Fund.

31 (1) The secretary shall propose emergency or legislative
32 rules for legislative approval in accordance with the provisions
33 of article three, chapter twenty-nine-a of this code to set out the
34 process and procedure for registration fee assessment and
35 collection.

36 (2) In recognition of the need to expeditiously capitalize the
37 AST Administrative Fund and the Protect Our Water Fund, the
38 secretary may charge the fees provided for in this subsection by
39 sending invoices for the same to the owners or operators of
40 ASTs prior to the promulgation of the rules contemplated in
41 subdivision (1) of this subsection.

42 (e) After July 1, 2015, it shall be unlawful for any owner or
43 operator to operate or use an aboveground storage tank that has
44 not been properly registered or for which any applicable
45 registration fee has not been paid.

§22-30-5. Aboveground Storage Tank Regulatory Program.

1 (a) The secretary shall develop a regulatory program for new
2 and existing regulated aboveground storage tanks and secondary
3 containment that takes into account the size, location and
4 contents of the tanks and sets out tiered requirements for
5 regulated tanks. Level 1 tanks shall be regulated to a higher
6 standard of tank and secondary containment integrity based upon

7 their proximity to a public surface water supply source or public
8 surface water influenced groundwater supply source.

9 (b) The rules promulgated by the secretary for regulated
10 tanks and secondary containment shall, at a minimum, include
11 the following:

12 (1) Criteria for the design, construction and maintenance of
13 aboveground storage tanks;

14 (2) Criteria for the design, construction, maintenance or
15 methods of secondary containment;

16 (3) Criteria for the design, operation, maintenance or
17 methods of leak detection. Acceptable leak detection shall
18 include, but not be limited to, visual inspections, an inventory
19 control system together with tank testing, or a comparable
20 system or method designed to identify leaks from aboveground
21 storage tanks;

22 (4) Requirements for recordkeeping;

23 (5) Requirements for the development of maintenance and
24 corrosion prevention plans;

25 (6) Requirements for the closure of aboveground storage
26 tanks and any remediation necessary as a result of release from
27 the aboveground storage tank;

28 (7) The assessment of a registration fee, and annual
29 operation and response fees as determined by the secretary;

30 (8) Certificate to operate issuance only after the application
31 and any other supporting documents have been submitted,
32 reviewed and approved by the secretary;

33 (9) A procedure for the administrative resolution of
34 violations including the assessment of administrative civil
35 penalties.

36 (c) For those entities that are otherwise regulated under those
37 provisions of this chapter that necessitate individual, site-specific
38 permits or plans that require appropriate containment and
39 diversionary structures or equipment to prevent discharged or
40 released materials from reaching the waters of the state, the
41 secretary may amend those permits or plans associated with
42 those permits or both at the request of the permittee to include
43 conditions pertaining to the management and control of
44 regulated tanks, so long as those conditions in the opinion of the
45 secretary are sufficient in combination with practices and
46 protections already in place to protect the waters of the state. In
47 its application for permit or plan modification, the permittee
48 shall advise the secretary whether, how and to what extent the
49 permittee adheres to other standards or plans with regard to tank
50 and secondary containment integrity, inspection and spill
51 prevention and response, including, without limitation, API 653
52 standards for Tank Inspection, Repair, Alteration and
53 Reconstruction or STI SP001 Standards for Aboveground
54 Storage Tanks or the requirements of the federal spill prevention
55 and countermeasures program governed by 40 C. F. R. Part 112.
56 Inclusion of ASTs in amended permits or plans would not relieve
57 the owner or operator's responsibility to pay registration,
58 certificate to operate or Protect Our Water Fund fees.
59 Specifically, the permits or plans the secretary may amend
60 include:

61 (1) Permits issued pursuant to the Surface Coal Mining and
62 Reclamation Act, article three of this chapter;

63 (2) Permits issued by the Office of Oil and Gas pursuant to
64 article six or six-a of this chapter or spill pollution and control
65 measures plans required under 35 C. S. R. 1;

66 (3) Individual permits issued pursuant to the National
67 Pollution Discharge Elimination System, article eleven of this
68 chapter;

69 (4) Permits issued pursuant to the Solid Waste Management
70 Act, article fifteen of this chapter; and

71 (5) Groundwater protection plans issued pursuant to article
72 twelve of this chapter.

73 (d) Any entity whose permit or plan modification or
74 amendment relating to tank integrity and secondary containment
75 design operation and maintenance is approved by the secretary
76 and so maintained shall be deemed to be compliant with this
77 article and entitles the entity to a certificate to operate so long as
78 the registration requirements of section four of this article are
79 also met.

80 (e) The manner and time frames for implementation of the
81 regulatory program required by this section shall be established
82 by the secretary through the proposal of emergency or legislative
83 rules in accordance with the provisions of article three, chapter
84 twenty-nine-a of this code.

§22-30-6. Evaluation and certification.

1 (a) Each regulated aboveground storage tank and its
2 associated secondary containment structure shall be evaluated by
3 a qualified registered professional engineer or a qualified person
4 working under the direct supervision of a registered professional
5 engineer, regulated and licensed by the State Board of
6 Registration for Professional Engineers, or by an individual
7 certified to perform tank inspections by the American Petroleum
8 Institute or the Steel Tank Institute, or by a person holding
9 certification under another program approved by the secretary.

10 (b) Every owner or operator shall submit a certification that
11 each regulated tank and its associated secondary containment
12 structure have been evaluated by a qualified person as set forth
13 in subsection (a) of this section and meets the standards
14 established in accordance with section five of this article.

15 (c) The certification form shall be submitted to the secretary
16 within one hundred eighty days of the effective date of the rules
17 establishing standards that are adopted in accordance with
18 section five of this article. Subsequent certifications shall be due
19 at regular intervals thereafter as established by the secretary by
20 legislative rule, but not more frequently than once per calendar
21 year.

22 (d) Any person who performs a tank evaluation in
23 accordance with subsection (a) of this section, a responsible
24 person designated by the owner or operator and any other person
25 designated by the secretary by legislative rule may certify
26 aboveground storage tanks in accordance with subsection (b) of
27 this section.

§22-30-7. Financial responsibility.

1 The secretary shall promulgate rules requiring owners and
2 operators of regulated aboveground storage tanks to provide
3 evidence of adequate financial resources to undertake reasonable
4 corrective action for releases from regulated aboveground
5 storage tanks based on factors including the location, contents
6 and size of the tanks. The means of demonstrating adequate
7 financial responsibility may include, but not be limited to,
8 providing evidence of current insurance, guarantee, surety bond,
9 letter of credit, proof of assets, trust fund or qualification as a
10 self insurer. The secretary may determine which bonds and other
11 guarantees of performance provided to the secretary pursuant to
12 other articles of this chapter shall satisfy the requirements of this
13 section.

§22-30-8. Corrective action.

1 (a) Prior to the effective date of the emergency and
2 legislative rules promulgated pursuant to the authority granted
3 under this article, the secretary is authorized to:

4 (1) Require the owner or operator of an aboveground storage
5 tank to undertake prompt corrective action to protect human
6 health, safety, water resources or the environment from
7 contamination caused by a release; or

8 (2) Undertake immediate corrective action with respect to
9 any release or threatened release of fluid from an aboveground
10 storage tank when, in the judgment of the secretary, the action is
11 necessary to protect human health, safety, water resources or the
12 environment from contamination caused by a release.

13 (b) The corrective action undertaken or required by this
14 section shall be what may be necessary to protect human health,
15 water resources and the environment from contamination caused
16 by a release, including the ordered cessation or closure of a
17 source of contamination and the ordered remediation of a
18 contaminated site. The secretary shall use funds in the Protect
19 Our Water Fund established pursuant to this article for payment
20 of costs incurred for corrective action taken by the secretary in
21 accordance with this article. In undertaking corrective actions
22 under this section and in issuing orders requiring owners or
23 operators to undertake the actions, the secretary shall give
24 priority to releases or threatened releases of fluid from
25 aboveground storage tanks that pose the greatest threat to human
26 health, water resources or the environment.

27 (c) Following the effective date of rules promulgated
28 pursuant to this article, all actions or orders of the secretary shall
29 be in conformity with those rules. Following the effective date
30 of the rules, the secretary may utilize funds from the Protect Our
31 Water Fund to undertake corrective action with respect to any
32 release from an aboveground storage tank only if, in the
33 judgment of the secretary, the action is necessary to protect
34 human health, safety, water resources or the environment from
35 contamination, and one or more of the following situations
36 exists:

37 (1) If no person can be found within thirty days, or a shorter
38 period as may be necessary to protect human health, safety,
39 water resources and the environment, who is an owner or
40 operator of the aboveground storage tank at issue and who is
41 capable of carrying out the corrective action properly;

42 (2) A situation exists that requires immediate action by the
43 secretary under this section to protect human health, safety,
44 water resources or the environment;

45 (3) The cost of corrective action to be expended on an
46 aboveground storage tank exceeds the amount of resources that
47 the owner or operator can reasonably be expected to possess
48 based on the information required to be submitted pursuant to
49 this article and, considering the fluid being stored in the
50 aboveground storage tank in question, expenditures from the
51 Protect Our Water Fund are necessary to assure an effective
52 corrective action; or

53 (4) The owner or operator of the tank has failed or refused to
54 comply with an order of the secretary under this article or of the
55 Environmental Quality Board under article one, chapter
56 twenty-two-b of this code or of a court of competent jurisdiction
57 to comply with appropriate corrective action measures.

58 (d) The secretary may draw upon the Protect Our Water
59 Fund in order to take action under subdivision (1) or (2),
60 subsection (c) of this section if the secretary has made diligent
61 good-faith efforts to determine the identity of the owner or
62 operator responsible for the release and:

63 (1) The secretary is unable to determine the identity of the
64 owner or operator in a manner consistent with the need to take
65 timely corrective action; or

66 (2) The owner or operator determined by the secretary to be
67 responsible for the release has been informed in writing of the

68 secretary's determination and has been requested by the
69 secretary to take appropriate corrective action but is unable or
70 unwilling to take proper action in a timely manner.

71 (e) The written notice to the owner or operator must inform
72 the owner or operator that if it is subsequently found liable by a
73 court of competent jurisdiction for releases pursuant to this
74 section, the owner or operator will be required to reimburse the
75 Protect Our Water Fund for the costs of the investigation,
76 information gathering and corrective action taken by the
77 secretary.

78 (f) If the secretary determines that immediate response to an
79 imminent threat to human health, safety, water resources or the
80 environment is necessary to avoid substantial injury or damage
81 thereto, corrective action may be taken pursuant to this section
82 without the prior written notice required by subdivision (2),
83 subsection (d) of this section. In that case, the secretary must
84 give subsequent written notice to the owner or operator within
85 fifteen days after the action is taken describing the circumstances
86 that required the action to be taken and setting forth the matters
87 identified in subsection (e) of this section.

§22-30-9. Spill prevention and response plan.

1 (a) Within one hundred eighty days of the effective date of
2 this article, each owner or operator of a regulated aboveground
3 storage tank shall submit to the secretary a spill prevention and
4 response plan for all regulated aboveground storage tanks at a
5 facility or location. Owners and operators of regulated
6 aboveground storage tanks shall file updated plans required to be
7 submitted by this section no less frequently than every five
8 years. The spill prevention and response plan shall at a
9 minimum:

10 (1) Describe the activity that occurs at the site and provide
11 an inventory of the types and amounts of fluids stored in

12 regulated aboveground storage tanks at the facility. The plan
13 shall provide a reference to the location of the safety data sheets
14 (SDS) required by the Occupational Safety and Health
15 Administration for all fluids stored in regulated aboveground
16 storage tanks at the facility;

17 (2) Identify all facility-related positions with duties and
18 responsibilities for overseeing the implementation of the
19 facility's plan and list all facility emergency coordinators;

20 (3) Describe a preventive maintenance program, monitoring
21 and inspection procedures, and employee training programs;

22 (4) Describe the general release response procedures that the
23 aboveground storage tank facility and contract emergency
24 personnel shall employ upon the occurrence of any release;

25 (5) Provide contact information for the state, county and
26 municipal emergency management agencies and the nearest
27 downstream public water supply intake, and designate the person
28 or persons to be notified in the event of a release from a
29 regulated aboveground storage tank that could reach waters of
30 the state; and

31 (6) Provide the secretary with any other information he or
32 she may reasonably request.

33 (b) Each owner of a regulated aboveground storage tank with
34 an approved spill prevention and response plan shall submit to
35 the secretary a revised plan or addendum to the plan in
36 accordance with the requirements of this article if any of the
37 following occur:

38 (1) There is a substantial modification in design,
39 construction, operation or maintenance of any regulated
40 aboveground storage tank, secondary containment or leak

41 detection equipment or methods, or there are other circumstances
42 that increase the potential for fires, explosions or releases of
43 fluids;

44 (2) There is a substantial modification in emergency
45 equipment at the facility;

46 (3) There are substantial changes in emergency response
47 protocols at the aboveground storage tank facility;

48 (4) The plan fails in an emergency;

49 (5) The removal or the addition of any regulated
50 aboveground storage tank; or

51 (6) Other circumstances occur for which the secretary
52 requests an update.

53 (c) The secretary shall approve the spill prevention and
54 response plan or reject the plan and require modifications as may
55 be necessary and reasonable to assure the protection of the
56 source water of a public water system from a release of fluids
57 from a regulated aboveground storage tank. If rejected, the
58 owner or operator of the regulated aboveground storage tank
59 shall submit a revised plan to the secretary for approval within
60 thirty days of receipt of notification of the secretary's decision.
61 Failure to comply with a plan approved by the secretary pursuant
62 to this section is a violation of this article.

63 (d) In lieu of a plan developed in accordance with the
64 requirements of this section, the owner or operator of a regulated
65 aboveground storage tank may certify to the secretary that it is
66 subject to: (1) A groundwater protection plan approved by the
67 secretary; or (2) a spill prevention control and countermeasures
68 plan that complies the requirements of 40 C. F. R. Part 112. Such
69 plans shall be made available for review or submitted to the
70 secretary upon request.

71 (e) Nothing contained in this section relieves the owner or
72 operator of an aboveground storage tank from his or her
73 obligation to report any release in accordance with the provisions
74 of this chapter and the rules promulgated thereunder.

§22-30-10. Notice to local governments and water companies.

1 (a) The owner or operator of a regulated aboveground
2 storage tank shall provide notice directly to the public water
3 system and to state, county and municipal emergency response
4 organizations of the type and quantity of fluid stored in the
5 regulated aboveground storage tanks at the facility and the
6 location of the safety data sheets (SDS) associated with the
7 fluids in storage. Subject to the protections afforded in section
8 fourteen of this article, the information required in this
9 subsection shall be delivered to the specific public water system
10 and to state, county and municipal emergency response
11 organizations that are designated by the secretary to receive
12 required notice.

13 (b) In lieu of the information required in subsection (a) of
14 this section, the tank owner or operator may provide the
15 inventory forms and applicable documents required by sections
16 311 and 312 of the Emergency Planning and Community
17 Right-to-Know Act, subject to the protection of trade secrets and
18 site security information allowed by section fourteen of this
19 article.

§22-30-11. Required signage.

1 Every aboveground storage tank shall display, or have
2 displayed nearby, the tank registration number, when issued by
3 the secretary; the emergency contact number for the owner or
4 operator of the tank; and the number for the Department of
5 Environmental Protection's Spill Reporting Hotline.

§22-30-12. Aboveground Storage Tank Administrative Fund.

1 (a) The secretary shall collect a registration fee from owners
2 or operators of each aboveground storage tank as set forth in
3 section four of this article and an annual operating fee for each
4 regulated aboveground tank in an amount to be promulgated in
5 the legislative rules authorized by this article, in an amount
6 sufficient to defray the costs of administering this article. All
7 registration and operation fees and the net proceeds of all fines,
8 penalties and forfeitures collected under this article, including
9 accrued interest, shall be paid into a special revenue account,
10 hereby created within the State Treasury, designated the
11 Aboveground Storage Tank Administrative Fund.

12 (b) At the end of each fiscal year, any unexpended balance,
13 including accrued interest, on deposit in the Aboveground
14 Storage Tank Administrative Fund shall not be transferred to the
15 General Revenue Fund, but shall remain in the Aboveground
16 Storage Tank Administrative Fund for expenditure pursuant to
17 this section.

§22-30-13. Protect Our Water Fund.

1 (a) Each owner or operator of a regulated aboveground
2 storage tank shall pay an annual fee to assure adequate response
3 to releases from aboveground storage tanks. The amount of fees
4 assessed pursuant to this section shall be set forth by rule. The
5 proceeds of the assessment shall be paid into a special revenue
6 account, hereby created within the State Treasury, designated the
7 Protect Our Water Fund” The fund shall be administered by the
8 secretary. Expenditures from the fund shall be solely to respond
9 to releases from aboveground storage tanks.

10 (b) Each owner or operator of an regulated aboveground
11 storage tank subject to a fee assessment under subsection (a) of
12 this section shall pay a fee based on the number, contents and

13 location of regulated aboveground storage tanks he or she owns
14 or operates, as applicable. The secretary shall vary the fees
15 annually to a level necessary to produce a fund of no more than
16 \$1 million after three years from the effective date of this article,
17 and to maintain an aggregate fund of \$1 million at the beginning
18 of each calendar year thereafter.

19 (c) At the end of each fiscal year, any unexpended balance,
20 including accrued interest, on deposit in the Protect Our Water
21 Fund shall not be transferred to the General Revenue fund, but
22 shall remain in the Protect Our Water Fund for expenditure
23 pursuant to this section.

24 (d) The secretary may enter into agreements and contracts
25 and to expend the moneys in the fund for the following purposes:

26 (1) Responding to aboveground storage tank releases when,
27 based on readily available information, the secretary determines
28 that immediate action is necessary to prevent or mitigate
29 significant risk of harm to human health, safety, water resources
30 or the environment from contamination caused by a release of
31 fluid from aboveground storage tanks in situations for which no
32 federal funds are immediately available for the response, cleanup
33 or containment: *Provided*, That the secretary shall apply for and
34 diligently pursue all available federal funds at the earliest
35 possible time;

36 (2) Reimbursing any nonresponsible parties for reasonable
37 cleanup costs incurred with the authorization of the secretary in
38 responding to an aboveground storage tank release; or

39 (3) Reimbursing any nonresponsible parties for reasonable
40 costs incurred with the authorization of the secretary responding
41 to perceived, potential or threatened releases from aboveground
42 storage tanks.

43 (e) The secretary, through a cooperative agreement with
44 another state regulatory agency, in this or another state, may use
45 the fund to compensate the cooperating agency for expenses the
46 cooperating agency incurs in carrying out corrective actions
47 pursuant to this article.

§22-30-14. Public access to information.

1 (a) The public shall have access to all documents and
2 information submitted to the department pursuant to this article,
3 subject to the limitations contained in the state Freedom of
4 Information Act, article one, chapter twenty-nine-b of this code,
5 or any information designated by the Division of Homeland
6 Security and Emergency Management as restricted from public
7 release. Trade secrets, proprietary business information and
8 information designated by the Division of Homeland Security
9 and Emergency Management as restricted from public release
10 shall be secured and safeguarded by the department. Such
11 information or data shall not be disclosed to the public or to any
12 firm, individual or agency other than officials or authorized
13 employees or representatives of a state or federal agency
14 implementing the provisions of this article or any other
15 applicable law related to releases of fluid from aboveground
16 storage tanks that impact the state's water resources. Any person
17 who makes any unauthorized disclosure of such confidential
18 information or data is guilty of a misdemeanor and, upon
19 conviction thereof, may be fined not more than \$1,000 or
20 confined in a regional jail facility for not more than twenty days,
21 or both.

22 (b) A list of the potential sources of significant
23 contamination contained within the zone of critical concern or
24 zone of peripheral concern as provided by the Bureau for Public
25 Health, working in conjunction with the department and the
26 Division of Homeland Security and Emergency Management
27 may only be disclosed to the extent consistent with the

28 protection of trade secrets, confidential business information and
29 information designated by the Division of Homeland Security
30 and Emergency Management as described above. The exact
31 location of the contaminants within the zone of critical concern
32 or zone of peripheral concern is not subject to public disclosure
33 in response to a Freedom of Information Act request under
34 article one, chapter twenty-nine-b of this code. However, the
35 location, characteristics and approximate quantities of potential
36 sources of significant contamination within the zone of critical
37 concern or zone of peripheral concern shall be made known to
38 one or more designees of the public water utility, and shall be
39 maintained in a confidential manner by the public water utility.
40 In the event of a release to waters of the state that could affect a
41 public water supply, information about the release shall be
42 promptly made available to any emergency responders
43 responding to the site of a spill or release and the general public
44 shall be promptly notified in the event of a chemical spill,
45 release or related emergency by the Director of Homeland
46 Security and Emergency Management.

47 (c) The Director of Homeland Security and Emergency
48 Management may promulgate emergency rules and shall propose
49 legislative rules, pursuant to article three, chapter twenty-nine-a
50 of this code to effectuate the provisions of this section.

§22-30-15. Inspections, monitoring and testing.

1 (a) For the purposes of developing or assisting in the
2 development of any rule, conducting any study, taking any
3 corrective action or enforcing any provision of this article, any
4 owner or operator of an aboveground storage tank shall, upon
5 request of the secretary:

6 (1) Furnish information relating to the aboveground storage
7 tanks, their associated equipment and contents;

8 (2) Conduct reasonable monitoring or testing;

9 (3) Permit the secretary, at all reasonable times, to inspect
10 and copy records relating to aboveground storage tanks; and

11 (4) Permit the secretary to have access to the aboveground
12 storage tanks for corrective action.

13 (b) For the purposes of developing or assisting in the
14 development of any rule, conducting any study, taking corrective
15 action or enforcing any provision of this article, the secretary
16 may:

17 (1) Enter at any time any establishment or other place where
18 an aboveground storage tank is located;

19 (2) Inspect and obtain samples of any fluid contained in an
20 aboveground storage tank;

21 (3) Conduct monitoring or testing of the aboveground
22 storage tanks, associated equipment, contents or surrounding
23 soils, surface water or groundwater; and

24 (4) Take corrective action as specified in this article.

25 (c) Each inspection shall be commenced and completed with
26 reasonable promptness.

27 (d) To ensure protection of the water resources of the state
28 and compliance with any provision of this article or
29 rule promulgated thereunder, the secretary shall inspect level 1
30 regulated tanks at least once every three years. The secretary
31 shall develop an inspection protocol for level 2 regulated tanks.

§22-30-16. Administrative orders; injunctive relief.

1 (a) When the secretary determines, on the basis of any
2 information, that a person is in violation of any requirement of
3 this article or the rules promulgated thereunder, the secretary

4 may issue an order stating with reasonable specificity the nature
5 of the violation and requiring compliance within a reasonable
6 specified time period, or the secretary may commence a civil
7 action in the circuit court of the county in which the violation
8 occurred or in the circuit court of Kanawha County for
9 appropriate relief, including a temporary or permanent
10 injunction. The secretary or the Environmental Quality Board
11 may stay any order issued by the secretary until the order is
12 reviewed by the Environmental Quality Board.

13 (b) In addition to the powers and authority granted to the
14 secretary by this chapter to enter into consent agreements,
15 settlements and otherwise enforce this chapter, the secretary
16 shall propose rules for legislative approval to establish a
17 mechanism for the administrative resolution of violations set
18 forth in this article through consent order or agreement as an
19 alternative to instituting a civil action.

§22-30-17. Civil and criminal penalties.

1 (a) Any person who fails to comply with an order of the
2 secretary issued under subsection (a), section sixteen of this
3 article within the time specified in the order is liable for a civil
4 penalty of not more than \$25,000 for each day of continued
5 noncompliance.

6 (b) Any owner or operator of an aboveground storage tank
7 who knowingly fails to register or obtain a certificate to operate
8 a regulated aboveground storage tank or submits false
9 information pursuant to this article is liable for a civil penalty
10 not to exceed \$10,000 for each aboveground storage tank that is
11 not registered or for which a certificate to operate a regulated
12 aboveground storage tank is not obtained or for which false
13 information is submitted.

14 (c) Any owner or operator of an aboveground storage tank
15 who fails to comply with any requirement of this article or any

16 standard promulgated by the secretary pursuant to this article is
17 subject to a civil penalty not to exceed \$10,000 for each day of
18 violation.

19 (d) Any person who knowingly and intentionally violates
20 any provision of this article, or any rule or order issued under or
21 subject to the provisions of this article, is guilty of a
22 misdemeanor and, upon conviction thereof, shall be confined in
23 a regional jail for a period of time not exceeding one year, and
24 be fined an amount not to exceed \$25,000.

25 (e) Any person convicted of a second or subsequent willful
26 violation as set forth in subsection (d) of this section is guilty of
27 a felony and, upon conviction, may be imprisoned in a
28 correctional facility not less than one nor more than three years,
29 or fined not more than \$50,000 for each day of violation, or both
30 fined and imprisoned.

31 (f) Any person may be prosecuted and convicted under the
32 provisions of this section notwithstanding that none of the
33 administrative remedies provided in this article have been
34 pursued or invoked against said person and notwithstanding that
35 civil action for the imposition and collection of a civil penalty or
36 an application for an injunction under the provisions of this
37 article has not been filed against such person.

38 (g) Where a person holding a permit is carrying out a
39 program of pollution abatement or remedial action in compliance
40 with the conditions and terms of a corrective action plan
41 approved by the secretary, the person is not subject to criminal
42 prosecution for pollution recognized and authorized by the
43 approved corrective action plan.

44 (h) Civil penalties are payable to the secretary. All moneys
45 collected under this section for civil fines collected under this
46 article shall be deposited into either the AST Administrative

47 Fund or the Protect Our Water Fund. All money deposited into
48 these accounts shall be used by the secretary solely for the
49 purposes described in sections twelve and thirteen of this article..

§22-30-18. Appeal to Environmental Quality Board.

1 Any person aggrieved or adversely affected by an action,
2 decision or order of the secretary made and entered in
3 accordance with the provisions of this article may appeal to the
4 Environmental Quality Board, pursuant to the provisions of
5 article one, chapter twenty-two-b of this code.

§22-30-19. Duplicative enforcement prohibited.

1 No enforcement proceeding brought pursuant to this article
2 may be duplicated by an enforcement proceeding subsequently
3 commenced under some other article of this code with respect to
4 the same transaction or event, unless the subsequent proceeding
5 involves the violation of a permit or permitting requirement of
6 the other article.

§22-30-21. Interagency cooperation.

1 (a) In implementation of this article, the secretary shall
2 coordinate with the Department of Health and Human
3 Resources, the West Virginia Public Service Commission, the
4 Division of Homeland Security and Emergency Management
5 and local health departments to ensure the successful planning
6 and implementation of this act, including consideration of the
7 role of those agencies in providing services to owners and
8 operators of regulated aboveground storage tanks and public
9 water systems.

10 (b) The Division of Homeland Security and Emergency
11 Management shall also coordinate with state and local
12 emergency response agencies to facilitate a coordinated

13 emergency response and incident command and communication
14 between the owner or operator of the regulated aboveground
15 storage tank, the state and local emergency response agencies,
16 and the affected public water systems.

§22-30-22. Imminent and substantial danger.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, upon receipt of evidence that an aboveground storage
3 tank may present an imminent and substantial danger to human
4 health, water resources or the environment, the secretary may
5 bring suit on behalf of the State of West Virginia in the circuit
6 court of the county in which the imminent and substantial danger
7 exists or in the circuit court of Kanawha County against any
8 owner or operator of an aboveground storage tank who has
9 contributed or who is contributing to imminent and substantial
10 danger to public health, safety, water resources or the
11 environment to order the person to take action as may be
12 necessary to abate the situation and protect human health, safety,
13 water resources and the environment from contamination caused
14 by a release of fluid from an aboveground storage tank.

15 (b) Upon receipt of information that there is any
16 aboveground storage tank that presents an imminent and
17 substantial danger to human health, safety, water resources or the
18 environment, the secretary shall require the owner or operator of
19 the tank to provide immediate notice to the appropriate state and
20 local government agencies and any affected public water
21 systems. In addition, the secretary shall require notice of any
22 danger to be promptly posted at the aboveground storage tank
23 facility containing the aboveground storage tank at issue.

§22-30-24. Powers and duties of secretary.

1 (a) In addition to the powers and duties prescribed in this
2 chapter or otherwise provided by law, the secretary has the

3 exclusive authority to perform all acts necessary to implement
4 this article.

5 (b) The secretary may receive and expend money from the
6 federal government or any other sources to implement this
7 article.

8 (c) The secretary may revoke any registration or certificate
9 to operate for a significant violation of this article or the rules
10 promulgated hereunder.

11 (d) The secretary may issue orders, assess civil penalties,
12 institute enforcement proceedings and prosecute violations of
13 this article as necessary.

14 (e) The secretary, in accordance with this article, may order
15 corrective action to be undertaken, take corrective action or
16 authorize a third party to take corrective action.

17 (f) The secretary may recover the costs of taking corrective
18 action, including costs associated with authorizing third parties
19 to perform corrective action. Costs may not include routine
20 inspection and administrative activities not associated with a
21 release.

**§22-30-25. Waiving certain requirements of this article for
specified categories of aboveground storage tanks
as designated by the department by legislative rule.**

1 The secretary may designate, by rules proposed for
2 legislative approval in accordance with article three, chapter
3 twenty-nine-a of this code, additional categories of aboveground
4 storage tanks for which one or more of the requirements of this
5 article may be waived upon a determination that such categories
6 of aboveground storage tanks either do not represent a
7 substantial threat of contamination or they are currently

8 regulated under standards that are consistent with the protective
9 standards and requirements set forth in this article and rules
10 promulgated thereunder.

§22-30-26. Secretary's authority to require individual NPDES permits within a zone of critical concern.

1 Any person who holds a National Pollutant Discharge
2 Elimination System general permit pursuant to the federal Water
3 Pollution Control Act or the West Virginia Water Pollution
4 Control Act, article eleven of this chapter, for a site that contains
5 one or more regulated aboveground storage tanks may be
6 required by the secretary to apply for and hold an individual
7 permit under those acts. Any general NPDES permit in effect on
8 the effective date of this act shall remain in effect until the
9 secretary either issues or denies the individual NPDES permit.

ARTICLE 31. THE PUBLIC WATER SUPPLY PROTECTION ACT.

§22-31-2. Public Water System Supply Study Commission.

1 (a) There is hereby established the Public Water System
2 Supply Study Commission which is created for the purpose of
3 studying and reporting back to the Joint Committee on
4 Government and Finance on the following subject matters:

5 (1) A review and assessment of the effectiveness and the
6 quality of information contained in updated source water
7 protection plans required for certain public water systems by the
8 provisions of section nine-c, article one, chapter sixteen of this
9 code;

10 (2) A review and assessment of the effectiveness of
11 legislation enacted during the 2014 Regular Session of the West
12 Virginia Legislature, as it pertains to assisting public water
13 systems in identifying and reacting or responding to identified

14 potential sources of significant contamination, and increasing
15 public awareness and public participation in the emergency
16 planning and response process;

17 (3) The extent of available financing and funding
18 alternatives which are available to existing public water systems
19 to pursue projects which are designed to create alternate sources
20 of supply or increased stability of supply in the event of a spill,
21 release or contamination event which impairs the water system's
22 primary source of supply;

23 (4) A review and consideration of the recommendations of
24 the U. S. Chemical Safety and Hazard and Investigation Board
25 after its investigation of the Bayer Crop Science incident of
26 2008; and

27 (5) Any recommendations or suggestions the study
28 commission may offer to improve the infrastructure of existing
29 public water systems, to provide safe and reliable sources of
30 supplies, and to pursue other measures designed to protect the
31 integrity of public water service.

32 (b) The study commission shall consist of the following
33 twelve members, who shall be appointed and comprised as
34 follows:

35 (1) Four members appointed by the Governor, one of whom
36 shall be a professional engineer experienced in the design and
37 construction of public water systems; one of whom shall be a
38 hydrologist or other expert experienced in determining the flow
39 characteristics of rivers and streams; one of whom shall be an
40 environmental toxicologist or other public health expert who is
41 familiar with the impact of contaminants on the human body;
42 and one citizen representative;

43 (2) One representative designated by the Rural Water
44 Association;

45 (3) One representative designated by the Municipal League;

46 (4) The Secretary of the Department of Environmental
47 Protection or his or her designee;

48 (5) The Commissioner of the Bureau for Public Health or his
49 or her designee who shall serve as chair;

50 (6) The Director of the Division of Homeland Security and
51 Emergency Management or his or her designee;

52 (7) The Chairman of the Public Service Commission or his
53 or her designee;

54 (8) Two representatives designated by the Business Industry
55 Council; and

56 (9) One representative designated by West Virginia Rivers
57 Coalition.

58 (c) Reports by the Commission shall be submitted to the
59 Joint Committee on Government and Finance on or before
60 December 15 of each year, beginning December 15, 2014.

61 (d) The study commission shall terminate on June 30, 2019.



CHAPTER 2

(S. B. 489 - By Senator Carmichael)

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §55-2-6a of the Code of West Virginia,
1931, as amended, relating to extending certain existing limits on

the filing of civil actions to those actions arising from the actual surveying of real property.

Be it enacted by the Legislature of West Virginia:

That §55-2-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-6a. Deficiencies, injuries or wrongful death resulting from any improvements to or survey of real property; limitation of actions and suits.

1 No action, whether in contract or in tort, for indemnity or
2 otherwise, nor any action for contribution or indemnity to
3 recover damages for any deficiency in the planning, design,
4 surveying, observation or supervision of any construction or the
5 actual construction of any improvement to real property, or the
6 actual surveying of real property, or, to recover damages for any
7 injury to real or personal property, or, for an injury to a person
8 or for bodily injury or wrongful death arising out of the defective
9 or unsafe condition of any improvement to real property, or the
10 survey of real property, may be brought more than ten years after
11 the performance or furnishing of the services or construction.
12 However, the above period is tolled according to section twenty-
13 one of this article. The period of limitation provided in this
14 section does not commence until the improvement to the real
15 property, or the survey of the real property in question has been
16 occupied or accepted by the owner of the real property,
17 whichever occurs first.



CHAPTER 3

(S. B. 3 - By Senators Palumbo, Leonhardt, Boley, Ferns, D. Hall, Karnes, Maynard, Nohe, Sypolt, Trump, Blair, Williams, Plymale, Kirkendoll, Stollings and Cole (Mr. President))

[Passed January 29, 2015; in effect ninety days from passage.]

[Approved by the Governor on February 9, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-27, relating to liability of possessor of real property for harm to a trespasser.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-27, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-27. Liability of possessor of real property for harm to a trespasser.

1 (a) A possessor of real property, including an owner, lessee
 2 or other lawful occupant, owes no duty of care to a trespasser
 3 except in those circumstances where a common-law
 4 right-of-action existed as of the effective date of this section,
 5 including the duty to refrain from willfully or wantonly causing
 6 the trespasser injury.

7 (b) A possessor of real property may use justifiable force to
 8 repel a criminal trespasser as provided by section twenty-two of
 9 this article.

10 (c) This section does not increase the liability of any
11 possessor of real property and does not affect any immunities
12 from or defenses to liability established by another section of
13 this code or available at common law to which a possessor of
14 real property may be entitled.

15 (d) The Legislature intends to codify and preserve the
16 common law in West Virginia on the duties owed to trespassers
17 by possessors of real property as of the effective date of this
18 section.



CHAPTER 4

**(Com. Sub. for S. B. 13 - Senators Nohe, Boley,
Ferns, D. Hall, Karnes, Maynard, Mullins, Sypolt, Trump,
Blair, Williams and Cole (Mr. President))**

[Passed February 18, 2015; in effect from passage.]

[Approved by the Governor on March 3, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-28, relating to the liability of a possessor of real property for injuries caused by open and obvious hazards; reinstating and codifying the open and obvious doctrine of common law as it existed prior to judicial abolition; clarifying that this section does not create, recognize or ratify claim or cause of action; stating legislative intent; and providing for judicial application.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-28, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.**§55-7-28. Limiting civil liability of a possessor of real property for injuries caused by open and obvious hazards.**

1 (a) A possessor of real property, including an owner, lessee
2 or other lawful occupant, owes no duty of care to protect others
3 against dangers that are open, obvious, reasonably apparent or as
4 well known to the person injured as they are to the owner or
5 occupant, and shall not be held liable for civil damages for any
6 injuries sustained as a result of such dangers.

7 (b) Nothing in this section creates, recognizes or ratifies a
8 claim or cause of action of any kind.

9 (c) It is the intent and policy of the Legislature that this
10 section reinstates and codifies the open and obvious hazard
11 doctrine in actions seeking to assert liability against an owner,
12 lessee or other lawful occupant of real property to its status prior
13 to the decision of the West Virginia Supreme Court of Appeals
14 in the matter of *Hersh v. E-T Enterprises, Limited Partnership*,
15 232 W. Va. 305 (2013). In its application of the doctrine, the
16 court as a matter of law shall appropriately apply the doctrine
17 considering the nature and severity, or lack thereof, of violations
18 of any statute relating to a cause of action.



CHAPTER 5

**(Com. Sub. for S. B. 421 - By Senators Trump,
Carmichael, Blair and Gaunch)**

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-29, relating

generally to treatment of punitive damages in civil actions; providing for limitations on punitive damages in civil actions; providing for when punitive damages may be awarded in civil actions; and providing for a bifurcated trial, upon request, for civil actions involving punitive damages.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-29, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-29. Limitations on punitive damages.

1 (a) An award of punitive damages may only occur in a civil
2 action against a defendant if a plaintiff establishes by clear and
3 convincing evidence that the damages suffered were the result of
4 the conduct that was carried out by the defendant with actual
5 malice toward the plaintiff or a conscious, reckless and
6 outrageous indifference to the health, safety and welfare of
7 others.

8 (b) Any civil action tried before a jury involving punitive
9 damages may, upon request of any defendant, be conducted in a
10 bifurcated trial in accordance with the following guidelines:

11 (1) In the first stage of a bifurcated trial, the jury shall
12 determine liability for compensatory damages and the amount of
13 compensatory damages, if any.

14 (2) If the jury finds during the first stage of a bifurcated trial
15 that a defendant is liable for compensatory damages, then the
16 court shall determine whether sufficient evidence exists to
17 proceed with a consideration of punitive damages.

18 (3) If the court finds that sufficient evidence exists to
19 proceed with a consideration of punitive damages, the same jury
20 shall determine if a defendant is liable for punitive damages in
21 the second stage of a bifurcated trial and may award such
22 damages.

23 (4) If the jury returns an award for punitive damages that
24 exceeds the amounts allowed under subsection (c) of this
25 section, the court shall reduce any such award to comply with the
26 limitations set forth therein.

27 (c) The amount of punitive damages that may be awarded in
28 a civil action may not exceed the greater of four times the
29 amount of compensatory damages or \$500,000, whichever is
30 greater.



CHAPTER 6

**(Com. Sub. for S. B. 344 - By Senators Trump,
Carmichael and Blair)**

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7E-1, §55-7E-2 and §55-7E-3, all relating to setting adequate and reasonable amounts of compensatory damages available to an employee in statutory and common law wrongful or retaliatory discharge causes of action and other employment law claims; setting forth definitions; setting forth legislative findings and declaration of public policy; placing duty to mitigate damages on plaintiffs in employment-related lawsuits and causes of action; and requiring a judge to make a

finding on the appropriateness of remedy versus reinstatement before front pay damages are to be considered by a jury.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7E-1, §55-7E-2 and §55-7E-3, all to read as follows:

ARTICLE 7E. DUTY TO MITIGATE DAMAGES IN EMPLOYMENT CLAIMS.

§55-7E-1. Definitions.

1 In this article:

2 (a) “Back pay” means the wages that an employee would
3 have earned, had the employee not suffered from an adverse
4 employment action, from the time of the adverse employment
5 action through the time of trial.

6 (b) “Front pay” means the wages that an employee would
7 have earned, had the employee not suffered from an adverse
8 employment action, from the time of trial through a future date.

§55-7E-2. Legislative findings and declaration of purpose.

1 (a) The Legislature finds that:

2 (1) Employees of this state are entitled to be free from
3 unlawful discrimination, wrongful discharge and unlawful
4 retaliation in the workplace. Employers are often confronted
5 with difficult choices in the hiring, discipline, promotion, layoff
6 and discharge of employees.

7 (2) The citizens and employers of this state are entitled to a
8 legal system that provides adequate and reasonable
9 compensation to those persons who have been subjected to

10 unlawful employment actions, a legal system that is fair,
11 predictable in its outcomes, and a legal system that functions
12 within the mainstream of American jurisprudence.

13 (3) The goal of compensation remedies in employment law
14 cases is to make the victim of unlawful workplace actions whole,
15 including back pay; reinstatement or some amount of front pay
16 in lieu of reinstatement; and under certain statutes, attorney's
17 fees for the successful plaintiff.

18 (4) In West Virginia, the amount of damages recently
19 awarded in statutory and common law employment cases have
20 been inconsistent with established federal law and the law of
21 surrounding states. This lack of uniformity in the law puts our
22 state and its businesses at a competitive disadvantage.

23 (b) The purpose of this article is to provide a framework for
24 adequate and reasonable compensation to those persons who
25 have been subjected to an unlawful employment action, but to
26 ensure that compensation does not far exceed the goal of making
27 a wronged employee whole.

§55-7E-3. Statutory or common law employment claims; duty to mitigate damages.

1 (a) In any employment law cause of action against a current
2 or former employer, regardless of whether the cause of action
3 arises from a statutory right created by the Legislature or a cause
4 of action arising under the common law of West Virginia, the
5 plaintiff has an affirmative duty to mitigate past and future lost
6 wages, regardless of whether the plaintiff can prove the
7 defendant employer acted with malice or malicious intent, or in
8 willful disregard of the plaintiff's rights. The malice exception
9 to the duty to mitigate damages is abolished. Unmitigated or flat
10 back pay and front pay awards are not an available remedy. Any
11 award of back pay or front pay by a commission, court or jury

12 shall be reduced by the amount of interim earnings or the amount
13 earnable with reasonable diligence by the plaintiff. It is the
14 defendant's burden to prove the lack of reasonable diligence.

15 (b) In any employment law claim or cause of action, the trial
16 court shall make a preliminary ruling on the appropriateness of
17 the remedy of reinstatement versus front pay if such remedies
18 are sought by the plaintiff. If front pay is determined to be the
19 appropriate remedy, the amount of front pay, if any, to be
20 awarded shall be an issue for the trial judge to decide.



CHAPTER 7

**(H. B. 2726 - By Delegate(s) Shott, Folk,
Overington, Sponaugle, Azinger, Deem and Waxman)**

[Passed March 3, 2015; in effect July 1, 2015.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §55-8-16 of the Code of West Virginia, 1931, as amended, relating to choice of law in product liability actions; and establishing the effective date of the amendments enacted in 2015.

Be it enacted by the Legislature of West Virginia:

That §55-8-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. ACTIONS ON CONTRACTS.

§55-8-16. Choice of law in product liability actions.

1 (a) It is public policy of this state that, in determining the
2 law applicable to a product liability claim brought by a

3 nonresident of this state against the manufacturer or distributor
4 of a prescription drug or other product, all liability claims at
5 issue shall be governed solely by the product liability law of the
6 place of injury (“lex loci delicti”).

7 (b) The amendments to this section enacted in 2015 shall be
8 applicable prospectively to all civil actions commenced on or
9 after July 1, 2015.



CHAPTER 8

(Com. Sub. for S. B. 37 - By Senator Palumbo)

[Passed March 14, 2015; in effect July 1, 2015.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §55-10-1, §55-10-2, §55-10-3, §55-10-4, §55-10-5, §55-10-6, §55-10-7 and §55-10-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto twenty-five new sections, designated §55-10-9, §55-10-10, §55-10-11, §55-10-12, §55-10-13, §55-10-14, §55-10-15, §55-10-16, §55-10-17, §55-10-18, §55-10-19, §55-10-20, §55-10-21, §55-10-22, §55-10-23, §55-10-24, §55-10-25, §55-10-26, §55-10-27, §55-10-28, §55-10-29, §55-10-30, §55-10-31, §55-10-32 and §55-10-33, all relating generally to arbitration; providing for a short title; making legislative findings; defining terms; defining notice under article; defining when article applies; prescribing effect of agreements to arbitrate; identifying nonwaivable provisions of article; allowing for application for judicial relief under article; providing required method for notice of application for judicial relief; making agreement to arbitrate valid unless legal or equitable reason for revocation exists; delineating decisions to be made by judge and

arbitrator; providing for terms by which arbitration may continue if challenged; providing for process for motions to compel or stay arbitration; providing for provisional remedies to protect effectiveness of arbitration proceedings; providing process for initiation of arbitration; providing for consolidation of separate arbitration proceedings; providing for appointment of arbitrator and default process for appointing arbitrator if not agreed by the parties; requiring neutrality of arbitrators; requiring disclosure by arbitrators of matters likely to affect impartiality; requiring majority of arbitrators to agree to exercise powers; providing immunity for arbitrators; providing exceptions to arbitrator immunity; providing that arbitrator incompetence to testify to same extent as judges; providing exceptions to arbitrator incompetence to testify; providing for attorneys' fees and costs for challenges from which arbitrators are immune from civil liability; providing general process for arbitration; providing for appointment of replacement arbitrator if necessary; allowing parties to be represented by a lawyer in arbitrations; outlining procedure for witnesses, issuance of subpoenas, depositions, discovery and protective orders in arbitrations; providing for judicial enforcement of discovery-related orders by arbitrator; providing for judicial enforcement of preaward ruling by arbitrator; providing for record of an award and requirements for making an award; providing an exemption from the award provisions in the case of arbitration conducted or administered by a self-regulatory organization as defined by the Securities Exchange Act of 1934, the Commodity Exchange Act or regulations adopted under those acts; allowing change of an award by arbitrator upon motion under certain conditions; providing that certain remedies and fees and costs of arbitration may be a part of arbitration award; allowing for confirmation by court of an award upon motion; providing process and grounds for vacating an award by a court; providing process and grounds for modification or correction of an award upon motion; providing that court shall enter a judgment upon confirmation of an award and may add certain reasonable

attorneys' fees and costs; providing for jurisdiction over arbitration agreements by a court of this state; providing venue; providing that appeals may be taken from certain orders related to arbitration proceedings; requiring uniform application and construction of act; providing that this act shall conform with the Electronic Signatures in Global and National Commerce Act; and clarifying that the act does not affect an action or proceeding commenced or right accrued before the effective date of the article.

Be it enacted by the Legislature of West Virginia:

That §55-10-1, §55-10-2, §55-10-3, §55-10-4, §55-10-5, §55-10-6, §55-10-7 and §55-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto twenty-five new sections, designated §55-10-9, §55-10-10, §55-10-11, §55-10-12, §55-10-13, §55-10-14, §55-10-15, §55-10-16, §55-10-17, §55-10-18, §55-10-19, §55-10-20, §55-10-21, §55-10-22, §55-10-23, §55-10-24, §55-10-25, §55-10-26, §55-10-27, §55-10-28, §55-10-29, §55-10-30, §55-10-31, §55-10-32 and §55-10-33, all to read as follows:

ARTICLE 10. ARBITRATION.

§55-10-1. Short title.

1 This article may be cited as the Revised Uniform Arbitration
2 Act.

§55-10-2. Declaration of public policy; legislative findings.

1 The Legislature finds that:

2 (1) Arbitration, as a form of alternative dispute resolution,
3 offers in many instances a more efficient and cost-effective
4 alternative to court litigation.

5 (2) The United States has a well-established federal policy
6 in favor of arbitral dispute resolution, as identified both by the

7 Federal Arbitration Act, 9 U.S.C. §1, *et seq.*, and the decisions
8 of the Supreme Court of the United States.

9 (3) Arbitration already provides participants with many of
10 the same procedural rights and safeguards as traditional
11 litigation, and ensuring that those rights and safeguards are
12 guaranteed to participants will ensure that arbitration remains a
13 fair and viable alternative to court litigation and guarantee that
14 no party to an arbitration agreement is unfairly prejudiced by
15 agreeing to an arbitration agreement or provision.

§55-10-3. Definitions.

1 In this article:

2 “Arbitration organization” means an association, agency,
3 board, commission or other entity that is neutral and initiates,
4 sponsors or administers an arbitration proceeding or is involved
5 in the appointment of an arbitrator.

6 “Arbitrator” means an individual appointed to render an
7 award, alone or with others, in a controversy that is subject to an
8 agreement to arbitrate.

9 “Court” means a circuit court in this state.

10 “Knowledge” means actual knowledge.

11 “Person” means an individual, corporation, business trust,
12 estate, trust, partnership, limited liability company, association,
13 joint venture or government; governmental subdivision, agency
14 or instrumentality; public corporation; or any other legal or
15 commercial entity.

16 “Record” means information that is inscribed on a tangible
17 medium or that is stored in an electronic or other medium and is
18 retrievable in perceivable form.

§55-10-4. Notice.

1 (a) Except as otherwise provided in this article, a person
2 gives notice to another person by taking action that is reasonably
3 necessary to inform the other person in ordinary course, whether
4 or not the other person acquires knowledge of the notice.

5 (b) A person has notice if the person has knowledge of the
6 notice or has received notice.

7 (c) A person receives notice when it comes to the person's
8 attention or the notice is delivered at the person's place of
9 residence or place of business or at another location held out by
10 the person as a place of delivery of such communications.

§55-10-5. When article applies.

1 (a) This article governs an agreement to arbitrate made on or
2 after July 1, 2015.

3 (b) This article governs an agreement to arbitrate made
4 before July 1, 2015, if all the parties to the agreement or to the
5 arbitration proceeding so agree in a record. Such record may be
6 made at any point and, for the mutual covenants contained
7 therein, no additional consideration is required by either party.

8 (c) Any agreement to arbitrate renewed or continued on or
9 after July 1, 2015, shall be governed by this agreement and, for
10 the mutual covenants contained therein, no additional
11 consideration is required by either party.

§55-10-6. Effect of agreement to arbitrate; nonwaivable provisions.

1 (a) Except as otherwise provided in subsections (b) and (c)
2 of this section, a party to an agreement to arbitrate or to an
3 arbitration proceeding may waive or the parties may vary the
4 effect of the requirements of this article to the extent permitted
5 by law.

6 (b) Before a controversy arises that is subject to an
7 agreement to arbitrate, a party to the agreement may not:

8 (1) Waive or agree to vary the effect of the requirements of
9 sections seven, eight, ten, nineteen, twenty-eight or thirty of this
10 article;

11 (2) Agree to unreasonably restrict the right under section
12 eleven of this article to notice of the initiation of an arbitration
13 proceeding;

14 (3) Agree to unreasonably restrict the right under section
15 fourteen of this article to disclosure of any facts by a neutral
16 arbitrator; or

17 (4) Waive the right under section eighteen of this article of
18 a party to an agreement to arbitrate to be represented by a lawyer
19 at any proceeding or hearing under this article, but an employer
20 and a labor organization may waive the right to representation by
21 a lawyer in a labor arbitration.

22 (c) A party to an agreement to arbitrate or arbitration
23 proceeding may not waive, or the parties may not vary the effect
24 of, the requirements of this section or sections five, nine, sixteen,
25 twenty, twenty-two, twenty-four, twenty-five, twenty-six,
26 twenty-seven, thirty-one, thirty-two or thirty-three of this article.

§55-10-7. Application for judicial relief.

1 (a) Except as otherwise provided in section thirty of this
2 article, an application for judicial relief under this article must be
3 made by motion to a West Virginia circuit court as specified in
4 section twenty-nine of this article and heard in accordance with
5 the rules of civil procedure governing motions.

6 (b) Unless a civil action involving the agreement to arbitrate
7 is pending, notice of an initial motion to the court under this

8 article must be served in the manner provided by law for the
9 service of a summons in a civil action. Otherwise, notice of the
10 motion must be given in the manner provided by the rules of
11 civil procedure for serving motions in pending cases.

§55-10-8. Validity of agreement to arbitrate.

1 (a) An agreement contained in a record to submit to
2 arbitration any existing or subsequent controversy arising
3 between the parties to the agreement is valid, enforceable and
4 irrevocable except upon a ground that exists at law or in equity
5 for the revocation of a contract.

6 (b) The court shall decide whether an agreement to arbitrate
7 exists or a controversy is subject to an agreement to arbitrate.

8 (c) An arbitrator shall decide whether a condition precedent
9 to arbitration has been fulfilled and whether a contract
10 containing a valid agreement to arbitrate is enforceable:
11 *Provided*, That the decision as to whether the arbitration
12 agreement is enforceable shall be made by a court of competent
13 jurisdiction, if requested by any party to the arbitration or
14 agreement, pursuant to section nine of this article.

15 (d) If a party to a judicial proceeding challenges the
16 existence of, or claims that a controversy is not subject to, an
17 agreement to arbitrate, the arbitration proceeding may continue
18 pending final resolution of the issue by the court, unless the
19 court otherwise orders.

§55-10-9. Motion to compel or stay arbitration.

1 (a) On motion of a person showing an agreement to arbitrate
2 and alleging another person's refusal to arbitrate pursuant to the
3 agreement:

4 (1) If the refusing party does not appear or does not oppose
5 the motion, the court shall order the parties to arbitrate; and

6 (2) If the refusing party opposes the motion, the court shall
7 proceed summarily to decide the issue and order the parties to
8 arbitrate unless it finds that there is no enforceable agreement to
9 arbitrate.

10 (b) On motion of a person alleging that an arbitration
11 proceeding has been initiated or threatened but that there is no
12 agreement to arbitrate, the court shall proceed summarily to
13 decide the issue. If the court finds that there is an enforceable
14 agreement to arbitrate, it shall order the parties to arbitrate.

15 (c) If the court finds that there is no enforceable agreement,
16 it may not, pursuant to subsection (a) or (b) of this section, order
17 the parties to arbitrate.

18 (d) The court may not refuse to order arbitration because the
19 claim subject to arbitration lacks merit or grounds for the claim
20 have not been established.

21 (e) If a proceeding involving a claim referable to arbitration
22 under an alleged agreement to arbitrate is pending in court, a
23 motion under this section must be made in that court. Otherwise
24 a motion under this section may be made in any court as
25 provided in section twenty-nine of this article.

26 (f) If a party makes a motion to the court to order arbitration,
27 the court on just terms shall stay any judicial proceeding that
28 involves a claim alleged to be subject to the arbitration until the
29 court renders a final decision under this section.

30 (g) If the court orders arbitration, the court on just terms
31 shall stay any judicial proceeding that involves a claim subject
32 to the arbitration. If a claim subject to the arbitration is
33 severable, the court may limit the stay to that claim.

§55-10-10. Provisional remedies.

1 (a) Before an arbitrator is appointed and is authorized and
2 able to act, the court, upon motion of a party to an arbitration

3 proceeding and for good cause shown, may enter an order for
4 provisional remedies to protect the effectiveness of the
5 arbitration proceeding to the same extent and under the same
6 conditions as if the controversy were the subject of a civil action.

7 (b) After an arbitrator is appointed and is authorized and able
8 to act:

9 (1) The arbitrator may issue such orders for provisional
10 remedies, including interim awards, as the arbitrator finds
11 necessary to protect the effectiveness of the arbitration
12 proceeding and to promote the fair and expeditious resolution of
13 the controversy to the same extent and under the same conditions
14 as if the controversy were the subject of a civil action; and

15 (2) A party to an arbitration proceeding may move the court
16 for a provisional remedy only if the matter is urgent and the
17 arbitrator is not able to act timely or the arbitrator cannot provide
18 an adequate remedy.

19 (c) A party does not waive a right of arbitration by making
20 a motion under subsection (a) or (b) of this section.

§55-10-11. Initiation of arbitration.

1 (a) A person initiates an arbitration proceeding by giving
2 notice in a record to the other parties to the agreement to
3 arbitrate in the agreed manner between the parties or, in the
4 absence of agreement, by certified or registered mail, return
5 receipt requested and obtained, or by service as authorized for
6 the commencement of a civil action. The notice must describe
7 the nature of the controversy and the remedy sought.

8 (b) Unless a person objects for lack or insufficiency of notice
9 under section seventeen of this article not later than the
10 beginning of the arbitration hearing, the person by appearing at
11 the hearing waives any objection to lack of or insufficiency of
12 notice.

§55-10-12. Consolidation of separate arbitration proceedings.

1 (a) Except as otherwise provided in subsection (c) of this
2 section, upon motion of a party to an agreement to arbitrate or to
3 an arbitration proceeding, the court may order consolidation of
4 separate arbitration proceedings as to all or some of the claims
5 if:

6 (1) There are separate agreements to arbitrate or separate
7 arbitration proceedings between the same persons or one of them
8 is a party to a separate agreement to arbitrate or a separate
9 arbitration proceeding with a third person;

10 (2) The claims subject to the agreements to arbitrate arise in
11 substantial part from the same transaction or series of related
12 transactions;

13 (3) The existence of a common issue of law or fact creates
14 the possibility of conflicting decisions in the separate arbitration
15 proceedings; and

16 (4) Prejudice resulting from a failure to consolidate is not
17 outweighed by the risk of undue delay or prejudice to the rights
18 of or hardship to parties opposing consolidation.

19 (b) The court may order consolidation of separate arbitration
20 proceedings as to some claims and allow other claims to be
21 resolved in separate arbitration proceedings.

22 (c) The court may not order consolidation of the claims of a
23 party to an agreement to arbitrate if the agreement prohibits
24 consolidation.

§55-10-13. Appointment of arbitrator; service as a neutral arbitrator.

1 (a) If the parties to an agreement to arbitrate agree on a
2 method for appointing an arbitrator, that method must be

3 followed, unless the method fails. If the parties have not agreed
4 on a method, the agreed method fails or an arbitrator appointed
5 fails or is unable to act and a successor has not been appointed,
6 the court, on motion of a party to the arbitration proceeding,
7 shall appoint the arbitrator. An arbitrator so appointed has all the
8 powers of an arbitrator designated in the agreement to arbitrate
9 or appointed pursuant to the agreed method.

10 (b) An individual who has a known, direct and material
11 interest in the outcome of the arbitration proceeding or a known,
12 existing and substantial relationship with a party may not serve
13 as an arbitrator required by an agreement to be neutral.

§55-10-14. Disclosure by arbitrator.

1 (a) Before accepting appointment, an individual who is
2 requested to serve as an arbitrator, after making a reasonable
3 inquiry, shall disclose to all parties to the agreement to arbitrate
4 and arbitration proceeding and to any other arbitrators any
5 known facts that a reasonable person would consider likely to
6 affect the impartiality of the arbitrator in the arbitration
7 proceeding, including:

8 (1) A financial or personal interest in the outcome of the
9 arbitration proceeding; and

10 (2) An existing or past relationship with any of the parties to
11 the agreement to arbitrate or the arbitration proceeding, their
12 counsel or representatives, a witness or another arbitrator.

13 (b) An arbitrator has a continuing obligation to disclose to all
14 parties to the agreement to arbitrate and arbitration proceeding
15 and to any other arbitrators any facts that the arbitrator learns
16 after accepting appointment which a reasonable person would
17 consider likely to affect the impartiality of the arbitrator.

18 (c) If an arbitrator discloses a fact required by subsection (a)
19 or (b) of this section to be disclosed and a party timely objects to

20 the appointment or continued service of the arbitrator based upon
21 the fact disclosed, the objection may be a ground under section
22 twenty-five of this article for vacating an award made by the
23 arbitrator.

24 (d) If the arbitrator did not disclose a fact as required by
25 subsection (a) or (b) of this section, upon timely objection by a
26 party, the court, under section twenty-five of this article, may
27 vacate an award.

28 (e) An arbitrator appointed as a neutral arbitrator who does
29 not disclose a known, direct and material interest in the outcome
30 of the arbitration proceeding or a known, existing and substantial
31 relationship with a party is presumed to act with evident
32 partiality under section twenty-five of this article.

33 (f) If the parties to an arbitration proceeding agree to the
34 procedures of an arbitration organization or any other procedures
35 for challenges to arbitrators before an award is made, substantial
36 compliance with those procedures is a condition precedent to a
37 motion to vacate an award on that ground under section
38 twenty-five of this article.

§55-10-15. Action by majority.

1 If there is more than one arbitrator, the powers of an
2 arbitrator must be exercised by a majority of the arbitrators, but
3 all of them shall conduct the hearing under section seventeen of
4 this article.

**§55-10-16. Immunity of arbitrator; competency to testify;
attorney's fees and costs.**

1 (a) An arbitrator or an arbitration organization acting in that
2 capacity is immune from civil liability to the same extent as a
3 judge of a court of this state acting in a judicial capacity.

4 (b) The immunity afforded by this section supplements any
5 immunity under other law.

6 (c) The failure of an arbitrator to make a disclosure required
7 by section fourteen of this article does not cause any loss of
8 immunity under this section.

9 (d) In a judicial, administrative or similar proceeding, an
10 arbitrator or representative of an arbitration organization is not
11 competent to testify, and may not be required to produce records
12 as to any statement, conduct, decision or ruling occurring during
13 the arbitration proceeding, to the same extent as a judge of a
14 court of this state acting in a judicial capacity. This subsection
15 does not apply:

16 (1) To the extent necessary to determine the claim of an
17 arbitrator, arbitration organization or representative of the
18 arbitration organization against a party to the arbitration
19 proceeding; or

20 (2) To a hearing on a motion to vacate an award under
21 section twenty-five of this article if the moving party establishes
22 prima facie that a ground for vacating the award exists.

23 (e) If a person commences a civil action against an
24 arbitrator, arbitration organization or representative of an
25 arbitration organization arising from the services of the
26 arbitrator, organization or representative or if a person seeks to
27 compel an arbitrator or a representative of an arbitration
28 organization to testify or produce records in violation of
29 subsection (d) of this section, and the court decides that the
30 arbitrator, arbitration organization or representative of an
31 arbitration organization is immune from civil liability or that the
32 arbitrator or representative of the organization is not competent
33 to testify, the court shall award to the arbitrator, organization or
34 representative reasonable attorneys' fees and other reasonable
35 expenses of litigation.

§55-10-17. Arbitration process.

1 (a) An arbitrator may conduct an arbitration in such manner
2 as the arbitrator considers appropriate for a fair and expeditious
3 disposition of the proceeding. The authority conferred upon the
4 arbitrator includes the power to hold conferences with the parties
5 to the arbitration proceeding before the hearing and, among other
6 matters, determine the admissibility, relevance, materiality and
7 weight of any evidence.

8 (b) An arbitrator may decide a request for summary
9 disposition of a claim or particular issue:

10 (1) If all interested parties agree; or

11 (2) Upon request of one party to the arbitration proceeding
12 if that party gives notice to all other parties to the proceeding,
13 and the other parties have a reasonable opportunity to respond.

14 (c) If an arbitrator orders a hearing, the arbitrator shall set a
15 time and place and give notice of the hearing not less than five
16 days before the hearing begins. Unless a party to the arbitration
17 proceeding makes an objection to lack or insufficiency of notice
18 not later than the beginning of the hearing, the party's
19 appearance at the hearing waives the objection. Upon request of
20 a party to the arbitration proceeding and for good cause shown,
21 or upon the arbitrator's own initiative, the arbitrator may adjourn
22 the hearing, from time to time, as necessary but may not
23 postpone the hearing to a time later than that fixed by the
24 agreement to arbitrate for making the award unless the parties to
25 the arbitration proceeding consent to a later date. The arbitrator
26 may hear and decide the controversy upon the evidence
27 produced although a party who was duly notified of the
28 arbitration proceeding did not appear. The court, on request, may
29 direct the arbitrator to conduct the hearing promptly and render
30 a timely decision.

31 (d) At a hearing under subsection (c) of this section, a party
32 to the arbitration proceeding has a right to be heard, to present
33 evidence material to the controversy and to cross examine
34 witnesses appearing at the hearing.

35 (e) If an arbitrator ceases or is unable to act during the
36 arbitration proceeding, a replacement arbitrator must be
37 appointed in accordance with section thirteen of this article to
38 continue the proceeding and to resolve the controversy.

§55-10-18. Representation by lawyer.

1 A party to an arbitration proceeding may be represented by
2 a lawyer licensed to practice law in the State of West Virginia.

§55-10-19. Witnesses; subpoenas; depositions; discovery.

1 (a) An arbitrator may issue a subpoena for the attendance of
2 a witness and for the production of records and other evidence at
3 any hearing and may administer oaths. A subpoena must be
4 served in the manner for service of subpoenas in a civil action
5 and, upon motion to the court by a party to the arbitration
6 proceeding or the arbitrator, enforced in the manner for
7 enforcement of subpoenas in a civil action.

8 (b) In order to make the proceedings fair, expeditious and
9 cost effective, upon request of a party to or a witness in an
10 arbitration proceeding, an arbitrator may permit a deposition of
11 any witness to be taken for use as evidence at the hearing,
12 including a witness who cannot be subpoenaed for or is unable
13 to attend a hearing. The arbitrator shall determine the conditions
14 under which the deposition is taken.

15 (c) An arbitrator may permit such discovery as the arbitrator
16 decides is appropriate in the circumstances, taking into account
17 the needs of the parties to the arbitration proceeding and other
18 affected persons and the desirability of making the proceeding
19 fair, expeditious and cost effective.

20 (d) If an arbitrator permits discovery under subsection (c) of
21 this section, the arbitrator may order a party to the arbitration
22 proceeding to comply with the arbitrator's discovery-related
23 orders, issue subpoenas for the attendance of a witness and for
24 the production of records and other evidence at a discovery
25 proceeding and take action against a noncomplying party to the
26 extent a court could if the controversy were the subject of a civil
27 action in this state.

28 (e) An arbitrator may issue a protective order to prevent the
29 disclosure of privileged information, confidential information,
30 trade secrets and other information protected from disclosure to
31 the extent a court could if the controversy were the subject of a
32 civil action in this state.

33 (f) All laws compelling a person under subpoena to testify
34 and all fees for attending a judicial proceeding, a deposition or
35 a discovery proceeding as a witness apply to an arbitration
36 proceeding as if the controversy were the subject of a civil action
37 in this state.

38 (g) The court may enforce a subpoena or discovery-related
39 order for the attendance of a witness within this state and for the
40 production of records and other evidence issued by an arbitrator
41 in connection with an arbitration proceeding in another state
42 upon conditions determined by the court so as to make the
43 arbitration proceeding fair, expeditious and cost effective. A
44 subpoena or discovery-related order issued by an arbitrator in
45 another state must be served in the manner provided by law for
46 service of subpoenas in a civil action in this state and, upon
47 motion to the court by a party to the arbitration proceeding or the
48 arbitrator, enforced in the manner provided by law for
49 enforcement of subpoenas in a civil action in this state.

§55-10-20. Judicial enforcement of preaward ruling by arbitrator.

1 If an arbitrator makes a preaward ruling in favor of a party
2 to the arbitration proceeding, the party may request the arbitrator

3 to incorporate the ruling into an award under section twenty-one
4 of this article. A prevailing party may make a motion to the court
5 for an expedited order to confirm the award under section
6 twenty-four of this article, in which case the court shall
7 summarily decide the motion. The court shall issue an order to
8 confirm the award unless the court vacates, modifies or corrects
9 the award under section twenty-five or twenty-six of this article.

§55-10-21. Award.

1 (a) An arbitrator shall make a record of an award. Such
2 record should set forth findings of fact and conclusions of law
3 that support the award. The record must be signed or otherwise
4 authenticated by any arbitrator who concurs with the award. The
5 arbitrator or the arbitration organization shall give notice of the
6 award, including a copy of the award, to each party to the
7 arbitration proceeding.

8 (b) An award must be made within the time specified by the
9 agreement to arbitrate or, if not specified therein, within the time
10 ordered by the court. The court may extend, or the parties to the
11 arbitration proceeding may agree in a record to extend, the time.
12 The court or the parties may do so within or after the time
13 specified or ordered. A party waives any objection that an award
14 was not timely made unless the party gives notice of the
15 objection to the arbitrator before receiving notice of the award.

16 (c) This section does not apply to an arbitration conducted
17 or administered by a self-regulatory organization as defined by
18 the Securities Exchange Act of 1934 (15 U. S.C. §78C), the
19 Commodity Exchange Act (7 U. S. C. §1, *et seq.*) or regulations
20 adopted under those acts.

§55-10-22. Change of award by arbitrator.

1 (a) On motion to an arbitrator by a party to an arbitration
2 proceeding, the arbitrator may modify or correct an award:

3 (1) Upon a ground stated in section twenty-six of this article;

4 (2) Because the arbitrator has not made a final and definite
5 award upon a claim submitted by the parties to the arbitration
6 proceeding; or

7 (3) To clarify the award.

8 (b) A motion under subsection (a) of this section must be
9 made and notice given to all parties within twenty days after the
10 moving party receives notice of the award.

11 (c) A party to the arbitration proceeding must give notice of
12 any objection to the motion within ten days after receipt of the
13 notice.

14 (d) If a motion to the court is pending under section
15 twenty-four, twenty-five or twenty-six of this article, the court
16 may submit the claim to the arbitrator to consider whether to
17 modify or correct the award:

18 (1) Upon a ground stated in section twenty-four of this
19 article;

20 (2) Because the arbitrator has not made a final and definite
21 award upon a claim submitted by the parties to the arbitration
22 proceeding; or

23 (3) To clarify the award.

24 (e) An award modified or corrected pursuant to this section
25 is subject to sections twenty-one, twenty-four, twenty-five and
26 twenty-six of this article.

§55-10-23. Remedies; fees and expenses of arbitration proceeding.

1 (a) An arbitrator may award punitive damages or other
2 exemplary relief if such an award is authorized by law in a civil

3 action involving the same claim and the evidence produced at
4 the hearing justifies the award under the legal standards
5 otherwise applicable to the claim.

6 (b) An arbitrator may award reasonable attorney's fees and
7 other reasonable expenses of arbitration if such an award is
8 authorized by law in a civil action involving the same claim or
9 by the agreement of the parties to the arbitration proceeding.

10 (c) As to all remedies other than those authorized by
11 subsections (a) and (b) of this section, an arbitrator may order
12 such remedies as the arbitrator considers just and appropriate
13 under the circumstances of the arbitration proceeding. The fact
14 that such a remedy could not or would not be granted by the
15 court is not a ground for refusing to confirm an award under
16 section twenty-four of this article or for vacating an award under
17 section twenty-three of this article.

18 (d) An arbitrator's award shall provide for the payment of
19 expenses and fees, together with other expenses to be split
20 among the parties, as provided by the parties' agreement or the
21 rules of the arbitration organization.

22 (e) If an arbitrator awards punitive damages or other
23 exemplary relief under subsection (a) of this section, the
24 arbitrator shall specify in the award the basis in fact justifying
25 and the basis in law authorizing the award and state separately
26 the amount of the punitive damages or other exemplary relief.

§55-10-24. Confirmation of award.

1 After a party to an arbitration proceeding receives notice of
2 an award, the party may make a motion to the court for an order
3 confirming the award at which time the court shall issue a
4 confirming order unless the award is modified or corrected
5 pursuant to section twenty-two or twenty-six of this article or is
6 vacated pursuant to section twenty-five of this article.

§55-10-25. Vacating award.

1 (a) Upon motion to the court by a party to an arbitration
2 proceeding, the court shall vacate an award made in the
3 arbitration proceeding if:

4 (1) The award was procured by corruption, fraud or other
5 undue means;

6 (2) There was:

7 (A) Evident partiality by an arbitrator appointed as a neutral
8 arbitrator;

9 (B) Corruption by an arbitrator; or

10 (C) Misconduct by an arbitrator prejudicing the rights of a
11 party to the arbitration proceeding;

12 (3) An arbitrator refused to postpone the hearing upon
13 showing of sufficient cause for postponement, refused to
14 consider evidence material to the controversy or otherwise
15 conducted the hearing contrary to section seventeen of this
16 article, so as to prejudice substantially the rights of a party to the
17 arbitration proceeding;

18 (4) An arbitrator exceeded the arbitrator's powers;

19 (5) There was no agreement to arbitrate, unless the person
20 participated in the arbitration proceeding without raising the
21 objection under section seventeen of this article not later than the
22 beginning of the arbitration hearing; or

23 (6) The arbitration was conducted without proper notice of
24 the initiation of an arbitration as required in section nine so as to
25 prejudice substantially the rights of a party to the arbitration
26 proceeding.

27 (b) A motion under this section must be filed within ninety
28 days after the moving party receives notice of the award
29 pursuant to section twenty-one of this article or within ninety
30 days after the moving party receives notice of a modified or
31 corrected award pursuant to section twenty-two of this article,
32 unless the moving party alleges that the award was procured by
33 corruption, fraud or other undue means, in which case the motion
34 must be made within ninety days after the ground is known or by
35 the exercise of reasonable care would have been known by the
36 moving party.

37 (c) If the court vacates an award on a ground other than that
38 set forth in subdivision (5), subsection (a) of this section, it may
39 order a rehearing. If the award is vacated on a ground stated in
40 subdivision (1) or (2), subsection (a) of this section, the
41 rehearing must be before a new arbitrator. If the award is vacated
42 on a ground stated in subdivision (3), (4) or (6), subsection (a) of
43 this section, the rehearing may be before the arbitrator who made
44 the award or the arbitrator's successor. The arbitrator must
45 render the decision in the rehearing within the same time as that
46 provided in section twenty-one of this article for an award.

47 (d) If the court denies a motion to vacate an award, it shall
48 confirm the award unless a motion to modify or correct the
49 award is pending.

§55-10-26. Modification or correction of award.

1 (a) Upon motion made within ninety days after the moving
2 party receives notice of the award pursuant to section nineteen
3 of this article or within ninety days after the moving party
4 receives notice of a modified or corrected award pursuant to
5 section twenty-two of this article, the court shall modify or
6 correct the award if:

7 (1) There was an evident mathematical miscalculation or an
8 evident mistake in the description of a person, thing or property
9 referred to in the award;

10 (2) The arbitrator has made an award on a claim not
11 submitted to the arbitrator and the award may be corrected
12 without affecting the merits of the decision upon the claims
13 submitted; or

14 (3) The award is imperfect in a matter of form not affecting
15 the merits of the decision on the claims submitted.

16 (b) If a motion made under subsection (a) of this section is
17 granted, the court shall modify or correct and confirm the award
18 as modified or corrected. Otherwise, unless a motion to vacate
19 is pending, the court shall confirm the award.

20 (c) A motion to modify or correct an award pursuant to this
21 section may be joined with a motion to vacate the award.

§55-10-27. Judgment on award; attorneys' fees and litigation expenses.

1 (a) Upon granting an order confirming, vacating without
2 directing a rehearing, modifying or correcting an award, the
3 court shall enter a judgment in conformity therewith. The
4 judgment may be recorded, docketed and enforced as any other
5 judgment in a civil action.

6 (b) A court may allow reasonable costs of the motion and
7 subsequent judicial proceedings.

8 (c) On application of a prevailing party to a contested
9 judicial proceeding under section twenty-four, twenty-five or
10 twenty-six of this article, the court may add reasonable
11 attorneys' fees and other reasonable expenses of litigation

12 incurred in a judicial proceeding after the award is made to a
13 judgment confirming, vacating without directing a rehearing,
14 modifying or correcting an award.

§55-10-28. Jurisdiction.

1 (a) A court of this state having jurisdiction over the
2 controversy and the parties may enforce an agreement to
3 arbitrate.

4 (b) An agreement to arbitrate providing for arbitration in this
5 state confers exclusive jurisdiction on the court to enter
6 judgment on an award under this article.

§55-10-29. Venue.

1 A motion pursuant to section seven of this article must be
2 made in the circuit court of the county in which the agreement to
3 arbitrate specifies the arbitration hearing is to be held or, if the
4 hearing has been held, in the circuit court of the county in which
5 it was held. Otherwise, the motion may be made in the court of
6 any county in which an adverse party resides or has a place of
7 business or, if no adverse party has a residence or place of
8 business in this state, in the circuit court of Kanawha County,
9 West Virginia. All subsequent motions must be made in the
10 court hearing the initial motion unless the court otherwise
11 directs.

§55-10-30. Appeals.

1 (a) An appeal may be taken from:

2 (1) An order denying a motion to compel arbitration;

3 (2) An order granting or denying a motion to compel
4 arbitration issued in an action filed pursuant to the provisions of
5 chapter forty-six-a of this code;

6 (3) An order granting a motion to stay arbitration;

7 (4) An order confirming or denying confirmation of an
8 award;

9 (5) An order modifying or correcting an award;

10 (6) An order vacating an award without directing a
11 rehearing; or

12 (7) A final judgment entered pursuant to this article.

13 (b) An appeal under this section must be taken as from an
14 order or a judgment in a civil action.

§55-10-31. Uniformity of application and construction.

1 In applying and construing this uniform act, consideration
2 must be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

**§55-10-32. Electronic Signatures in Global and National
Commerce Act.**

1 The provisions of this article governing the legal effect,
2 validity or enforceability of electronic records or signatures, and
3 of contracts performed with the use of such records or
4 signatures, shall conform to the requirements of Section 102 of
5 the Electronic Signatures in Global and National Commerce Act,
6 Pub. L. No. 106-229, 114 Stat. 464 (2000).

§55-10-33. Savings clause.

1 This article does not affect an action or proceeding
2 commenced or right accrued before this article takes effect.

CHAPTER 9

**(Com. Sub. for S. B. 140 - By Senators Snyder,
Romano and Facemire)**

[Passed March 13, 2015; in effect from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to repeal §29A-2-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §29A-1-2 of said code; to amend said code by adding thereto two new sections, designated §29A-1-3a and §29A-1-3b; and to amend and reenact §29A-3-1a, §29A-3-4, §29A-3-8, §29A-3-13 and §29A-3-15 of said code, all relating generally to the State Administrative Procedures Act; defining “legislative exempt rule”; providing certain technical amendments; providing for nullification and voiding of rules; setting forth requirements for amendments to existing rules, proposed new rules and repeal of existing rules; establishing filing and adoption requirements for legislative exempt rules; making legislative rules effective upon filing; requiring agency to provide list of interested parties with emergency rules; and changing number of copies required when filing an emergency rule.

Be it enacted by the Legislature of West Virginia:

That §29A-2-8 of the Code of West Virginia, 1931, as amended, be repealed; that §29A-1-2 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §29A-1-3a and §29A-1-3b; and that §29A-3-1a, §29A-3-4, §29A-3-8, §29A-3-13 and §29A-3-15 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-2. Definitions of terms used in this chapter.

1 For the purposes of this chapter:

2 (a) “Agency” means any state board, commission,
3 department, office or officer authorized by law to make rules or
4 adjudicate contested cases, except those in the legislative or
5 judicial branches.

6 (b) “Contested case” means a proceeding before an agency
7 in which the legal rights, duties, interests or privileges of specific
8 parties are required by law or constitutional right to be
9 determined after an agency hearing, but does not include cases
10 in which an agency issues a license, permit or certificate after an
11 examination to test the knowledge or ability of the applicant
12 where the controversy concerns whether the examination was
13 fair or whether the applicant passed the examination and does
14 not include rulemaking.

15 (c) “Interpretive rule” means every rule, as defined in
16 subdivision (j) of this section, adopted by an agency
17 independently of any delegation of legislative power which is
18 intended by the agency to provide information or guidance to the
19 public regarding the agency’s interpretations, policy or opinions
20 upon the law enforced or administered by it and which is not
21 intended by the agency to be determinative of any issue affecting
22 constitutional, statutory or common law rights, privileges or
23 interests. An interpretive rule may not be relied upon to impose
24 a civil or criminal sanction nor to regulate conduct or the
25 exercise of constitutional, statutory or common law rights or
26 privileges nor to confer any right or privilege provided by law
27 and is not admissible in any administrative or judicial
28 proceeding for that purpose, except where the interpretive rule

29 established the conditions for the exercise of discretionary power
30 as provided in this subdivision. However, an interpretive rule is
31 admissible for the purpose of showing that the prior conduct of
32 a person was based on good faith reliance on the rule. The
33 admission of the rule in no way affects any legislative or judicial
34 determination regarding the prospective effect of the rule. Where
35 any provision of this code lawfully commits any decision or
36 determination of fact or judgment to the sole discretion of any
37 agency or any executive officer or employee, the conditions for
38 the exercise of that discretion, to the extent that the conditions
39 are not prescribed by statute or by legislative rule, may be
40 established by an interpretive rule and such rule is admissible in
41 any administrative or judicial proceeding to prove the conditions.

42 (d) “Legislative exempt rule” means every rule promulgated
43 by an agency or relating to a subject matter that is exempt from
44 the rule-making provisions of article three of this chapter, under
45 section three, article one of this chapter or any other section of
46 this code.

47 (e) “Legislative rule” means every rule, as defined in
48 subdivision (j) of this section, proposed or promulgated by an
49 agency pursuant to this chapter. Legislative rule includes every
50 rule which, when promulgated after or pursuant to authorization
51 of the Legislature, has: (1) The force of law; or (2) supplies a
52 basis for the imposition of civil or criminal liability; or (3) grants
53 or denies a specific benefit. Every rule which, when effective, is
54 determinative on any issue affecting constitutional, statutory or
55 common law rights, privileges or interests is a legislative rule.
56 Unless lawfully promulgated as an emergency rule, a legislative
57 rule is only a proposal by the agency and has no legal force or
58 effect until promulgated by specific authorization of the
59 Legislature. Except where otherwise specifically provided in this
60 code, legislative rule does not include: (A) Findings or
61 determinations of fact made or reported by an agency, including
62 any findings and determinations that are required to be made by

63 any agency as a condition precedent to proposal of a rule to the
64 Legislature; (B) declaratory rulings issued by an agency pursuant
65 to the provisions of section one, article four of this chapter; (C)
66 orders, as defined in subdivision (e) of this section; or (D)
67 executive orders or proclamations by the Governor issued solely
68 in the exercise of executive power, including executive orders
69 issued in the event of a public disaster or emergency.

70 (f) “Order” means the whole or any part of the final
71 disposition, whether affirmative, negative, injunctive or
72 declaratory in form, by any agency of any matter other than
73 rulemaking.

74 (g) “Person” includes individuals, partnerships, corporations,
75 associations or public or private organizations of any character.

76 (h) “Procedural rule” means every rule, as defined in
77 subdivision (j) of this section, which fixes rules of procedure,
78 practice or evidence for dealings with or proceedings before an
79 agency, including forms prescribed by the agency.

80 (i) “Proposed rule” is a legislative rule, interpretive rule or
81 a procedural rule which has not become effective pursuant to the
82 provisions of this chapter or law authorizing its promulgation.

83 (j) “Rule” includes every rule, standard or statement of
84 policy or interpretation of general application and future effect,
85 including the amendment or repeal of the rule, affecting
86 constitutional, statutory or common law rights, privileges or
87 interests, or the procedures available to the public, adopted by an
88 agency to implement, extend, apply, interpret or make specific
89 the law enforced or administered by it or to govern its
90 organization or procedure, but does not include rules relating
91 solely to the internal management of the agency, nor rules of
92 which notice is customarily given to the public by markers or
93 signs, nor mere instructions. Every rule shall be classified as

94 “legislative rule”, “interpretive rule” or “procedural rule”, all as
95 defined in this section, and is effective only as provided in this
96 chapter.

97 (k) “Rulemaking” means the process for the formulation,
98 amendment or repeal of a rule as provided in this chapter.

§29A-1-3a. Technical amendments to a current rule.

1 The provisions of this chapter do not apply to purely
2 technical amendments to a current rule, including correcting
3 addresses, phone numbers, punctuation, spelling, code citations
4 or internal citations, numbering, grammatical errors or changes
5 to language to standardize rules generally without affecting the
6 content of any rule. An agency may make these amendments by
7 filing the corrected rule with the Secretary of State’s office.

§29A-1-3b. Void rules.

1 If an agency ceases to exist, through the operation of law or
2 by statute, any rules adopted or promulgated by the agency are
3 void on the date the agency ceases to exist, unless the agency’s
4 rule-making power and its rules have been transferred to another
5 agency.

ARTICLE 3. RULEMAKING.

**§29A-3-1a. Filing proposed amendments to an existing rule; and
repealing an existing rule.**

1 (a) An agency shall file all sections of the proposed rule
2 when proposing an amendment to an existing rule. The proposed
3 rule shall be accompanied by note of explanation as to the effect
4 of the amendment and its relation to the existing rules.

5 (b) An agency proposing to repeal a rule, shall file the rule
6 in its entirety with the provisions of the rule struck through. An
7 agency may not repeal a rule by reference in another rule.

§29A-3-4. Filing of proposed legislative exempt rules, procedural rules and interpretive rules.

1 (a) When an agency proposes a legislative exempt rule,
2 procedural rule or an interpretive rule, the agency shall file in the
3 State Register a notice of its action, including the text of the rule
4 as proposed.

5 (b) All proposed rules filed under subsection (a) of this
6 section shall have a fiscal note attached itemizing the cost of
7 implementing the rules as they relate to this state and to persons
8 affected by the rules. The fiscal note shall include all
9 information included in a fiscal note for either house of the
10 Legislature and a statement of the economic impact of the rule
11 on the state or its residents. The objectives of the rule shall be
12 clearly and separately stated in the fiscal note by the agency
13 issuing the proposed rules. A legislative exempt, procedural or
14 interpretive rule is not void or voidable by virtue of
15 noncompliance with this subsection.

§29A-3-8. Adoption of legislative exempt, procedural and interpretive rules.

1 An agency shall consider a legislative exempt, procedural
2 and interpretive rule for adoption not later than six months after
3 the close of public comment and file a notice of withdrawal or
4 adoption in the State Register within that period. An agency's
5 failure to file the notice constitutes withdrawal and the Secretary
6 of State shall note the failure in the State Register immediately
7 upon the expiration of the six-month period.

8 A legislative exempt, procedural or interpretive rule may be
9 amended by the agency prior to final adoption without further
10 hearing or public comment. The amendment may not change the
11 main purpose of the rule. If the fiscal implications have changed
12 since the rule was proposed, the agency shall attach a new fiscal
13 note to the notice of filing. Upon adoption of the rule, including

14 any amendment, the agency shall file the text of the adopted
15 legislative exempt, procedural or interpretive rule with its notice
16 of adoption in the State Register and the rule is effective on the
17 date specified in the rule or thirty days after the filing, whichever
18 is later or as specified in this code.

§29A-3-13. Adoption of legislative rules; effective date.

1 (a) Except as the Legislature may by law otherwise provide,
2 within sixty days after the effective date of an act authorizing
3 promulgation of a legislative rule, the agency shall promulgate
4 the rule in conformity with the provisions of law authorizing and
5 directing the promulgation of the rule. In the case of a rule
6 proposed by an agency which is administered by an executive
7 department pursuant to the provisions of article two, chapter
8 five-f of this code, the secretary of the department shall
9 promulgate the rule as authorized by the Legislature. In the case
10 of an agency which is not subject to administration by the
11 secretary of an executive department, the agency which proposed
12 the rule for promulgation shall promulgate the rule as authorized
13 by the Legislature.

14 (b) A legislative rule authorized by the Legislature is
15 effective upon filing in the State Register, or on the effective
16 date fixed by the authorizing act or, if none is fixed by law, a
17 later date not to exceed ninety days, as fixed by the agency.

18 (c) The Secretary of State shall note in the State Register the
19 effective date of an authorized and promulgated legislative rule
20 and shall promptly publish the duly promulgated rule in the
21 Code of State Rules maintained by his or her office.

**§29A-3-15. Emergency legislative rules; procedure for promulga-
tion; definition.**

1 (a) Any agency with authority to propose legislative rules
2 may, without hearing, find that an emergency exists requiring

3 that an emergency rule be promulgated and promulgate the
4 emergency rule in accordance with this section. The agency shall
5 file the emergency rule, together with a statement of the facts
6 and circumstances constituting the emergency and a listing of
7 state agencies, professions, businesses and other identifiable
8 interest groups affected by the proposed emergency rule, with
9 the Secretary of State, who shall publish a notice of the filing in
10 the State Register. However, an agency's good faith failure to
11 list all known state agencies, professions, businesses and other
12 identifiable interest groups is not a basis for disapproval of the
13 emergency rule or does not subject the emergency rule to
14 judicial review. The emergency rule becomes effective upon the
15 approval of the Secretary of State in accordance with section
16 fifteen-a of this article or upon the approval of the Attorney
17 General in accordance with section fifteen-b of this article or
18 upon the forty-second day following the filing, whichever occurs
19 first. The emergency rule may adopt, amend or repeal any
20 legislative rule, but the agency shall state, with particularity, the
21 circumstances constituting the emergency requiring the adoption,
22 amendment or repeal, and the emergency rule is subject to de
23 novo review by any court having original jurisdiction of an
24 action challenging its validity. An agency shall immediately file
25 a copy of the emergency rule and the required statement with the
26 Secretary of State and one copy with the Legislative
27 Rule-Making Review Committee.

28 An emergency rule is effective for not more than fifteen
29 months and expires earlier if any of the following occurs:

30 (1) The Secretary of State, acting under the authority
31 provided in section fifteen-a of this article, or the Attorney
32 General, acting under the authority provided in section fifteen-b
33 of this article, disapproves the emergency rule because: (A) The
34 emergency rule or an amendment to the emergency rule exceeds
35 the scope of the law authorizing or directing the promulgation of
36 the rule; (B) an emergency does not exist justifying the

37 promulgation of the emergency rule; or (C) the emergency rule
38 was not promulgated in compliance with the provisions of this
39 section. An emergency rule may not be disapproved pursuant to
40 the authority granted by clauses (A) or (B) of this subdivision on
41 the basis that the Secretary of State or the Attorney General
42 disagrees with the underlying public policy established by the
43 Legislature in enacting the authorizing legislation. An
44 emergency rule which would otherwise be approved as being
45 necessary to comply with a time limitation established by this
46 code or by a federal statute or regulation may not be disapproved
47 pursuant to the authority granted by paragraphs (A) or (B) of this
48 subdivision on the basis that the agency has failed to file the
49 emergency rule prior to the date fixed by the time limitation.
50 When the authorizing statute specifically directs an agency to
51 promulgate an emergency rule, or specifically finds that an
52 emergency exists and directs the promulgation of an emergency
53 rule, the emergency rule may not be disapproved pursuant to the
54 authority granted by paragraph (B) of this subdivision. An
55 emergency rule may not be disapproved on the basis that the
56 Legislature has not specifically directed an agency to promulgate
57 the emergency rule, or has not specifically found that an
58 emergency exists and directed the promulgation of an emergency
59 rule;

60 (2) The agency has not previously filed and fails to file a
61 notice of public hearing on the proposed rule within thirty days
62 of the date the proposed rule was filed as an emergency rule, in
63 which case the emergency rule expires on the thirty-first day;

64 (3) The agency has not previously filed and fails to file the
65 proposed rule as approved by the agency following the close of
66 the public comment period with the Legislative Rule-Making
67 Review Committee within ninety days of the date the proposed
68 rule was filed as an emergency rule, in which case the
69 emergency rule expires on the ninety-first day;

70 (4) The Legislature has authorized or directed promulgation
71 of an authorized legislative rule dealing with substantially the
72 same subject matter since the emergency rule was first
73 promulgated, in which case the emergency rule expires on the
74 date the authorized rule is made effective; or

75 (5) The Legislature has, by law, disapproved the emergency
76 rule, in which case the emergency rule expires on the date the
77 law becomes effective.

78 (b) Any amendment to an emergency rule made by the
79 agency shall be filed in the State Register and does not constitute
80 a new emergency rule for the purpose of acquiring additional
81 time or avoiding the expiration dates in subdivision (2), (3), (4)
82 or (5), subsection (a) of this section: *Provided*, That the
83 emergency amendment becomes effective upon the approval of
84 the Secretary of State in accordance with section fifteen-a of this
85 article or upon approval of the Attorney General in accordance
86 with section fifteen-b of this article or upon the forty-second day
87 following the filing, whichever occurs first.

88 (c) Once an emergency rule expires due to the conclusion of
89 fifteen months or due to the effect of subdivision (2), (3), (4) or
90 (5), subsection (a) of this section, the agency may not refile the
91 same or similar rule as an emergency rule.

92 (d) An agency may not use the provisions of this section to
93 avoid or evade any provision of this article or any other
94 provisions of this code, including any provisions for legislative
95 review and approval of proposed rules. Any emergency rule
96 promulgated for that purpose may be contested in a judicial
97 proceeding before a court of competent jurisdiction.

98 (e) The Legislative Rule-Making Review Committee may
99 review any emergency rule to determine: (1) Whether the
100 emergency rule or an amendment to the emergency rule exceeds

101 the scope of the law authorizing or directing its promulgation;
102 (2) whether there exists an emergency justifying the
103 promulgation of the emergency rule; and (3) whether the
104 emergency rule was promulgated in compliance with the
105 requirements and prohibitions contained in this section. The
106 committee may recommend to the agency, the Legislature or the
107 Secretary of State any action it determines appropriate.

108 (f) For the purposes of this section, an emergency exists
109 when the promulgation of an emergency rule is necessary: (1)
110 For the immediate preservation of the public peace, health,
111 safety or welfare; (2) to comply with a time limitation
112 established by this code or by a federal statute or regulation; or
113 (3) to prevent substantial harm to the public interest.

CHAPTER 10

**(H. B. 2657 - By Delegate(s) A. Evans, Eldridge,
Hamilton, L. Phillips, Guthrie, Romine, Rowan,
Canterbury, Lynch and Sponaugle)
[By Request of the Department of Agriculture]**

[Passed March 9, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §19-1C-5 of the Code of West Virginia, 1931, as amended, relating to reimbursement of expenses of Compensation of Livestock Care Standards board members.

Be it enacted by the Legislature of West Virginia:

That §19-1C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1C. CARE OF LIVESTOCK.

§19-1C-5. Compensation of board members.

1 (a) The ex officio members of the board may not receive
2 compensation for serving on the board.

3 (b) The appointed members of the board shall receive
4 compensation for each day or portion of a day engaged in the
5 discharge of official duties, which compensation may not exceed
6 the amount paid to members of the Legislature for their interim
7 duties as recommended by the Citizens Legislative
8 Compensation Commission and authorized by law.

9 (c) Each member of the board shall be reimbursed actual and
10 necessary expenses incurred for each day or portion of a day
11 engaged in the discharge of official duties in a manner consistent
12 with the West Virginia Department of Agriculture Travel Policy
13 and Procedure.



CHAPTER 11

**(H. B. 2888 - By Delegate(s) A. Evans, Hamilton,
Folk, Lynch, Williams, R. Smith, Canterbury,
Romine and Ambler)**

[Passed March 11, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §19-9-34 of the Code of West Virginia, 1931, as amended, relating to allowing the use of rotary drum composters to destroy or dispose of the carcass of any animal to prevent the spread of disease.

Be it enacted by the Legislature of West Virginia:

That §19-9-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS.

§19-9-34. Disposal of carcass of diseased animal.

1 (a) Whenever it is necessary to destroy or dispose of the
2 carcass of any animal to prevent the spread of disease, the
3 destruction or disposal shall be made by one of the following
4 methods designed to be protective of human health and the
5 environment:

6 (1) Complete cremation of the entire carcass with all its parts
7 and products;

8 (2) Boiling the carcass and all its parts and products in water
9 or heating the same with steam at the temperature of boiling
10 water, continuously during at least two hours;

11 (3) Disposing of the carcass and all its parts and products in
12 a solid waste landfill permitted and approved by the Department
13 of Environmental Protection;

14 (4) Burial of the carcass and all its parts and products:

15 (A) In a place that will not be subjected to overflow from
16 ponds or streams, and which is not less than one hundred feet
17 from any watercourse, well, spring, public highway, house or
18 stable;

19 (B) Covered with quicklime to a depth of not less than three
20 inches; and

21 (C) So that the top of the carcass is not within two feet of the
22 surface of the ground when the grave is filled and smoothed to
23 the level of the surrounding surface;

24 (5) Rendering by a licensed facility;

25 (6) Composting; and

26 (7) Any other method the commissioner prescribes.

27 (b) When an animal infected with a communicable disease
28 dies or is euthanized, the owner of the animal shall destroy or
29 dispose of the carcass in the manner provided in this section. It
30 is unlawful to sell the carcass, any part of it, or any hide or offal
31 from it. If the owner of the animal does not dispose of the
32 carcass within twenty-four hours as provided by law, the
33 commissioner or the commissioner's agent shall destroy or
34 dispose of the carcass according to law, at the cost of the owner.
35 The expense of destruction or disposal may be collected from the
36 owner as debts of like amount are by law collectible.

37 (c) For purposes of this section and rules promulgated under
38 this section:

39 "Composting" means a natural process in which beneficial
40 microbes reduce organic waste (poultry mortality) into a
41 biologically safe by-product which is capable of being recycled
42 in the agriculture industry.

43 "Composter" is a roofed structure with an impervious floor,
44 and with treatment areas made of wood, designed for composting
45 organic materials; or a rotary drum composter designed,
46 constructed and located to prevent the contamination of ground
47 and surface water.

CHAPTER 12

**(H. B. 2658 - By Delegate(s) A. Evans, Hamilton,
Romine, L. Phillips, Ambler, Eldridge, Guthrie,
Rowan, Canterbury and Lynch)
[By Request of the Department of Agriculture]**

[Passed March 12, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §19-29-4 of the Code of West Virginia, 1931, as amended, relating to the inspection and slaughter of nontraditional agriculture; and removing the requirement that all nontraditional agriculture needing to be slaughtered be slaughtered in an inspected slaughterhouse.

Be it enacted by the Legislature of West Virginia:

That §19-29-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 29. PRODUCTION OF NONTRADITIONAL AGRICULTURE PRODUCTS.

§19-29-4. Inspection of animals, meat and meat products.

1 The commissioner shall propose rules for legislative
2 approval in accordance with article three, chapter twenty-nine-a
3 of this code, to include inspection of the meat from
4 nontraditional agriculture intended for sale in commercial
5 outlets. Except for rabbits and game birds, nontraditional
6 agriculture shall be slaughtered in an inspected meat processing
7 facility.

CHAPTER 13

**(Com. Sub. for S. B. 273 - By Senators Cole
(Mr. President) and Kessler)
[By Request of the Executive]**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §11-16-3, §11-16-6, §11-16-9 and §11-16-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §11-16-6a and §11-16-6b, all relating to brewer, resident brewer, brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee and Class B retail licensee licensing and operations; clarifying, adding and revising definitions; providing legislative findings; authorizing licensed brewers and resident brewers to offer complimentary nonintoxicating beer and nonintoxicating craft beer samples; authorizing licensed brewers, resident brewers, brewpubs, Class A retail dealers, Class B retail dealers, private clubs, Class A retail licensees and Class B retail licensees to sell nonintoxicating beer and nonintoxicating craft beer in growlers subject to limitations; imposing operational, advertising, sanitation, sealing and labeling standards; authorizing and imposing penalties; authorizing promulgation of rules; clarifying and imposing license requirements and fees; removing authorization to propose rules; changing license fee schedule for certain brewers and resident brewers; decreasing license fee for brewpubs; requiring annual production report; providing for fee correction; authorizing penalty for failure to submit production report; removing brewpub bonding requirement; and providing clarifying and technical amendments.

Be it enacted by the Legislature of West Virginia:

That §11-16-3, §11-16-6, §11-16-9 and §11-16-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §11-16-6a and §11-16-6b, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

1 For the purpose of this article, except where the context
2 clearly requires differently:

3 (1) “Brand” means a nonintoxicating beer product
4 manufactured, brewed, mixed, concocted, blended, bottled or
5 otherwise produced, or imported or transhipped by a brewer or
6 manufacturer, the labels of which have been registered and
7 approved by the commissioner that is being offered for sale or
8 sold in West Virginia by a distributor who has been appointed in
9 a valid franchise agreement or a valid amendment thereto.

10 (2) “Brewer” or “manufacturer” means any person
11 manufacturing, otherwise producing or importing or transhipping
12 nonintoxicating beer or nonintoxicating craft beer for sale at
13 wholesale to any licensed distributor. Brewer or manufacturer
14 may be used interchangeably throughout this article. A brewer
15 may obtain only one brewer’s license for its nonintoxicating beer
16 or nonintoxicating craft beer.

17 (3) “Brewpub” means a place of manufacture of
18 nonintoxicating beer or nonintoxicating craft beer owned by a
19 resident brewer, subject to federal and state regulations and
20 guidelines, a portion of which premises are designated for retail
21 sales of nonintoxicating beer or nonintoxicating craft beer by the
22 resident brewer owning the brewpub.

23 (4) “Class A retail license” means a retail license permitting
24 the retail sale of liquor at a freestanding liquor retail outlet
25 licensed pursuant to chapter sixty of this code.

26 (5) “Class B retail license” means a retail license permitting
27 the retail sale of liquor at a mixed retail liquor outlet licensed
28 pursuant to chapter sixty of this code.

29 (6) “Commissioner” means the West Virginia Alcohol
30 Beverage Control Commissioner.

31 (7) “Distributor” means and includes any person jobbing or
32 distributing nonintoxicating beer or nonintoxicating craft beer to
33 retailers at wholesale and whose warehouse and chief place of
34 business shall be within this state. For purposes of a distributor
35 only, the term “person” means and includes an individual, firm,
36 trust, partnership, limited partnership, limited liability company,
37 association or corporation. Any trust licensed as a distributor or
38 any trust that is an owner of a distributor licensee, and the trustee
39 or other persons in active control of the activities of the trust
40 relating to the distributor license, is liable for acts of the trust or
41 its beneficiaries relating to the distributor license that are
42 unlawful acts or violations of article eleven of this chapter
43 notwithstanding the liability of trustees in article ten, chapter
44 forty-four-d of this code.

45 (8) “Franchise agreement” means the written agreement
46 between a brewer and a distributor that is identical as to terms
47 and conditions between the brewer and all its distributors, which
48 agreement has been approved by the commissioner. The
49 franchise agreement binds the parties so that a distributor,
50 appointed by a brewer, may distribute all of the brewer’s
51 nonintoxicating beer products, brands or family of brands
52 imported and offered for sale in West Virginia, including, but
53 not limited to, existing brands, line extensions and new brands
54 all in the brewer’s assigned territory for the distributor. All
55 brands and line extensions being imported or offered for sale in

56 West Virginia must be listed by the brewer in the franchise
57 agreement or a written amendment to the franchise agreement.
58 A franchise agreement may be amended by mutual written
59 agreement of the parties as approved by the commissioner with
60 identical terms and conditions for a brewer and all of its
61 distributors. Any approved amendment to the franchise
62 agreement becomes a part of the franchise agreement. A brewer
63 and a distributor may mutually agree in writing to cancel a
64 franchise agreement. A distributor terminated by a brewer as
65 provided in this article and the promulgated rules no longer has
66 a valid franchise agreement. If a brewer has reached an
67 agreement to cancel a distributor or has terminated a distributor,
68 then a brewer may appoint a successor distributor who accedes
69 to all the rights of the cancelled or terminated distributor.

70 (9) “Franchise distributor network” means the distributors
71 who have entered into a binding written franchise agreement,
72 identical as to terms and conditions, to distribute nonintoxicating
73 beer products, brands and line extensions in an assigned territory
74 for a brewer. A brewer may only have one franchise distributor
75 network: *Provided*, That a brewer that has acquired the
76 manufacturing, bottling or other production rights for the sale of
77 nonintoxicating beer at wholesale from a selling brewer as
78 specified in subdivision (2), subsection (a), section twenty-one
79 of this article shall continue to maintain and be bound by the
80 selling brewer’s separate franchise distributor’s network for any
81 of its existing brands, line extensions and new brands.

82 (10) “Freestanding liquor retail outlet” means a retail outlet
83 that sells only liquor, beer, nonintoxicating beer and other
84 alcohol-related products, as defined pursuant to section four,
85 article three-a, chapter sixty of this code.

86 (11) “Growler” means a container or jug that is made of
87 glass, ceramic, metal or other material approved by the
88 commissioner, that may be only thirty-two or sixty-four fluid

89 ounces in size and must be capable of being securely sealed. The
90 growler is utilized by an authorized licensee for purposes of off-
91 premise sales only of nonintoxicating beer or nonintoxicating
92 craft beer for personal consumption not on a licensed premise
93 and not for resale. Notwithstanding any other provision of this
94 code to the contrary, a securely sealed growler is not an open
95 container under federal, state and local law. A growler with a
96 broken seal is an open container under federal, state and local
97 law unless it is located in an area of the motor vehicle physically
98 separated from the passenger compartment. The secure sealing
99 of a growler requires the use of a tamper-resistant seal, security
100 tape or other material, as approved by the commissioner, placed
101 on or over the growler's opening, which seal, security tape or
102 other material is clearly marked with the date of the secure
103 sealing by the authorized licensee who is selling the growler.

104 (12) "Line extension" means any nonintoxicating beer
105 product that is an extension of brand or family of brands that is
106 labeled, branded, advertised, marketed, promoted or offered for
107 sale with the intent or purpose of being manufactured, imported,
108 associated, contracted, affiliated or otherwise related to a
109 brewer's existing brand through the use of a brewer, its
110 subsidiaries, parent entities, contracted entities, affiliated entities
111 or other related entities. In determining whether a
112 nonintoxicating beer product is a line extension, the
113 commissioner may consider, but is not limited to, the following
114 factors: Name or partial name; trade name or partial trade name;
115 logos; copyrights; trademarks or trade design; product codes;
116 advertising promotion or pricing.

117 (13) "Nonintoxicating beer" means all natural cereal malt
118 beverages or products of the brewing industry commonly
119 referred to as beer, lager beer, ale and all other mixtures and
120 preparations produced by the brewing industry, including malt
121 coolers and nonintoxicating craft beers with no caffeine infusion
122 or any additives masking or altering the alcohol effect containing

123 at least one half of one percent alcohol by volume, but not more
124 than nine and six-tenths of alcohol by weight, or twelve percent
125 by volume, whichever is greater. The word “liquor” as used in
126 chapter sixty of this code does not include or embrace
127 nonintoxicating beer nor any of the beverages, products,
128 mixtures or preparations included within this definition.

129 (14) “Nonintoxicating beer sampling event” means an event
130 approved by the commissioner for a Class A retail licensee to
131 hold a nonintoxicating beer sampling authorized pursuant to
132 section eleven-a of this article.

133 (15) “Nonintoxicating beer sampling day” means any days
134 and hours of the week where Class A retail licensees may sell
135 nonintoxicating beer pursuant to section eleven-a and
136 subdivision (1), subsection (a), section eighteen of this article,
137 and is approved, in writing, by the commissioner to conduct a
138 nonintoxicating beer sampling event.

139 (16) “Nonintoxicating craft beer” means any beverage
140 obtained by the natural fermentation of barley, malt, hops or any
141 other similar product or substitute and containing not less than
142 one half of one percent by volume and not more than twelve
143 percent alcohol by volume or nine and six-tenths percent alcohol
144 by weight with no caffeine infusion or any additives masking or
145 altering the alcohol effect.

146 (17) “Original container” means the container used by a
147 resident brewer or brewer at the place of manufacturing, bottling
148 or otherwise producing nonintoxicating beer or nonintoxicating
149 craft beer for sale at wholesale.

150 (18) “Person” means and includes an individual, firm,
151 partnership, limited partnership, limited liability company,
152 association or corporation.

153 (19) “Private club” means a license issued pursuant to article
154 seven, chapter sixty of this code.

155 (20) “Resident brewer” means any brewer or manufacturer
156 of nonintoxicating beer or nonintoxicating craft beer whose
157 principal place of business and manufacture is located in the
158 state of West Virginia and which does not brew or manufacture
159 more than twenty-five thousand barrels of nonintoxicating beer
160 or nonintoxicating craft beer annually, and does not self-
161 distribute more than ten thousand barrels thereof in the state of
162 West Virginia annually.

163 (21) “Retailer” means any person selling, serving, or
164 otherwise dispensing nonintoxicating beer and all products
165 regulated by this article, including, but not limited to, malt
166 coolers at his or her established and licensed place of business.

167 (22) “Tax Commissioner” means the Tax Commissioner of
168 the State of West Virginia or the commissioner’s designee.

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

1 (a) No person shall be licensed in more than one capacity
2 under the terms of this article, and there shall be no connection
3 whatsoever between any retailer, distributor, resident brewer or
4 brewer, and no person shall be interested, directly or indirectly,
5 through the ownership of corporate stock, membership in a
6 partnership, or in any other way in the business of a retailer, if
7 such person is at the same time interested in the business of a
8 brewer, resident brewer or distributor. A resident brewer may act
9 as distributor in a limited capacity for his or her own product
10 from such resident brewery, place of manufacture or bottling, but
11 a resident brewer is not permitted to act as a distributor as
12 defined in section three of this article: *Provided*, That nothing in

13 this article may prevent a resident brewer from using the services
14 of licensed distributors as specified in this article. A resident
15 brewer or distributor may sell to a patron for personal use and
16 not for resale quantities of draught beer in original containers
17 that are no larger in size than one-half barrel for off-premises
18 consumption. A resident brewer who also has a brewpub license
19 may sell nonintoxicating beer or nonintoxicating craft beer
20 produced by the resident brewer in cans, bottles or sealed
21 growlers, pursuant to section six-b of this article, for personal
22 consumption off of the brewpub's licensed premises and not for
23 resale.

24 (b) It is unlawful for any brewer, resident brewer,
25 manufacturer or distributor to assist any retailer or for any
26 retailer to accept assistance from any brewer, manufacturer or
27 distributor, accept any gifts, loans, forbearance of money or
28 property of any kind, nature or description, or other thing of
29 value, or give any rebates or discounts of any kind whatsoever,
30 except as may be permitted by rule, regulation or order
31 promulgated by the commissioner in accordance with this article.

32 (c) Notwithstanding subsections (a) and (b) of this section,
33 a brewpub may offer for retail sale nonintoxicating beer or
34 nonintoxicating craft beer so long as the sale of the
35 nonintoxicating beer or nonintoxicating craft beer is limited to
36 the brewpub's licensed premises, except as provided in section
37 six-b of this article.

**§11-16-6a. Brewer and resident brewer license to manufacture, sell
and provide complimentary samples.**

1 (a) *Legislative findings.* — The Legislature hereby finds that
2 it is in the public interest to regulate, control and support the
3 brewing, manufacturing, distribution, sale, consumption,
4 transportation and storage of nonintoxicating beer and
5 nonintoxicating craft beer and its industry in this state in order
6 to protect the public health, welfare and safety of the citizens of

7 this state, and promote hospitality and tourism. Therefore, this
8 section authorizes a licensed brewer or resident brewer with its
9 principal place of business and manufacture located in this state
10 to have certain abilities in order to promote the sale of
11 nonintoxicating beer and nonintoxicating craft beer
12 manufactured in this state for the benefit of the citizens of this
13 state, the state's growing brewing industry and the state's
14 hospitality and tourism industry, all of which are vital
15 components for the state's economy.

16 (b) *Sales of nonintoxicating beer.* — A licensed brewer or
17 resident brewer with its principal place of business and
18 manufacture located in the state of West Virginia may offer only
19 nonintoxicating beer or nonintoxicating craft beer manufactured
20 by the licensed brewer or resident brewer for retail sale to
21 customers from the brewer's or resident brewer's licensed
22 premises for consumption off the licensed premises only in the
23 form of kegs, bottles, cans or growlers for personal consumption
24 and not for resale. A licensed brewer or resident brewer may not
25 sell, give or furnish nonintoxicating beer for consumption on the
26 premises of the principal place of business and manufacture
27 located in the state of West Virginia, except for the limited
28 purpose of complimentary samples as permitted in subsection (c)
29 of this section.

30 (c) *Complimentary samples.* — A licensed brewer or
31 resident brewer with its principal place of business and
32 manufacture located in the state of West Virginia may only offer
33 complimentary samples of nonintoxicating beer or
34 nonintoxicating craft beer brewed at the brewer's or resident
35 brewer's principal place of business and manufacture located in
36 the state of West Virginia. The complimentary samples may be
37 no greater than two ounces per sample per patron, and a
38 sampling shall not exceed ten complimentary two-ounce samples
39 per patron per day. A licensed brewer or resident brewer
40 providing complimentary samples shall provide complimentary

41 food items to the patron consuming the complimentary samples;
42 and prior to any sampling, verify, using proper identification,
43 that the patron sampling is twenty-one years of age or over and
44 that the patron is not visibly intoxicated.

45 (d) *Retail sales.* — Every licensed brewer or resident brewer
46 under this section shall comply with all the provisions of this
47 article as applicable to nonintoxicating beer retailers when
48 conducting sales of nonintoxicating beer or nonintoxicating craft
49 beer and shall be subject to all applicable requirements and
50 penalties in this article.

51 (e) *Payment of taxes and fees.* — A licensed brewer or
52 resident brewer under this section shall pay all taxes and fees
53 required of licensed nonintoxicating beer retailers, in addition to
54 any other taxes and fees required, and meet applicable licensing
55 provisions as required by this chapter and by rule of the
56 commissioner.

57 (f) *Advertising.* — A licensed brewer or resident brewer
58 under this section may advertise a particular brand or brands of
59 nonintoxicating beer or nonintoxicating craft beer produced by
60 the licensed brewer or resident brewer and the price of the
61 nonintoxicating beer or nonintoxicating craft beer subject to state
62 and federal requirements or restrictions. The advertisement may
63 not encourage intemperance.

64 (g) *Growler requirements.* — A licensed brewer or resident
65 brewer under this section must fill a growler and patrons are not
66 permitted to access the secure area or fill a growler. A licensed
67 brewer or resident brewer under this section must sanitize, fill,
68 securely seal and label any growler prior to its sale. A licensed
69 brewer or resident brewer under this section may only offer for
70 retail sale up to two 64-ounce, or four 32-ounce, growlers of
71 nonintoxicating beer or nonintoxicating craft beer manufactured
72 by the licensed brewer or resident brewer per customer per day

73 for personal consumption off of the licensed premises and not
74 for resale. A licensed brewer or resident brewer under this
75 section may refill a growler subject to the requirements of this
76 section. A licensed brewer or resident brewer shall visually
77 inspect any growler before filling or refilling it. A licensed
78 brewer or resident brewer may not fill or refill any growler that
79 appears to be cracked, broken, unsafe or otherwise unfit to serve
80 as a sealed beverage container.

81 (h) *Growler labeling.* — A licensed brewer or resident
82 brewer under this section selling growlers shall affix a
83 conspicuous label on all sold and securely sealed growlers listing
84 the name of the licensee selling the growler, the brand of the
85 nonintoxicating beer or nonintoxicating craft beer in the growler,
86 the alcohol content by volume of the nonintoxicating beer or
87 nonintoxicating craft beer in the growler and the date the growler
88 was filled or refilled, and, further, all labeling on the growler
89 shall be consistent with all federal labeling and warning
90 requirements.

91 (i) *Growler sanitation.* — A licensed brewer or resident
92 brewer authorized under this section shall clean and sanitize all
93 growlers he or she fills or refills in accordance with all state and
94 county health requirements prior to its sealing. In addition, the
95 licensed brewer or resident brewer shall sanitize, in accordance
96 with all state and county health requirements, all taps, tap lines,
97 pipe lines, barrel tubes and any other related equipment used to
98 fill or refill growlers. Failure to comply with this subsection may
99 result in penalties under section twenty-three of this article.

100 (j) *Fee.* — There is no additional fee for a licensed brewer
101 or resident brewer authorized under this section to sell growlers.

102 (k) *Limitations on licensees.* — To be authorized under this
103 section, a licensed brewer or resident brewer may not produce
104 more than twenty-five thousand barrels per calendar year at the

105 brewer's or resident brewer's principal place of business and
106 manufacture located in the state of West Virginia. No more than
107 one brewer or resident brewer license may be issued to a single
108 person or entity and no person may hold both a brewer and a
109 resident brewer license. A licensed brewer or resident brewer
110 under this section may only conduct tours, give complimentary
111 samples and sell growlers during the hours of operation set forth
112 in subdivision (1), subsection (a), section eighteen of this article.
113 A licensed brewer or resident brewer authorized under this
114 section shall be subject to the applicable penalties under section
115 twenty-three of this article for violations of this section. (1)
116 *Rules.* — The commissioner, in consultation with the Bureau for
117 Public Health concerning sanitation, is authorized to propose
118 rules for legislative approval, pursuant to article three, chapter
119 twenty-nine-a of this code, to implement this section.

**§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer,
private club, Class A retail licensee and Class B
retail licensee's authority to sell growlers.**

1 (a) *Legislative findings.* — The Legislature hereby finds that
2 it is in the public interest to regulate, control and support the
3 brewing, manufacturing, distribution, sale, consumption,
4 transportation and storage of nonintoxicating beer and
5 nonintoxicating craft beer and its industry in this state in order
6 to protect the public health, welfare and safety of the citizens of
7 this state and promote hospitality and tourism. Therefore, this
8 section authorizes a licensed brewpub, Class A retail dealer,
9 Class B retail dealer, private club, Class A retail licensee or
10 Class B retail licensee to have certain abilities in order to
11 promote the sale of nonintoxicating beer and nonintoxicating
12 craft beer manufactured in this state for the benefit of the
13 citizens of this state, the state's growing brewing industry and
14 the state's hospitality and tourism industry, all of which are vital
15 components for the state's economy.

16 (b) *Sales of nonintoxicating beer.* — A licensed brewpub,
17 Class A retail dealer, Class B retail dealer, private club, Class A
18 retail licensee or Class B retail licensee who pays the fee in
19 subsection (i) of this section and meets the requirements of this
20 section may offer nonintoxicating beer or nonintoxicating craft
21 beer for retail sale to patrons from their licensed premises in a
22 growler for personal consumption only off of the licensed
23 premises and not for resale. Prior to the sale, the licensee shall
24 verify, using proper identification, that any patron purchasing
25 nonintoxicating beer or nonintoxicating craft beer is twenty-one
26 years of age or over and that the patron is not visibly intoxicated.
27 A licensee authorized under this section may not sell, give or
28 furnish alcoholic liquors, including wine, for consumption off of
29 its licensed premises, unless it is a private club licensed to sell
30 sealed wine for consumption off of the licensed premises and
31 meets the requirements set out in subdivisions (j) and (l), section
32 three, article eight, chapter sixty of this code, for the sale of
33 wine, not liquor.

34 (c) *Retail sales.* — Every licensee authorized under this
35 section shall comply with all the provisions of this article as
36 applicable to nonintoxicating beer retailers when conducting
37 sales of nonintoxicating beer or nonintoxicating craft beer and
38 shall be subject to all applicable requirements and penalties in
39 this article.

40 (d) *Payment of taxes and fees.* — A licensee authorized
41 under this section shall pay all taxes and fees required of
42 licensed nonintoxicating beer retailers, in addition to any other
43 taxes and fees required, and meet applicable licensing provisions
44 as required by this chapter and by rule of the commissioner.

45 (e) *Advertising.* — A licensee authorized under this section
46 may advertise a particular brand or brands of nonintoxicating
47 beer or nonintoxicating craft beer and the price of the
48 nonintoxicating beer or nonintoxicating craft beer subject to state
49 and federal requirements or restrictions. The advertisement may
50 not encourage intemperance.

51 (f) *Growler requirements.* — A licensee authorized under
52 this section must fill a growler and patrons are not permitted to
53 access the secure area or fill a growler. A licensee authorized
54 under this section must sanitize, fill, securely seal and label any
55 growler prior to its sale. A licensee authorized under this section
56 may only offer for retail sale up to two 64-ounce, or four 32-
57 ounce, growlers of nonintoxicating beer or nonintoxicating craft
58 beer per customer per day for personal consumption off of the
59 licensed premises and not for resale. A licensee under this
60 section may refill a growler subject to the requirements of this
61 section. A licensee shall visually inspect any growler before
62 filling or refilling it. A licensee may not fill or refill any growler
63 that appears to be cracked, broken, unsafe or otherwise unfit to
64 serve as a sealed beverage container.

65 (g) *Growler labeling.* — A licensee authorized under this
66 section selling growlers shall affix a conspicuous label on all
67 sold and securely sealed growlers listing the name of the licensee
68 selling the growler, the brand of the nonintoxicating beer or
69 nonintoxicating craft beer in the growler, the alcohol content by
70 volume of the nonintoxicating beer or nonintoxicating craft beer
71 in the growler and the date the growler was filled or refilled, and,
72 further, all labeling on the growler shall be consistent with all
73 federal labeling and warning requirements.

74 (h) *Growler sanitation.* — A licensed brewer or resident
75 brewer authorized under this section shall clean and sanitize all
76 growlers he or she fills or refills in accordance with all state and
77 county health requirements prior to its sealing. In addition, the
78 licensed brewer or resident brewer shall sanitize, in accordance
79 with all state and county health requirements, all taps, tap lines,
80 pipe lines, barrel tubes and any other related equipment used to
81 fill or refill growlers. Failure to comply with this subsection may
82 result in penalties under section twenty-three of this article.

83 (i) *Fee.* — Commencing July 1, 2015, and by every July 1
84 thereafter, there is an annual \$100 nonrefundable fee for a

85 licensee, except for a licensed brewpub, to sell growlers as
86 provided by this section. The licensee must be in good standing
87 with the state at the time of paying the fee.

88 (j) *Limitations on licensees.* — A licensee under this section
89 may only sell growlers during the hours of operation set forth in
90 subdivision (1), subsection (a), section eighteen of this article.
91 Any licensee licensed under this section must maintain a secure
92 area for the sale of nonintoxicating beer or nonintoxicating craft
93 beer in a growler. The secure area must only be accessible by the
94 licensee. Any licensee licensed under this section shall be
95 subject to the applicable penalties under section twenty-three of
96 this article for violations of this section.

97 (k) *Nonapplicability of certain statutes.* — Notwithstanding
98 any other provision of this code to the contrary, licensees under
99 this section are permitted to break the seal of the original
100 container for the limited purpose of filling a growler as provided
101 in this section. Any unauthorized sale of nonintoxicating beer or
102 nonintoxicating craft beer or any consumption not permitted on
103 the licensee's licensed premises is subject to penalties under this
104 article.

105 (l) *Rules.* — The commissioner is authorized to propose
106 rules for legislative approval, pursuant to article three, chapter
107 twenty-nine-a of this code, to implement this section.

**§11-16-9. Amount of license tax; Class A and Class B retail
dealers; purchase and sale of nonintoxicating beer
permitted; distributors; brewers; brewpubs.**

1 (a) All retail dealers, distributors, brewpubs, brewers and
2 resident brewers of nonintoxicating beer and of nonintoxicating
3 craft beer shall pay an annual fee to maintain an active license as
4 required by this article. The license period begins on July 1 of
5 each year and ends on June 30 of the following year. If the
6 license is granted for a shorter period, then the license fee shall

7 be computed semiannually in proportion to the remainder of the
8 fiscal year.

9 (b) The annual license fees are as follows:

10 (1) Retail dealers shall be divided into two classes: Class A
11 and Class B.

12 (A) For a Class A retail dealer, the license fee is \$150 for
13 each place of business; the license fee for social, fraternal or
14 private clubs not operating for profit, and having been in
15 continuous operation for two years or more immediately
16 preceding the date of application, is \$150: *Provided*, That
17 railroads operating in this state may dispense nonintoxicating
18 beer upon payment of an annual license tax of \$10 for each
19 dining, club or buffet car in which the beer is dispensed.

20 Class A licenses issued for railroad dining, club or buffet
21 cars authorize the licensee to sell nonintoxicating beer at retail
22 for consumption only on the licensed premises where sold. All
23 other Class A licenses authorize the licensee to sell
24 nonintoxicating beer at retail for consumption on or off the
25 licensed premises.

26 (B) For a Class B retail dealer, the license fee, authorizing
27 the sale of both chilled and unchilled beer, is \$150 for each place
28 of business. A Class B license authorizes the licensee to sell
29 nonintoxicating beer at retail in bottles, cans or other sealed
30 containers only, and only for consumption off the licensed
31 premises. A Class B retailer may sell to a patron, for personal
32 use and not for resale, quantities of draught beer in original
33 containers that are no larger in size than one-half barrel for off-
34 premises consumption.

35 A Class B license may be issued only to the proprietor or
36 owner of a grocery store. For the purpose of this article, the term
37 "grocery store" means any retail establishment commonly

38 known as a grocery store or delicatessen, and caterer or party
39 supply store, where food or food products are sold for
40 consumption off the premises, and includes a separate and
41 segregated portion of any other retail store which is dedicated
42 solely to the sale of food, food products and supplies for the
43 table for consumption off the premises. Caterers or party supply
44 stores are required to purchase the appropriate licenses from the
45 Alcohol Beverage Control Administration.

46 (2) For a distributor, the license fee is \$1,000 for each place
47 of business.

48 (3) For a brewer or a resident brewer with its principal place
49 of business or manufacture located in this state and who
50 produces:

51 (A) Twelve thousand five hundred barrels or less of
52 nonintoxicating beer or nonintoxicating craft beer, the license fee
53 is \$500 for each place of manufacture;

54 (B) Twelve thousand five hundred one barrels and up to
55 twenty-five thousand barrels of nonintoxicating beer or
56 nonintoxicating craft beer, the license fee is \$1,000 for each
57 place of manufacture;

58 (C) More than twenty-five thousand one barrels of
59 nonintoxicating beer or nonintoxicating craft beer, the license fee
60 is \$1,500 for each place of manufacture.

61 (4) For a brewer whose principal place of business or
62 manufacture is not located in this state, the license fee is \$1,500.
63 The brewer is exempt from the requirements set out in
64 subsections (c), (d) and (e) of this section: *Provided*, That a
65 brewer whose principal place of business or manufacture is not
66 located in this state that produces less than twenty-five thousand
67 barrels of nonintoxicating beer or nonintoxicating craft beer may
68 choose to apply in writing to the commissioner to be subject to

69 the variable license fees of subdivision (3), subsection (b) of this
70 section and the requirements set out in subsections (c), (d) and
71 (e) of this section subject to investigation and approval by the
72 commissioner as to brewer requirements.

73 (5) For a brewpub, the license fee is \$500 for each place of
74 manufacture.

75 (c) As part of the application or renewal application and in
76 order to determine a brewer or resident brewer's license fee
77 pursuant to this section, a brewer or resident brewer shall
78 provide the commissioner, on a form provided by the
79 commissioner, with an estimate of the number of nonintoxicating
80 beer or nonintoxicating craft beer barrels and gallons it will
81 produce during the year based upon the production capacity of
82 the brewer's or resident brewer's manufacturing facilities, and
83 the prior year's production and sales volume of nonintoxicating
84 beer or nonintoxicating craft beer.

85 (d) On or before July 15 of each year, every brewer or
86 resident brewer who is granted a license shall file a final report,
87 on a form provided by the commissioner, that is dated as of June
88 30 of each year, stating the actual volume of nonintoxicating
89 beer or nonintoxicating craft beer in barrels and gallons
90 produced at its principal place of business and manufacture
91 during the prior year.

92 (e) If the actual total production of nonintoxicating beer or
93 nonintoxicating craft beer by the brewer or resident brewer
94 exceeded the brewer's or resident brewer's estimate that was
95 filed with the application or renewal for a brewer's or resident
96 brewer's license for that period, then the brewer or resident
97 brewer shall include a remittance for the balance of the license
98 fee pursuant to this section that would be required for the final,
99 higher level of production.

100 (f) Any brewer or resident brewer failing to file the reports
101 required in subsections (c) and (d) of this section, and who is not
102 exempt from the reporting requirements, shall, at the discretion
103 of the commissioner, be subject to the penalties set forth in
104 section twenty-three of this article.

**§11-16-12. Bond of brewer, distributor and Class A retail dealer;
action on bond of retail dealer upon revocation of
license; duty of prosecuting attorney.**

1 (a) In addition to furnishing the information required by this
2 article, each brewer or distributor applying for a license under
3 this article shall furnish, as prerequisite to a license, a bond with
4 some solvent surety company as surety, to be approved by the
5 commissioner, payable to the state of West Virginia, conditioned
6 for the payment of any and all additional taxes accruing during
7 the period of such license, and conditioned further for the
8 faithful observance of the provisions of this article, the rules,
9 regulations and orders promulgated pursuant thereto and of any
10 other laws of the state of West Virginia generally relating to the
11 sale, transportation, storage and distribution of nonintoxicating
12 beer, which said bonds shall be forfeited to the state upon the
13 revocation of the license of any such brewer or distributor. The
14 amount of such bond in the case of a resident brewer or brewpub
15 shall be not less than \$5,000 nor more than \$10,000 and in the
16 case of a distributor, not less than \$2,000 nor more than \$5,000
17 for each place of business licensed and conducted within the
18 state, the amount of such bond, between the minimum and
19 maximum amounts, to be determined in the discretion of the
20 commissioner. There shall be no bond for a brewpub license, as
21 the license privilege itself secures the payment of taxes and is
22 subject to suspension and revocation for failure to pay said taxes.
23 In the case of brewers shipping nonintoxicating beer into the
24 state, any brewer must also furnish a bond in a penalty of not
25 less than \$5,000 nor more than \$25,000 conditioned as
26 hereinabove in this subsection provided and any bond furnished

27 pursuant hereto shall be forfeited to the state in the full amount
28 of said bond upon revocation of license of any such brewer or
29 distributor. Such money received by the state shall be credited to
30 the State Fund, General Revenue.

31 (b) Each Class A retail dealer, in addition to furnishing the
32 information required by this article, shall furnish, as prerequisite
33 to obtaining a license, a bond with some solvent surety company
34 as surety, to be approved by the commissioner, payable to the
35 state of West Virginia, in the amount not less than \$500 nor
36 more than \$1000 within the discretion of the commissioner. All
37 such bonds shall be conditioned for the faithful observance of
38 the provisions of this article, the rules, regulations and orders
39 promulgated pursuant thereto and of any other laws of the state
40 of West Virginia generally relating to the distribution, sale and
41 dispensing of nonintoxicating beer and shall be forfeited to the
42 state in the full amount of said bond upon the revocation of the
43 license of any such retail dealer. Such money received by the
44 state shall be credited to the State Fund, General Revenue.

45 (c) Upon the revocation of the license of any Class A retail
46 dealer by the commissioner or by any court of competent
47 jurisdiction, the commissioner or the clerk of said court shall
48 notify the prosecuting attorney of the county wherein such retail
49 dealer's place of business is located, or the prosecuting attorney
50 of the county wherein the licensee resides, of such revocation,
51 and, upon receipt of said notice, it shall be the duty of such
52 prosecuting attorney forthwith to institute appropriate
53 proceedings for the collection of the full amount of said bond.
54 Upon request of such prosecuting attorney, the commissioner
55 shall deliver the bond to him. Willful refusal without just cause
56 therefor by the prosecuting attorney to perform said duty hereby
57 imposed shall subject him to removal from office by the circuit
58 court of the county for which said prosecuting attorney was
59 elected upon proper proceedings and proof in the manner
60 provided by law.

CHAPTER 14

**(S. B. 574 - By Senators Trump, Miller, Woelfel,
Snyder, Beach, Gaunch, Karnes, D. Hall,
Kirkendoll and Williams)**

[Passed March 14, 2015; in effect ninety day from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §60-3A-17 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-4-3 and §60-4-3a of said code, all relating to sales of liquor by distilleries and mini-distilleries generally; setting fees; reducing buyback price; setting fees to be paid to the Alcohol Beverage Control Commissioner on sales of liquor to customers from a distillery or a mini-distillery for off-premises consumption; providing that no liquor sold by a distillery or mini-distillery shall be priced less than the price set by the commissioner; setting a maximum for market zone payments; and raising the production level allowable for mini-distilleries.

Be it enacted by the Legislature of West Virginia:

That §60-3A-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60-4-3 and §60-4-3a of said code be amended and reenacted, all to read as follows:

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from state; transportation and storage; method of payment.

- 1 (a) The commissioner shall fix wholesale prices for the sale
- 2 of liquor, other than wine, to retail licensees. The commissioner

3 shall sell liquor, other than wine, to retail licensees according to
4 a uniform pricing schedule. The commissioner shall obtain, if
5 possible, upon request, any liquor requested by a retail licensee
6 and those permitted to manufacture and sell liquor pursuant to
7 section three, article four of this chapter.

8 (b) Wholesale prices shall be established in order to yield a
9 net profit for the General Revenue Fund of not less than
10 \$6,500,000 annually on an annual volume of business equal to
11 the average for the past three years. The net revenue derived
12 from the sale of alcoholic liquors shall be deposited into the
13 General Revenue Fund in the manner provided in section
14 seventeen, article three of this chapter.

15 (c) Notwithstanding any provision of this code to the
16 contrary, the commissioner shall specify the maximum
17 wholesale markup percentage which may be applied to the prices
18 paid by the commissioner for all liquor, other than wine, in order
19 to determine the prices at which all liquor, other than wine, will
20 be sold to retail licensees. A retail licensee shall purchase all
21 liquor, other than wine, for resale in this state only from the
22 commissioner, and the provisions of sections twelve and
23 thirteen, article six of this chapter shall not apply to the
24 transportation of the liquor: *Provided*, That a retail licensee shall
25 purchase wine from a wine distributor who is duly licensed
26 under article eight of this chapter. All liquor, other than wine,
27 purchased by retail licensees shall be stored in the state at the
28 retail outlet or outlets operated by the retail licensee: *Provided*,
29 *however*, That the commissioner, in his or her discretion, may
30 upon written request permit a retail licensee to store liquor at a
31 site other than the retail outlet or outlets.

32 (d) The sale of liquor by the commissioner to retail licensees
33 shall be paid by electronic funds transfer which shall be initiated
34 by the commissioner on the business day following the retail
35 licensees order or by money order, certified check or cashier's

36 check which shall be received by the commissioner at least
37 twenty-four hours prior to the shipping of the alcoholic liquors:
38 *Provided*, That if a retail licensee posts with the commissioner
39 an irrevocable letter of credit or bond with surety acceptable to
40 the commissioner from a financial institution acceptable to the
41 commissioner guaranteeing payment of checks, then the
42 commissioner may accept the retail licensee's checks in an
43 amount up to the amount of the letter of credit.

44 (e) (1) A retail licensee may not sell liquor to persons
45 licensed under the provisions of article seven of this chapter at
46 less than one hundred ten percent of the retail licensee's cost as
47 defined in section six, article eleven-a, chapter forty-seven of
48 this code.

49 (2) A retail licensee may not sell liquor to the general public
50 at less than one hundred ten percent of the retail licensee's cost
51 as defined in section six, article eleven-a, chapter forty-seven of
52 this code.

ARTICLE 4. LICENSES.

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

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

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

1 (a) *Sales of liquor.* — An operator of a distillery or a mini-
2 distillery may offer liquor for retail sale to customers from the
3 distillery or the mini-distillery for consumption off premises
4 only. Except for free complimentary samples offered pursuant to
5 section one, article six of this chapter, customers are prohibited
6 from consuming any liquor on the premises of the distillery or
7 the mini-distillery.

8 (b) *Retail sales.* — Every licensed distillery or mini-distillery
9 shall comply with the provisions of sections nine, eleven,
10 thirteen, sixteen, seventeen, eighteen, nineteen, twenty-two,
11 twenty-three, twenty-four, twenty-five and twenty-six, article
12 three-a of this chapter and the provisions of articles three and
13 four of this chapter applicable to liquor retailers and distillers.

14 (c) *Payment of taxes and fees.* — The distillery or mini-
15 distillery shall pay all taxes and fees required of licensed
16 retailers and meet applicable licensing provisions as required by
17 this chapter and by rule of the commissioner, except for
18 payments of the wholesale markup percentage and the handling
19 fee provided by rule of the commissioner: *Provided*, That all
20 liquor for sale to customers from the distillery or the mini-
21 distillery for off-premises consumption shall be subject of a five
22 percent wholesale markup fee and an 80 cents per case bailment
23 fee to be paid to the commissioner: *Provided, however*, That no
24 liquor sold by the distillery or mini-distillery shall be priced less
25 than the price set by the commissioner pursuant to section
26 seventeen, article three-a of this chapter.

27 (d) *Payments to market zone retailers.* — Each distillery or
28 mini-distillery shall submit to the commissioner two percent of
29 the gross sales price of each retail liquor sale for the value of all
30 sales at the distillery or the mini-distillery each month. This

31 collection shall be distributed by the commissioner, at least
32 quarterly, to each market zone retailer located in the distillery or
33 mini-distillery's market zone, proportionate to each market zone
34 retailer's annual gross prior years pretax value sales. The
35 maximum amount of market zone payments that a distillery or
36 mini-distillery shall be required to submit to the commissioner
37 is \$15,000 per annum.

38 (e) *Limitations on licensees.* — No distillery or mini-
39 distillery may sell more than three thousand gallons of product
40 at the distillery or mini-distillery location the initial two years of
41 licensure. The distillery or mini-distillery may increase sales at
42 the distillery or mini-distillery location by two thousand gallons
43 following the initial 24-month period of licensure and may
44 increase sales at the distillery or mini-distillery location each
45 subsequent 24-month period by two thousand gallons, not to
46 exceed ten thousand gallons a year of total sales at the distillery
47 or mini-distillery location. No licensed mini-distillery may
48 produce more than fifty thousand gallons per calendar year at the
49 mini-distillery location. No more than one distillery or mini-
50 distillery license may be issued to a single person or entity and
51 no person may hold both a distillery and a mini-distillery license.

CHAPTER 15

**(Com. Sub. for H. B. 2016 - By Mr. Speaker (Mr. Armstead)
and Delegate Miley)**

[Passed March 18, 2015; in effect from passage.]

[Approved by the Governor with deletions and reductions on March 23, 2015.]

AN ACT making appropriations of public money out of the Treasury
in accordance with section fifty-one, article VI of the Constitution.

Be it enacted by the Legislature of West Virginia:

Title

I. General Provisions.

II. Appropriations.

III. Administration.

TITLE I — GENERAL PROVISIONS.

TITLE I — GENERAL PROVISIONS.

§1. General policy.

§2. Definitions.

§3. Classification of appropriations.

§4. Method of expenditure.

§5. Maximum expenditures.

1 **Section 1. General policy.** — The purpose of this bill is to
2 appropriate money necessary for the economical and efficient
3 discharge of the duties and responsibilities of the state and its
4 agencies during the fiscal year 2016.

1 **Sec. 2. Definitions.** — For the purpose of this bill:

2 “Governor” shall mean the Governor of the State of West
3 Virginia.

4 “Code” shall mean the Code of West Virginia, one thousand
5 nine hundred thirty-one, as amended.

6 “Spending unit” shall mean the department, bureau, division,
7 office, board, commission, agency or institution to which an
8 appropriation is made.

9 The “fiscal year 2016” shall mean the period from July 1,
10 2015, through June 30, 2016.

11 “General revenue fund” shall mean the general operating
12 fund of the state and includes all moneys received or collected
13 by the state except as provided in W.Va. Code §12-2-2 or as
14 otherwise provided.

15 “Special revenue funds” shall mean specific revenue sources
16 which by legislative enactments are not required to be accounted
17 for as general revenue, including federal funds.

18 “From collections” shall mean that part of the total
19 appropriation which must be collected by the spending unit to be
20 available for expenditure. If the authorized amount of collections
21 is not collected, the total appropriation for the spending unit
22 shall be reduced automatically by the amount of the deficiency
23 in the collections. If the amount collected exceeds the amount
24 designated “from collections,” the excess shall be set aside in a
25 special surplus fund and may be expended for the purpose of the
26 spending unit as provided by Article 2, Chapter 11B of the Code.

1 **Sec. 3. Classification of appropriations.** — An
2 appropriation for:

3 “Personal services” shall mean salaries, wages and other
4 compensation paid to full-time, part-time and temporary
5 employees of the spending unit but shall not include fees or
6 contractual payments paid to consultants or to independent
7 contractors engaged by the spending unit. “Personal services”
8 shall include “annual increment” for “eligible employees” and
9 shall be disbursed only in accordance with Article 5, Chapter 5
10 of the Code.

11 Unless otherwise specified, appropriations for “personal
12 services” shall include salaries of heads of spending units.

13 “Employee benefits” shall mean social security matching,
14 workers’ compensation, unemployment compensation, pension
15 and retirement contributions, public employees insurance
16 matching, personnel fees or any other benefit normally paid by
17 the employer as a direct cost of employment. Should the
18 appropriation be insufficient to cover such costs, the remainder
19 of such cost shall be paid by each spending unit from its

20 “unclassified” appropriation, or its “current expenses”
21 appropriation or other appropriate appropriation. Each spending
22 unit is hereby authorized and required to make such payments in
23 accordance with the provisions of Article 2, Chapter 11B of the
24 Code.

25 Each spending unit shall be responsible for all contributions,
26 payments or other costs related to coverage and claims of its
27 employees for unemployment compensation and workers
28 compensation. Such expenditures shall be considered an
29 employee benefit.

30 “BRIM Premiums” shall mean the amount charged as
31 consideration for insurance protection and includes the present
32 value of projected losses and administrative expenses. Premiums
33 are assessed for coverages, as defined in the applicable policies,
34 for claims arising from, inter alia, general liability, wrongful
35 acts, property, professional liability and automobile exposures.

36 Should the appropriation for “BRIM Premium” be
37 insufficient to cover such cost, the remainder of such costs shall
38 be paid by each spending unit from its “unclassified”
39 appropriation, its “current expenses” appropriation or any other
40 appropriate appropriation to the Board of Risk and Insurance
41 Management. Each spending unit is hereby authorized and
42 required to make such payments. If there is no appropriation for
43 “BRIM Premium” such costs shall be paid by each spending unit
44 from its “current expenses” appropriation, “unclassified”
45 appropriation or other appropriate appropriation.

46 West Virginia Council for Community and Technical
47 College Education and Higher Education Policy Commission
48 entities operating with special revenue funds and/or federal
49 funds shall pay their proportionate share of the Board of Risk
50 and Insurance Management total insurance premium cost for
51 their respective institutions.

52 “Current expenses” shall mean operating costs other than
53 personal services and shall not include equipment, repairs and
54 alterations, buildings or lands. Each spending unit shall be
55 responsible for and charged monthly for all postage meter
56 service and shall reimburse the appropriate revolving fund
57 monthly for all such amounts. Such expenditures shall be
58 considered a current expense.

59 “Equipment” shall mean equipment items which have an
60 appreciable and calculable period of usefulness in excess of one
61 year.

62 “Repairs and alterations” shall mean routine maintenance
63 and repairs to structures and minor improvements to property
64 which do not increase the capital assets.

65 “Buildings” shall include new construction and major
66 alteration of existing structures and the improvement of lands
67 and shall include shelter, support, storage, protection or the
68 improvement of a natural condition.

69 “Lands” shall mean the purchase of real property or interest
70 in real property.

71 “Capital outlay” shall mean and include buildings, lands or
72 buildings and lands, with such category or item of appropriation
73 to remain in effect as provided by W.Va. Code §12-3-12.

74 From appropriations made to the spending units of state
75 government, upon approval of the Governor there may be
76 transferred to a special account an amount sufficient to match
77 federal funds under any federal act.

78 Appropriations classified in any of the above categories shall
79 be expended only for the purposes as defined above and only for
80 the spending units herein designated: *Provided*, That the
81 secretary of each department shall have the authority to transfer

82 within the department those general revenue funds appropriated
83 to the various agencies of the department: *Provided, however,*
84 That no more than five percent of the general revenue funds
85 appropriated to any one agency or board may be transferred to
86 other agencies or boards within the department: and no funds
87 may be transferred to a “personal services and employee
88 benefits” appropriation unless the source funds are also wholly
89 from a “personal services and employee benefits” line, or unless
90 the source funds are from another appropriation that has
91 exclusively funded employment expenses for at least twelve
92 consecutive months prior to the time of transfer and the
93 position(s) supported by the transferred funds are also
94 permanently transferred to the receiving agency or board within
95 the department: *Provided further,* That the secretary of each
96 department and the director, commissioner, executive secretary,
97 superintendent, chairman or any other agency head not governed
98 by a departmental secretary as established by Chapter 5F of the
99 Code shall have the authority to transfer funds appropriated to
100 “personal services and employee benefits,” “current expenses,”
101 “repairs and alterations,” “equipment,” “other assets,” “land,”
102 and “buildings” to other appropriations within the same account
103 and no funds from other appropriations shall be transferred to the
104 “personal services and employee benefits” or the “unclassified”
105 appropriation: *And provided further,* That no authority exists
106 hereunder to transfer funds into appropriations to which no funds
107 are legislatively appropriated: *And provided further,* That if the
108 Legislature by subsequent enactment consolidates agencies,
109 boards or functions, the secretary or other appropriate agency
110 head may transfer the funds formerly appropriated to such
111 agency, board or function in order to implement such
112 consolidation. No funds may be transferred from a Special
113 Revenue Account, dedicated account, capital expenditure
114 account or any other account or fund specifically exempted by
115 the Legislature from transfer, except that the use of the
116 appropriations from the State Road Fund for the office of the

117 Secretary of the Department of Transportation is not a use other
118 than the purpose for which such funds were dedicated and is
119 permitted.

120 Appropriations otherwise classified shall be expended only
121 where the distribution of expenditures for different purposes
122 cannot well be determined in advance or it is necessary or
123 desirable to permit the spending unit the freedom to spend an
124 appropriation for more than one of the above classifications.

1 **Sec. 4. Method of expenditure.** — Money appropriated by
2 this bill, unless otherwise specifically directed, shall be
3 appropriated and expended according to the provisions of Article
4 3, Chapter 12 of the Code or according to any law detailing a
5 procedure specifically limiting that article.

1 **Sec. 5. Maximum expenditures.** — No authority or
2 requirement of law shall be interpreted as requiring or permitting
3 an expenditure in excess of the appropriations set out in this bill.

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TITLE III – ADMINISTRATION

- §1. Appropriations conditional.
- §2. Constitutionality.

1 **Section 1. Appropriations from general revenue.**— From
2 the State Fund, General Revenue, there are hereby appropriated
3 conditionally upon the fulfillment of the provisions set forth in
4 Article 2, Chapter 11B the following amounts, as itemized, for
5 expenditure during the fiscal year 2016.

LEGISLATIVE

1 - Senate

Fund 0165 FY 2016 Org 2100

	Appropriation	General Revenue Fund
1 Compensation of Members (R). 00300	\$	1,010,000
2 Compensation and Per Diem of Officers		
3 and Employees (R). 00500		3,233,620
4 Employee Benefits (R).. 01000		777,712
5 Current Expenses and		
6 Contingent Fund (R). 02100		276,392
7 Repairs and Alterations (R). 06400		50,000
8 Computer Supplies (R).. 10100		20,000
9 Computer Systems (R).. 10200		60,000
10 Printing Blue Book (R). 10300		125,000
11 Expenses of Members (R). 39900		370,000
12 BRIM Premium (R).. 91300		<u>29,482</u>
13 Total..	\$	5,952,206

14 The appropriations for the Senate for the fiscal year 2015 are
 15 to remain in full force and effect and are hereby reappropriated
 16 to June 30, 2016. Any balances so reappropriated may be
 17 transferred and credited to the fiscal year 2015 accounts.

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

22 The Clerk of the Senate, with the approval of the President,
 23 is authorized to draw his or her requisitions upon the Auditor,
 24 payable out of the Current Expenses and Contingent Fund of the

25 Senate, for any bills for supplies and services that may have been
26 incurred by the Senate and not included in the appropriation bill,
27 for supplies and services incurred in preparation for the opening,
28 the conduct of the business and after adjournment of any regular
29 or extraordinary session, and for the necessary operation of the
30 Senate offices, the requisitions for which are to be accompanied
31 by bills to be filed with the Auditor.

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

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

54 The distribution of the blue book shall be by the office of the
55 Clerk of the Senate and shall include 75 copies for each member
56 of the Legislature and two copies for each classified and

57 approved high school and junior high or middle school and one
58 copy for each elementary school within the state.

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

2 - House of Delegates

Fund 0170 FY 2016 Org 2200

1	Compensation of Members (R).	00300	\$	3,000,000
2	Compensation and Per Diem of Officers			
3	and Employees (R).	00500		575,000
4	Current Expenses and			
5	Contingent Fund (R).	02100		3,929,031
6	Expenses of Members (R).	39900		1,350,000
7	BRIM Premium (R).	91300		<u>50,000</u>
8	Total.		\$	8,904,031

9 The appropriations for the House of Delegates for the fiscal
10 year 2015 are to remain in full force and effect and are hereby
11 reappropriated to June 30, 2016. Any balances so reappropriated
12 may be transferred and credited to the fiscal year 2015 accounts.

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

17 The Clerk of the House of Delegates, with the approval of
18 the Speaker, is authorized to draw his or her requisitions upon
19 the Auditor, payable out of the Current Expenses and Contingent
20 Fund of the House of Delegates, for any bills for supplies and
21 services that may have been incurred by the House of Delegates

22 and not included in the appropriation bill, for bills for services
23 and supplies incurred in preparation for the opening of the
24 session and after adjournment, and for the necessary operation
25 of the House of Delegates' offices, the requisitions for which are
26 to be accompanied by bills to be filed with the Auditor.

27 The Speaker of the House of Delegates, upon approval of the
28 House committee on rules, shall have authority to employ such
29 staff personnel during and between sessions of the Legislature as
30 shall be needed, in addition to personnel designated in the House
31 resolution, and the compensation of all personnel shall be as
32 fixed in such House resolution for the session, or fixed by the
33 Speaker, with the approval of the House committee on rules,
34 during and between sessions of the Legislature, notwithstanding
35 such House resolution. The Clerk of the House of Delegates is
36 hereby authorized to draw requisitions upon the Auditor for such
37 services, payable out of the appropriation for the Compensation
38 and Per Diem of Officers and Employees or Current Expenses
39 and Contingent Fund of the House of Delegates.

40 For duties imposed by law and by the House of Delegates,
41 including salary allowed by law as keeper of the rolls, the Clerk
42 of the House of Delegates shall be paid a monthly salary as
43 provided in the House resolution, unless increased between
44 sessions under the authority of the Speaker, with the approval of
45 the House committee on rules, and payable out of the
46 appropriation for Compensation and Per Diem of Officers and
47 Employees or Current Expenses and Contingent Fund of the
48 House of Delegates.

49 Included in the above appropriation for House of Delegates
50 (fund 0170, appropriation 02100), an amount not less than
51 \$5,000 is to be used for the West Virginia Academy of Family
52 Physicians - Doc of the Day Program.

3 - Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2016 Org 2300

1	Joint Committee on		
2	Government and Finance (R).	10400	\$ 6,758,015
3	Legislative Printing (R).	10500	760,000
4	Legislative Rule-Making		
5	Review Committee (R)	10600	147,250
6	Legislative Computer System (R).	10700	902,500
7	BRIM Premium (R).	91300	<u>27,692</u>
8	Total.		\$ 8,595,457

9 The appropriations for the joint expenses for the fiscal year
10 2015 are to remain in full force and effect and are hereby
11 reappropriated to June 30, 2016; Provided, That the amount to be
12 reappropriated to Tax Reduction and Federal Funding Increased
13 Compliance (TRAFFIC), (fiscal year 2009, fund 0175,
14 appropriation 64200), be reduced by \$1,000,000 and the
15 \$1,000,000 so reduced be added and reappropriated to Joint
16 Committee on Government and Finance (2014, fund 0175,
17 appropriation 10400). Any balances reappropriated may be
18 transferred and credited to the fiscal year 2015 accounts.

19 Upon the written request of the Clerk of the Senate, with the
20 approval of the President of the Senate, and the Clerk of the
21 House of Delegates, with the approval of the Speaker of the
22 House of Delegates, and a copy to the Legislative Auditor, the
23 Auditor shall transfer amounts between items of the total
24 appropriation in order to protect or increase the efficiency of the
25 service.

26 The appropriation for the Tax Reduction and Federal
27 Funding Increased Compliance (TRAFFIC) (fund 0175,
28 appropriation 64200) is intended for possible general state tax

29 reductions or the offsetting of any reductions in federal funding
30 for state programs.

JUDICIAL

*4 - Supreme Court –
General Judicial*

Fund 0180 FY 2016 Org 2400

1	Personal Services and		
2	Employee Benefits (R).	00100	\$ 98,955,687
3	Children’s Protection Act (R).	09000	2,800,000
4	Current Expenses (R).	13000	29,465,276
5	Repairs and Alterations (R).	06400	715,000
6	Equipment (R).	07000	3,100,000
7	Judges’ Retirement System (R).	11000	2,845,000
8	Buildings (R).	25800	100,000
9	Other Assets (R).	69000	1,200,000
10	BRIM Premium (R).	91300	<u>391,532</u>
11	Total.		\$ 139,572,495

12 The appropriations to the Supreme Court of Appeals for the
13 fiscal years 2014 and 2015 are to remain in full force and effect
14 and are hereby reappropriated to June 30, 2016. Any balances so
15 reappropriated may be transferred and credited to the fiscal year
16 2015 accounts.

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

22 The appropriation for the Judges’ Retirement System (fund
23 0180, appropriation 11000) is to be transferred to the
24 Consolidated Public Retirement Board, in accordance with the

25 law relating thereto, upon requisition of the Administrative
26 Director of the Supreme Court of Appeals.

EXECUTIVE

5 - Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2016 Org 0100

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,253,530
3	Current Expenses (R).....	13000	1,145,458
4	Repairs and Alterations.	06400	2,000
5	GO HELP (R).....	11600	0
6	National Governors Association. . .	12300	60,700
7	Herbert Henderson Office of		
8	Minority Affairs.....	13400	156,726
9	Southern Governors' Association. .	31400	40,000
10	BRIM Premium.	91300	<u>151,851</u>
11	Total.....		\$ 4,810,265

12 Any unexpended balances remaining in the appropriations
13 for Unclassified (fund 0101, appropriation 09900), GO HELP
14 (fund 0101, appropriation 11600), Current Expenses (fund 0101,
15 appropriation 13000), and JOBS Fund (fund 0101, appropriation
16 66500) at the close of the fiscal year 2015 are hereby
17 reappropriated for expenditure during the fiscal year 2016.

18 Included in the above appropriation to Personal Services and
19 Employee Benefits (fund 0101, appropriation 00100), is
20 \$150,000 for the Salary of the Governor.

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

*6 - Governor's Office –
Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2016 Org 0100

1	Personal Services and		
2	Employee Benefits 00100	\$	352,216
3	Current Expenses (R) 13000		214,166
4	Repairs and Alterations. 06400		5,000
5	Total	\$	571,382

6 Any unexpended balance remaining in the appropriation for
7 Current Expenses (fund 0102, appropriation 13000) at the close
8 of the fiscal year 2015 is hereby reappropriated for expenditure
9 during the fiscal year 2016.

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

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

(WV Code Chapter 5)

Fund 0105 FY 2016 Org 0100

1 Any unexpended balances remaining in the appropriations
2 for Business and Economic Development Stimulus – Surplus
3 (fund 0105, appropriation 08400), Civil Contingent Fund – Total
4 (fund 0105, appropriation 11400), 2012 Natural Disasters –
5 Surplus (fund 0105, appropriation 13500), Civil Contingent
6 Fund – Total – Surplus (fund 0105, appropriation 23800), Civil
7 Contingent Fund – Surplus (fund 0105, appropriation 26300),

8 Business and Economic Development Stimulus (fund 0105,
 9 appropriation 58600), Civil Contingent Fund (fund 0105,
 10 appropriation 61400), and Natural Disasters – Surplus (fund
 11 0105, appropriation 76400) at the close of the fiscal year 2015
 12 are hereby reappropriated for expenditure during the fiscal year
 13 2016.

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

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

*8 - Auditor’s Office –
 General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2016 Org 1200

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,160,621
3	Current Expenses (R).....	13000	10,622
4	BRIM Premium.	91300	<u>10,451</u>
5	Total.....		\$ 3,181,694

6 Any unexpended balance remaining in the appropriation for
 7 Current Expenses (fund 0116, appropriation 13000) at the close
 8 of the fiscal year 2015 is hereby reappropriated for expenditure
 9 during the fiscal year 2016.

10 Included in the above appropriation to Personal Services and
 11 Employee Benefits (fund 0116, appropriation 00100), is \$95,000
 12 for the Salary of the Auditor.

9 - Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2016 Org 1300

1	Personal Services and		
2	Employee Benefits..... 00100	\$	2,534,350
3	Unclassified..... 09900		32,355
4	Current Expenses (R)..... 13000		387,757
5	Abandoned Property Program. 11800		157,337
6	Other Assets..... 69000		10,000
7	Tuition Trust Fund (R)..... 69200		73,207
8	BRIM Premium. 91300		<u>30,809</u>
9	Total.....	\$	<u>3,225,815</u>

10 Any unexpended balances remaining in the appropriations
 11 for Current Expenses (fund 0126, appropriation 13000) and
 12 Tuition Trust Fund (fund 0126, appropriation 69200) at the close
 13 of the fiscal year 2015 are hereby reappropriated for expenditure
 14 during the fiscal year 2016.

15 Included in the above appropriation to Personal Services and
 16 Employee Benefits (fund 0126, appropriation 00100), is \$95,000
 17 for the Salary of the Treasurer.

10 - Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2016 Org 1400

1	Personal Services and		
2	Employee Benefits..... 00100	\$	5,832,272
3	Animal Identification Program. 03900		184,484
4	State Farm Museum..... 05500		104,500
5	Unclassified (R)..... 09900		67,969

6	Current Expenses (R).....	13000	264,826
7	Repairs and Alterations.	06400	30,000
8	Equipment.	07000	23,402
9	Gypsy Moth Program (R).	11900	1,148,890
10	Huntington Farmers Market.....	12800	43,866
11	Black Fly Control.....	13700	532,444
12	Donated Foods Program.....	36300	50,000
13	Predator Control (R).....	47000	200,000
14	Logan Farmers Market.....	50100	46,799
15	Bee Research.	69100	77,821
16	Charleston Farmers Market.	74600	84,360
17	Microbiology Program (R).	78500	115,096
18	Moorefield Agriculture		
19	Center (R).	78600	1,077,467
20	Chesapeake Bay Watershed.....	83000	125,416
21	Livestock Care Standards Board. . .	84300	15,000
22	BRIM Premium.	91300	120,202
23	Threat Preparedness.....	94200	82,110
24	WV Food Banks.....	96900	140,000
25	Seniors' Farmers' Market		
26	Nutrition Coupon Program. . . .	97000	<u>62,137</u>
27	Total.....		\$ 10,429,061

28 Any unexpended balances remaining in the appropriations
29 for Unclassified – Surplus (fund 0131, appropriation 09700),
30 Unclassified (fund 0131, appropriation 09900), Gypsy Moth
31 Program (fund 0131, appropriation 11900), Current Expenses
32 (fund 0131, appropriation 13000), Predator Control (fund 0131,
33 appropriation 47000), Capital Outlay, Repairs and Equipment –
34 Surplus (fund 0131, appropriation 67700), Capital Outlay and
35 Maintenance (fund 0131, appropriation 75500), Microbiology
36 Program (fund 0131, appropriation 78500), Moorefield
37 Agriculture Center (fund 0131, appropriation 78600), and
38 Agricultural Disaster and Mitigation Needs – Surplus (fund
39 0131, appropriation 85000) at the close of the fiscal year 2015

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40 are hereby reappropriated for expenditure during the fiscal year
41 2016.

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

45 The above appropriation for Predator Control (fund 0131,
46 appropriation 47000) is to be made available to the United States
47 Department of Agriculture, Wildlife Services to administer the
48 Predator Control Program.

49 A portion of the Unclassified or Current Expenses
50 appropriation may be transferred to a special revenue fund for
51 the purpose of matching federal funds for marketing and
52 development activities.

53 From the above appropriation for WV Food Banks (fund
54 0131, appropriation 96900), \$20,000 is for House of Hope and
55 the remainder of the appropriation shall be allocated to the
56 Huntington Food Bank and the Mountaineer Food Bank in
57 Braxton County.

11 - West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2016 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 722,344
3	Unclassified (R).....	09900	83,564
4	Current Expenses (R).....	13000	333,771
5	Repairs and Alterations.	06400	10,000
6	Equipment.	07000	10,000
7	Soil Conservation Projects (R).. . . .	12000	7,148,899
8	BRIM Premium.	91300	<u>26,326</u>
9	Total.....		\$ 8,334,904

10 Any unexpended balances remaining in the appropriations
 11 for Unclassified (fund 0132, appropriation 09900), Soil
 12 Conservation Projects (fund 0132, appropriation 12000), and
 13 Current Expenses (fund 0132, appropriation 13000) at the close
 14 of the fiscal year 2015 are hereby reappropriated for expenditure
 15 during the fiscal year 2016.

*12 - Department of Agriculture –
 Meat Inspection Fund*

(WV Code Chapter 19)

Fund 0135 FY 2016 Org 1400

1	Personal Services and		
2	Employee Benefits..... 00100	\$	618,662
3	Unclassified..... 09900		7,182
4	Current Expenses..... 13000		<u>96,344</u>
5	Total.....	\$	722,188

6 Any part or all of this appropriation may be transferred to a
 7 special revenue fund for the purpose of matching federal funds
 8 for the above-named program.

*13 - Department of Agriculture –
 Agricultural Awards Fund*

(WV Code Chapter 19)

Fund 0136 FY 2016 Org 1400

1	Programs and Awards for 4-H		
2	Clubs and FFA/FHA..... 57700	\$	15,000
3	Commissioner’s Awards and		
4	Programs..... 73700		<u>39,250</u>
5	Total.....	\$	54,250

*14 - Department of Agriculture –
West Virginia Agricultural Land Protection Authority*

(WV Code Chapter 8A)

Fund 0607 FY 2016 Org 1400

1	Personal Services and		
2	Employee Benefits..... 00100	\$	98,029
3	Unclassified..... 09900		950
4	Total.....	\$	98,979

15 - Attorney General

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2016 Org 1500

1	Personal Services and		
2	Employee Benefits (R). 00100	\$	3,062,683
3	Unclassified (R)..... 09900		51,867
4	Current Expenses (R)..... 13000		590,706
5	Repairs and Alterations. 06400		7,500
6	Equipment. 07000		40,000
7	Criminal Convictions and		
8	Habeas Corpus Appeals (R). . . 26000		1,050,739
9	Better Government Bureau. 74000		270,742
10	BRIM Premium. 91300		90,000
11	Total.....	\$	5,164,237

12 Any unexpended balances remaining in the above
 13 appropriations for Personal Services and Employee Benefits
 14 (fund 0150, appropriation 00100), Employee Benefits (fund
 15 0150, appropriation 01000), Unclassified (fund 0150,
 16 appropriation 09900), Current Expenses (fund 0150,
 17 appropriation 13000), Criminal Convictions and Habeas Corpus
 18 Appeals (fund 0150, appropriation 26000), Agency Client

19 Revolving Liquidity Pool (fund 0150, appropriation 36200),
 20 Equipment – Surplus (fund 0150, appropriation 34100),
 21 Technology Improvements – Surplus (fund 0150, appropriation
 22 72500), and Operating Expenses – Surplus (fund 0150,
 23 appropriation 77900) at the close of the fiscal year 2015 are
 24 hereby reappropriated for expenditure during the fiscal year
 25 2016.

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

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

16 - Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2016 Org 1600

1	Personal Services and		
2	Employee Benefits..... 00100	\$	119,024
3	Unclassified (R)..... 09900		11,217
4	Current Expenses (R)..... 13000		977,395
5	BRIM Premium. 91300		<u>20,000</u>
6	Total.....	\$	<u>1,127,636</u>

7 Any unexpended balances remaining in the appropriations
 8 for Unclassified (fund 0155, appropriation 09900), Current
 9 Expenses (fund 0155, appropriation 13000), and Technology
 10 Improvements – Surplus (fund 0155, appropriation 72500) at the
 11 close of the fiscal year 2015 are hereby reappropriated for
 12 expenditure during the fiscal year 2016.

13 Included in the above appropriation to Personal Services and
 14 Employee Benefits (fund 0155, appropriation 00100), is \$95,000
 15 for the Salary of the Secretary of State.

17 - State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2016 Org 1601

1	Personal Services and		
2	Employee Benefits..	00100	\$ 2,477
3	Unclassified.	09900	83
4	Current Expenses.	13000	<u>5,782</u>
5	Total.		\$ 8,342

DEPARTMENT OF ADMINISTRATION

*18 - Department of Administration –
 Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2016 Org 0201

1	Personal Services and		
2	Employee Benefits..	00100	\$ 584,142
3	Unclassified.	09900	9,177
4	Current Expenses.	13000	102,470
5	Repairs and Alterations.	06400	100
6	Equipment.	07000	1,000
7	Financial Advisor (R)..	30400	110,546

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8	Lease Rental Payments. 51600	15,000,000
9	Design-Build Board. 54000	4,000
10	Other Assets. 69000	100
11	BRIM Premium. 91300	<u>4,000</u>
12	Total.	\$ 15,815,535

13 Any unexpended balance remaining in the appropriation for
14 Financial Advisor (fund 0186, appropriation 30400) at the close
15 of the fiscal year 2015 is hereby reappropriated for expenditure
16 during the fiscal year 2016.

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

19 - Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2016 Org 0205

1 The Division of Highways, Division of Motor Vehicles,
2 Public Service Commission and other departments, bureaus,
3 divisions, or commissions operating from special revenue funds
4 and/or federal funds shall pay their proportionate share of the
5 retirement costs for their respective divisions. When specific
6 appropriations are not made, such payments may be made from
7 the balances in the various special revenue funds in excess of
8 specific appropriations.

20 - Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2016 Org 0209

1	Personal Services and		
2	Employee Benefits. 00100	\$	91,073

152	APPROPRIATIONS	[Ch. 15
3	Unclassified. 09900	2,400
4	Current Expenses. 13000	84,462
5	Repairs and Alterations. 06400	1,500
6	Equipment. 07000	1,000
7	GAAP Project (R). 12500	594,456
8	Other Assets. 69000	2,000
9	BRIM Premium. 91300	<u>4,526</u>
10	Total.	\$ 781,417

11 Any unexpended balance remaining in the appropriation for
12 GAAP Project (fund 0203, appropriation 12500) at the close of
13 the fiscal year 2015 is hereby reappropriated for expenditure
14 during the fiscal year 2016.

21 - Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2016 Org 0211

1	Personal Services and	
2	Employee Benefits. 00100	\$ 2,640,822
3	Unclassified. 09900	20,000
4	Current Expenses. 13000	878,365
5	Repairs and Alterations. 06400	500
6	Equipment. 07000	5,000
7	Fire Service Fee. 12600	14,000
8	Buildings (R). 25800	500
9	Preservation and Maintenance of	
10	Statues and Monuments	
11	on Capitol Grounds. 37100	68,000
12	Capital Outlay, Repairs and	
13	Equipment (R). 58900	4,500,000
14	Other Assets. 69000	500
15	Land (R). 73000	500
16	BRIM Premium. 91300	<u>112,481</u>
17	Total.	\$ 8,240,668

18 Any unexpended balances remaining in the above
 19 appropriations for Buildings (fund 0230, appropriation 25800),
 20 Capital Outlay, Repairs and Equipment (fund 0230,
 21 appropriation 58900), and Land (fund 0230, appropriation
 22 73000) at the close of the fiscal year 2015 are hereby
 23 reappropriated for expenditure during the fiscal year 2016.

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

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

22 - Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2016 Org 0213

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,005,608
3	Unclassified.....	09900	1,444
4	Current Expenses.....	13000	24,070
5	Repairs and Alterations.....	06400	700
6	Equipment.....	07000	1,000
7	Other Assets.....	69000	1,000
8	BRIM Premium.....	91300	<u>6,167</u>
9	Total.....		\$ 1,039,989

10 The division of highways shall reimburse Fund 2031 within
 11 the Division of Purchasing for all actual expenses incurred
 12 pursuant to the provisions of W.Va. Code §17-2A-13.

23 - Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2016 Org 0215

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 926,382
3	Unclassified.....	09900	14,414
4	Current Expenses.....	13000	447,316
5	Repairs and Alterations.....	06400	0
6	Equipment.....	07000	5,000
7	Buildings (R).....	25800	100
8	Other Assets.....	69000	100
9	Total.....		\$ 1,393,312

10 Any unexpended balance remaining in the appropriation for
 11 Buildings (fund 0615, appropriation 25800) at the close of the
 12 fiscal year 2015 is hereby reappropriated for expenditure during
 13 the fiscal year 2016.

24 - Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2016 Org 0217

1	Unclassified.....	09900	\$ 465
2	Current Expenses.....	13000	<u>45,085</u>
3	Total.....		\$ 45,550

4 To pay expenses for members of the commission on uniform
 5 state laws.

25 - West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2016 Org 0219

1	Personal Services and		
2	Employee Benefits..	00100	\$ 918,368
3	Unclassified.	09900	1,000
4	Current Expenses.	13000	165,806
5	Equipment.	07000	50
6	BRIM Premium.	91300	<u>7,803</u>
7	Total.		\$ 1,093,027

8 Any unexpended balances remaining in the appropriations
 9 for Buildings (fund 0220, appropriation 25800), and Land (fund
 10 0220, appropriation 73000) at the close of the fiscal year 2015
 11 are hereby reappropriated for expenditure during the fiscal year
 12 2016.

26 - Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2016 Org 0220

1	Personal Services and		
2	Employee Benefits..	00100	\$ 570,145
3	Unclassified.	09900	4,500
4	Current Expenses.	13000	128,193
5	Repairs and Alterations.	06400	500
6	Other Assets.	69000	100
7	BRIM Premium.	91300	<u>3,137</u>
8	Total.		\$ 706,575

27 - Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2016 Org 0221

1	Personal Services and		
2	Employee Benefits..	00100	\$ 1,419,650

156	APPROPRIATIONS	[Ch. 15
3	Unclassified 09900	317,429
4	Current Expenses. 13000	45,840
5	Public Defender Corporations. 35200	19,199,406
6	Appointed Counsel Fees (R). 78800	10,723,115
7	BRIM Premium. 91300	<u>6,155</u>
8	Total.	\$ 31,711,595

9 Any unexpended balance remaining in the above
10 appropriation for Appointed Counsel Fees (fund 0226,
11 appropriation 78800) at the close of the fiscal year 2015 is
12 hereby reappropriated for expenditure during the fiscal year
13 2016.

14 The director shall have the authority to transfer funds from
15 the appropriation to Public Defender Corporations (fund 0226,
16 appropriation 35200) to Appointed Counsel Fees (fund 0226,
17 appropriation 78800).

*28 - Committee for the Purchase of
Commodities and Services from the Handicapped*

(WV Code Chapter 5A)

Fund 0233 FY 2016 Org 0224

1	Personal Services and		
2	Employee Benefits. 00100	\$	3,187
3	Current Expenses. 13000		<u>868</u>
4	Total.	\$	4,055

29 - Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2016 Org 0225

1 The Division of Highways, Division of Motor Vehicles,
2 Public Service Commission and other departments, bureaus,
3 divisions, or commissions operating from special revenue funds

4 and/or federal funds shall pay their proportionate share of the
5 public employees health insurance cost for their respective
6 divisions.

30 - West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2016 Org 0228

1	Forensic Medical		
2	Examinations (R).....	68300	\$ 140,505
3	Federal Funds/Grant Match (R)...	74900	<u>100,782</u>
4	Total.....		\$ 241,287

5 Any unexpended balances remaining in the appropriations
6 for Forensic Medical Examinations (fund 0557, appropriation
7 68300) and Federal Funds/Grant Match (fund 0557,
8 appropriation 74900) at the close of the fiscal year 2015 are
9 hereby reappropriated for expenditure during the fiscal year
10 2016.

31 - Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2016 Org 0230

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 0
3	Current Expenses.....	13000	0
4	Autism Spectrum Disorder		
5	Coverage.....	85600	<u>0</u>
6	Total.....		\$ 0

32 - Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2016 Org 0233

1	Personal Services and		
2	Employee Benefits..	00100	\$ 725,360
3	Unclassified.	09900	2,000
4	Current Expenses.	13000	167,046
5	Repairs and Alterations.	06400	100
6	Equipment.	07000	2,500
7	BRIM Premium.	91300	<u>4,200</u>
8	Total..		\$ 901,206

9 Any unexpended balances remaining in the appropriations
10 for Buildings (fund 0610, appropriation 25800) and Land (fund
11 0610, appropriation 73000) at the close of the fiscal year 2015
12 are hereby reappropriated for expenditure during the fiscal year
13 2016.

DEPARTMENT OF COMMERCE

33 - Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2016 Org 0305

1	Personal Services and		
2	Employee Benefits..	00100	\$ 3,908,154
3	Unclassified.	09900	21,435
4	Current Expenses.	13000	1,213,953
5	Repairs and Alterations.	06400	135,000
6	Equipment (R).	07000	100,000
7	BRIM Premium.	91300	<u>85,000</u>
8	Total..		\$ 5,463,542

9 Any unexpended balance remaining in the appropriation for
10 Equipment (fund 0250, appropriation 07000) at the close of the
11 fiscal year 2015 is hereby reappropriated for expenditure during
12 the fiscal year 2016.

13 Out of the above appropriations a sum may be used to match
14 federal funds for cooperative studies or other funds for similar
15 purposes.

34 - Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2016 Org 0306

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,632,541
3	Unclassified.....	09900	30,096
4	Current Expenses.....	13000	91,852
5	Repairs and Alterations.....	06400	10,000
6	Equipment.....	07000	100
7	Mineral Mapping System (R). . . .	20700	1,214,328
8	Other Assets.....	69000	100
9	BRIM Premium.....	91300	<u>20,950</u>
10	Total.....		\$ 2,999,967

11 Any unexpended balance remaining in the appropriation for
12 Mineral Mapping System (fund 0253, appropriation 20700) at
13 the close of the fiscal year 2015 is hereby reappropriated for
14 expenditure during the fiscal year 2016.

15 The above Unclassified and Current Expenses appropriations
16 include funding to secure federal and other contracts and may be
17 transferred to a special revolving fund (fund 3105) for the
18 purpose of providing advance funding for such contracts.

35 - West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2016 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 3,954,304

3	ARC-WV Home of Your		
4	Own Alliance.....	04800	33,744
5	Unclassified.....	09900	128,379
6	Current Expenses.....	13000	1,750,854
7	Southern WV Career Center.....	07100	414,840
8	Local Economic Development		
9	Partnerships (R).....	13300	1,650,000
10	ARC Assessment.....	13600	152,585
11	Mid-Atlantic Aerospace		
12	Complex.....	23100	149,134
13	Guaranteed Work Force		
14	Grant (R).....	24200	993,386
15	Robert C. Byrd Institute for		
16	Advanced/Flexible Manufacturing -		
17	Technology Outreach and		
18	Programs for Environmental and		
19	Advanced Technologies.....	36700	438,504
20	Advantage Valley.....	38900	0
21	Chemical Alliance Zone.....	39000	40,099
22	WV High Tech Consortium.....	39100	*198,906
23	Regional Contracting		
24	Assistance Center.....	41800	*208,215
25	Highway Authorities.....	43100	732,078
26	International Offices (R).....	59300	529,867
27	WV Manufacturing		
28	Extension Partnership.....	73100	121,478
29	Polymer Alliance.....	75400	97,014
30	Regional Councils.....	78400	371,184
31	Mainstreet Program.....	79400	167,292
32	National Institute of		
33	Chemical Studies.....	80500	59,474
34	I-79 Development Council.....	82400	46,296

* **NOTE:** The Governor reduced Item 35, line 22, by \$101,094, from \$300,000 to \$198,906. And lines 23 and 24, by \$16,785, from \$225,000 to \$208,215. The total does NOT reflect the reductions made by the Governor.

35	Mingo County Post Mine Land		
36	Use Projects	84100	250,000
37	BRIM Premium.	91300	26,096
38	Hatfield McCoy		
39	Recreational Trail.	96000	210,900
40	Hardwood Alliance Zone.	99200	<u>35,937</u>
41	Total.		\$ 12,878,445

42 Any unexpended balances remaining in the appropriations
43 for Unclassified – Surplus (fund 0256, appropriation 09700),
44 Partnership Grants (fund 0256, appropriation 13100), Local
45 Economic Development Partnerships (fund 0256, appropriation
46 13300), Guaranteed Work Force Grant (fund 0256, appropriation
47 24200), Industrial Park Assistance (fund 0256, appropriation
48 48000), Small Business Development (fund 0256, appropriation
49 70300), Local Economic Development Assistance (fund 0256,
50 appropriation 81900), and 4-H Camp Improvements (fund 0256,
51 appropriation 94100) at the close of the fiscal year 2015 are
52 hereby reappropriated for expenditure during the fiscal year
53 2016.

54 The above appropriation to Local Economic Development
55 Partnerships (fund 0256, appropriation 13300) shall be used by
56 the West Virginia Development Office for the award of funding
57 assistance to county and regional economic development
58 corporations or authorities participating in the certified
59 development community program developed under the
60 provisions of W.Va. Code §5B-2-14. The West Virginia
61 Development Office shall award the funding assistance through
62 a matching grant program, based upon a formula whereby
63 funding assistance may not exceed \$34,000 per county served by
64 an economic development or redevelopment corporation or
65 authority.

66 From the above appropriation for Highway Authorities (fund
67 0256, appropriation 43100), \$106,548 is for King Coal Highway

68 Authority; \$106,548 is for Coal Field Expressway Authority;
 69 \$170,478 is for Coal Heritage Area Authority; \$42,620 is for
 70 Little Kanawha River Parkway; \$76,715 is for Midland Trail
 71 Scenic Highway Association; \$48,585 is for Shawnee Parkway
 72 Authority; \$85,239 is for Corridor G Regional Development
 73 Authority; \$52,725 is for Corridor H Authority; and \$42,620 is
 74 for Route 2 I68 Highway Authority.

36 - Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2016 Org 0308

1	Personal Services and		
2	Employee Benefits.. 00100	\$	2,201,632
3	Unclassified. 09900		28,658
4	Current Expenses. 13000		564,773
5	Repairs and Alterations. 06400		30,000
6	Equipment. 07000		10,000
7	BRIM Premium. 91300		<u>22,752</u>
8	Total.	\$	2,857,815

37 - Division of Labor –

Occupational Safety and Health Fund

(WV Code Chapter 21)

Fund 0616 FY 2016 Org 0308

1	Personal Services and		
2	Employee Benefits.. 00100	\$	74,144
3	Current Expenses. 13000		79,963
4	Repairs and Alterations. 06400		500
5	Equipment. 07000		500
6	BRIM Premium. 91300		<u>985</u>
7	Total.	\$	156,092

38 - Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2016 Org 0310

1	Personal Services and		
2	Employee Benefits..... 00100	\$	16,378,772
3	Unclassified..... 09900		11,220
4	Current Expenses..... 13000		57,416
5	Repairs and Alterations..... 06400		400
6	Equipment..... 07000		500
7	Buildings (R)..... 25800		400
8	Litter Control Conservation		
9	Officers..... 56400		149,103
10	Upper Mud River Flood Control... 65400		168,622
11	Other Assets..... 69000		200
12	Land (R)..... 73000		400
13	Law Enforcement..... 80600		2,764,373
14	BRIM Premium..... 91300		<u>293,374</u>
15	Total.....	\$	<u>19,824,780</u>

16 Any unexpended balances remaining in the appropriations
 17 for Buildings (fund 0265, appropriation 25800), Land (fund
 18 0265, appropriation 73000), and State Park Improvements –
 19 Surplus (fund 0265, appropriation 76300) at the close of the
 20 fiscal year 2015 are hereby reappropriated for expenditure
 21 during the fiscal year 2016.

22 Any revenue derived from mineral extraction at any state
 23 park shall be deposited in a special revenue account of the
 24 division of natural resources, first for bond debt payment
 25 purposes and with any remainder to be for park operation and
 26 improvement purposes.

39 - Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2016 Org 0314

1	Personal Services and		
2	Employee Benefits.. 00100	\$	10,503,524
3	Unclassified. 09900		120,000
4	Current Expenses. 13000		1,870,667
5	Coal Dust and Rock		
6	Dust Sampling. 27000		572,583
7	BRIM Premium. 91300		<u>68,134</u>
8	Total.	\$	13,134,908
9	Included in the above appropriation for Current Expenses		
10	(fund 0277, appropriation 13000) is \$500,000 for the Southern		
11	West Virginia Community and Technical College Mine Rescue		
12	and Rapid Response Team.		

40 - Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2016 Org 0319

1	Personal Services and		
2	Employee Benefits.. 00100	\$	286,435
3	Unclassified. 09900		4,230
4	Current Expenses. 13000		<u>131,634</u>
5	Total.	\$	422,299

41 - WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2016 Org 0323

1	Personal Services and		
2	Employee Benefits.. 00100	\$	13,464
3	Unclassified. 09900		655
4	Current Expenses. 13000		<u>51,289</u>
5	Total.	\$	65,408

*42 - Department of Commerce –
Office of the Secretary*

(WV Code Chapter 19)

Fund 0606 FY 2016 Org 0327

1	Personal Services and		
2	Employee Benefits.. 00100	\$	327,407
3	Unclassified. 09900		3,500
4	Current Expenses. 13000		<u>29,560</u>
5	Total.	\$	360,467

*43 - Department of Commerce –
Office of the Secretary –
Office of Economic Opportunity*

Fund 0617 FY 2016 Org 0327

1	Office of Economic Opportunity. . . 03400	\$	102,417
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44 - Division of Energy

(WV Code Chapter 5H)

Fund 0612 FY 2016 Org 0328

1	Personal Services and		
2	Employee Benefits.. 00100	\$	204,270
3	Unclassified. 09900		16,268
4	Current Expenses. 13000		<u>1,402,196</u>

5	BRIM Premium.	91300		<u>3,297</u>
6	Total.		\$	1,626,031

7 From the above appropriation for Current Expenses (fund
8 0612, appropriation 13000) \$593,375 is for West Virginia
9 University and \$593,375 is for Southern West Virginia
10 Community and Technical College for the Mine Training and
11 Energy Technologies Academy.

DEPARTMENT OF EDUCATION

45 - State Board of Education – School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2016 Org 0402

1	Personal Services and			
2	Employee Benefits.	00100	\$	361,665
3	Unclassified.	09900		0
4	Current Expenses.	13000		<u>2,118,490</u>
5	Total.		\$	2,480,155

46 - State Board of Education – State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2016 Org 0402

1	Personal Services and			
2	Employee Benefits.	00100	\$	600,273
3	Unclassified.	09900		*0
4	Current Expenses.	13000		128,033

* **NOTE:** The Governor reduced Item 46, line 3, by \$500,000, from \$500,000 to \$0. The total does NOT reflect the reductions made by the Governor.

5	BRIM Premium.	91300		<u>21,694</u>
6	Total.		\$	1,250,000

*47 - State Board of Education –
State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2016 Org 0402

1	Personal Services and			
2	Employee Benefits.	00100	\$	4,366,344
3	Technology System Specialist.	06200		2,000,000
4	Teachers' Retirement			
5	Savings Realized.	09500		34,472,000
6	Unclassified (R).	09900		300,000
7	Current Expenses (R).	13000		2,673,081
8	Repairs and Alterations.	06400		50,000
9	Equipment.	07000		5,000
10	Increased Enrollment.	14000		5,260,000
11	Safe Schools.	14300		5,028,664
12	Teacher Mentor (R).	15800		592,034
13	National Teacher			
14	Certification (R).	16100		150,000
15	Buildings (R).	25800		1,000
16	Allowance for County Transfers.	26400		469,993
17	Technology Repair and			
18	Modernization.	29800		951,003
19	HVAC Technicians.	35500		491,258
20	Early Retirement Notification			
21	Incentive.	36600		300,000
22	MATH Program.	36800		366,532
23	Assessment Programs.	39600		2,339,588
24	21 st Century Fellows.	50700		274,899
25	English as a Second Language.	52800		100,000
26	Teacher Reimbursement.	57300		297,188

27	Hospitality Training.....	60000	*264,973
28	Hi-Y Youth in Government.....	61600	100,000
29	High Acuity Special Needs (R)....	63400	1,500,000
30	Foreign Student Education.....	63600	89,231
31	Principals Mentorship.	64900	69,250
32	State Board of Education		
33	Administrative Costs.....	68400	363,428
34	Other Assets.....	69000	1,000
35	IT Academy.....	72100	500,000
36	Land (R).....	73000	1,000
37	Early Literacy Program.	75600	5,700,000
38	Local Solutions Dropout		
39	Prevention and Recovery.....	78000	2,230,000
40	School Based Truancy Prevention..	78101	2,000,000
41	Elementary/Middle		
42	Alternative Schools.....	83300	900,000
43	21 st Century Innovation Zones....	87600	266,144
44	21 st Century Learners (R).....	88600	1,716,874
45	Technology Initiatives.....	90100	230,000
46	BRIM Premium.	91300	285,686
47	High Acuity Health Care		
48	Needs Program.	92000	925,000
49	21 st Century Assessment and		
50	Professional Development....	93100	4,496,283
51	21 st Century Technology		
52	Infrastructure Network		
53	Tools and Support (R).....	93300	7,636,586
54	WV Commission on		
55	Holocaust Education.	93500	13,875
56	Regional Education		
57	Service Agencies.....	97200	3,690,750
58	Educational Program Allowance...	99600	*516,250
59	Total.....		\$ 94,057,696

* **NOTE:** The Governor reduced Item 47, line 27, by \$54,032, from \$319,005 to \$264,973. And line 58, by \$18,750, from \$535,000 to \$516,250.

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

62 Any unexpended balances remaining in the appropriations
63 for Unclassified (fund 0313, appropriation 09900), Current
64 Expenses (fund 0313, appropriation 13000), Teacher Mentor
65 (fund 0313, appropriation 15800), National Teacher Certification
66 (fund 0313, appropriation 16100), Buildings (fund 0313,
67 appropriation 25800), High Acuity Special Needs (fund 0313,
68 appropriation 63400), Land (fund 0313, appropriation 73000),
69 and 21st Century Learners (fund 0313, appropriation 88600) at
70 the close of the fiscal year 2015 are hereby reappropriated for
71 expenditure during the fiscal year 2016.

72 The above appropriation for Technology System Specialists
73 (fund 0313, appropriation 06200), shall first be used for the
74 continuance of current pilot projects. The remaining balance, if
75 any, may be used to expand the pilot project for additional
76 counties.

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

81 Included in the above appropriation for Current Expenses
82 (fund 0313, appropriation 13000) is \$50,000 for the fifth year of
83 a five year special community development school pilot program
84 per W.Va. Code §18-3-12.

85 The above appropriation for Hospitality Training (fund
86 0313, appropriation 60000), shall be allocated only to entities
87 that have a plan approved for funding by the Department of
88 Education, at the funding level determined by the State
89 Superintendent of Schools. Plans shall be submitted to the State
90 Superintendent of Schools to be considered for funding.

170

APPROPRIATIONS

[Ch. 15

91 The above appropriation for Local Solutions Dropout
92 Prevention and Recovery (fund 0313, appropriation 78000) shall
93 be transferred to the Local Solutions Dropout Prevention and
94 Recovery Fund (fund 3949).

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

*48 - State Board of Education –
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2016 Org 0402

1	Special Education – Counties. . . .	15900	\$	7,271,757
2	Special Education – Institutions.. . .	16000		3,707,066
3	Education of Juveniles			
4	Held in Predispositional			
5	Juvenile Detention Centers. . . .	30200		589,370
6	Education of Institutionalized			
7	Juveniles and Adults (R).....	47200		<u>17,335,390</u>
8	Total.....		\$	28,903,583

9 Any unexpended balance remaining in the appropriation for
10 Education of Institutionalized Juveniles and Adults (fund 0314,
11 appropriation 47200) at the close of the fiscal year 2015 is

* **NOTE:** The Governor reduced Item 47, line 102, from \$85,000 to \$66,250. The total does NOT reflect the reductions made by the Governor.

12 hereby reappropriated for expenditure during the fiscal year
 13 2016.

14 From the above appropriations, the superintendent shall have
 15 authority to expend funds for the costs of special education for
 16 those children residing in out-of-state placements.

*49 - State Board of Education –
 State Aid to Schools*

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2016 Org 0402

1	Other Current Expenses. 02200	\$ 154,485,546
2	Advanced Placement. 05300	526,406
3	Professional Educators. 15100	869,841,621
4	Service Personnel. 15200	294,796,569
5	Fixed Charges. 15300	103,420,680
6	Transportation. 15400	76,249,111
7	Professional Student	
8	Support Services. 65500	37,927,850
9	Improved Instructional	
10	Programs. 15600	47,840,943
11	21st Century Strategic Technology	
12	Learning Growth. 93600	<u>18,176,651</u>
13	Basic Foundation Allowances.	1,603,265,377
14	Less Local Share.	(454,137,621)
15	Adjustments.	*0
16	Total Basic State Aid.	<u>1,149,845,924</u>
17	Public Employees'	
18	Insurance Matching. 01200	214,590,471
19	Teachers' Retirement System. . . . 01900	66,486,618
20	School Building Authority. 45300	23,423,270

* **NOTE:** The Governor reduced Item 49, line 15, by \$718,168, from \$718,168 to \$0. The total does NOT reflect the reductions made by the Governor.

172

APPROPRIATIONS

[Ch. 15

21	Retirement Systems –		
22	Unfunded Liability.	77500	<u>298,584,000</u>
23	Total.		\$ 1,752,930,283

*50 - State Board of Education –
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2016 Org 0402

1	Personal Services and		
2	Employee Benefits.	00100	\$ 1,293,783
3	Unclassified.	09900	280,000
4	Current Expenses.	13000	918,886
5	Wood Products – Forestry		
6	Vocational Program.	14600	64,841
7	Albert Yanni Vocational		
8	Program.	14700	131,951
9	Vocational Aid.	14800	22,193,335
10	Adult Basic Education.	14900	4,470,114
11	Program Modernization.	30500	884,313
12	High School Equivalency		
13	Diploma Testing (R).	72600	1,067,176
14	FFA Grant Awards.	83900	11,496
15	Pre-Engineering		
16	Academy Program.	84000	<u>265,294</u>
17	Total.		\$ 31,581,189

18 Any unexpended balances remaining in the appropriations
19 for GED Testing (fund 0390, appropriation 33900) and High
20 School Equivalency Diploma Testing (fund 0390, appropriation
21 72600) at the close of the fiscal year 2015 is hereby
22 reappropriated for expenditure during the fiscal year 2016.

*51 - State Board of Education –
Division of Education Performance Audits*

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2016 Org 0402

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 903,491
3	Unclassified.....	09900	7,000
4	Current Expenses.....	13000	942,099
5	Repairs and Alterations.....	06400	1,000
6	Equipment.....	07000	1,000
7	Other Assets.....	69000	<u>1,000</u>
8	Total.....		\$ 1,855,590

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

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2016 Org 0403

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 11,551,213
3	Unclassified.....	09900	107,329
4	Current Expenses.....	13000	1,690,291
5	Repairs and Alterations.....	06400	75,000
6	Equipment.....	07000	35,000
7	Buildings (R).....	25800	25,000
8	Other Assets.....	69000	25,000
9	Capital Outlay and		
10	Maintenance (R).....	75500	62,500
11	BRIM Premium.....	91300	<u>68,628</u>
12	Total.....		\$ 13,639,961

13 Any unexpended balances remaining in the appropriations
 14 for Buildings (fund 0320, appropriation 25800) and Capital
 15 Outlay and Maintenance (fund 0320, appropriation 75500) at the
 16 close of the fiscal year 2015 are hereby reappropriated for
 17 expenditure during the fiscal year 2016.

DEPARTMENT OF EDUCATION AND THE ARTS

*53 - Department of Education and the Arts –
 Office of the Secretary*

(WV Code Chapter 5F)

Fund 0294 FY 2016 Org 0431

1	Personal Services and		
2	Employee Benefits..... 00100	\$	851,891
3	Unclassified..... 09900		35,000
4	Current Expenses..... 13000		27,818
5	Center for Professional		
6	Development (R)..... 11500		2,298,371
7	National Youth Science		
8	Camp..... 13200		246,500
9	WV Humanities Council..... 16800		450,000
10	Benedum Professional		
11	Development		
12	Collaborative (R)..... 42700		805,895
13	Governor's Honors		
14	Academy (R)..... 47800		597,714
15	Educational Enhancements..... 69500		*200,000
16	S.T.E.M. Education and		
17	Grant Program..... 71900		500,000
18	Energy Express..... 86100		470,000
19	BRIM Premium..... 91300		4,509

* **NOTE:** The Governor reduced Item 53, line 15, by \$375,000, from \$575,000 to \$200,000. The total does NOT reflect the reductions made by the Governor.

20	Special Olympic Games.....	96600		<u>25,000</u>
21	Total.....		\$	6,887,698

22 Any unexpended balances remaining in the appropriations
 23 for Center for Professional Development (fund 0294,
 24 appropriation 11500), Benedum Professional Development
 25 Collaborative (fund 0294, appropriation 42700), and Governor’s
 26 Honors Academy (fund 0294, appropriation 47800) at the close
 27 of the fiscal year 2015 are hereby reappropriated for expenditure
 28 during the fiscal year 2016.

29 Included in the above appropriation for Educational
 30 Enhancements (fund 0294, appropriation 69500) is \$125,000 for
 31 Reconnecting McDowell - Save the Children,*

32

33 * and \$75,000 for the Clay Center.

54 - Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2016 Org 0432

1	Personal Services and			
2	Employee Benefits.....	00100	\$	3,802,316
3	Unclassified (R).....	09900		44,177
4	Current Expenses.....	13000		810,103
5	Repairs and Alterations.....	06400		1,000
6	Equipment.....	07000		1
7	Buildings (R).....	25800		1
8	Other Assets.....	69000		1
9	Land (R).....	73000		1

* **NOTE:** The Governor deleted language in Item 53, lines 31 through 33, which read “\$375,000 for Save the Children programs in Cabell, Roane, Calhoun and Mason counties, and lines 34 through 36, which redirects funds from the S.T.E.M. Education and Grant Program. The total does NOT reflect the reductions made by the Governor.

176	APPROPRIATIONS	[Ch. 15
10	Culture and History	
11	Programming..... 73200	236,298
12	Capital Outlay and	
13	Maintenance (R). 75500	20,000
14	Historical Highway	
15	Marker Program..... 84400	58,722
16	BRIM Premium. 91300	<u>33,677</u>
17	Total.....	\$ 5,006,297

18 Any unexpended balances remaining in the appropriations
19 for Unclassified (fund 0293, appropriation 09900), Buildings
20 (fund 0293, appropriation 25800), Capital Outlay, Repairs and
21 Equipment (fund 0293, appropriation 58900), Capital
22 Improvements – Surplus (fund 0293, appropriation 66100),
23 Capital Outlay, Repairs and Equipment – Surplus (fund 0293,
24 appropriation 67700), Land (fund 0293, appropriation 73000),
25 and Capital Outlay and Maintenance (fund 0293, appropriation
26 75500) at the close of the fiscal year 2015 are hereby
27 reappropriated for expenditure during the fiscal year 2016.

28 The Current Expense appropriation includes funding for the
29 arts funds, department programming funds, grants, fairs and
30 festivals and Camp Washington Carver and shall be expended
31 only upon authorization of the division of culture and history and
32 in accordance with the provisions of Chapter 5A, Article 3, and
33 Chapter 12 of the Code.

55 - Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2016 Org 0433

1	Personal Services and	
2	Employee Benefits..... 00100	\$ 1,309,788
3	Current Expenses. 13000	171,140
4	Repairs and Alterations. 06400	6,500

5	Services to Blind &		
6	Handicapped.	18100	161,559
7	BRIM Premium.	91300	<u>15,177</u>
8	Total.		\$ 1,664,164

56 - Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2016 Org 0439

1	Personal Services and		
2	Employee Benefits.	00100	\$ 4,261,859
3	Current Expenses.	13000	170,545
4	Mountain Stage.	24900	300,000
5	Capital Outlay and		
6	Maintenance (R).	75500	50,000
7	BRIM Premium.	91300	<u>41,929</u>
8	Total.		\$ 4,824,333

9 Any unexpended balance remaining in the appropriation for
10 Capital Outlay and Maintenance (fund 0300, appropriation
11 75500) at the close of the fiscal year 2015 is hereby
12 reappropriated for expenditure during the fiscal year 2016.

13 From the above appropriation for Current Expenses (fund
14 0300, appropriation 13000) \$100,000 is for Healthy Choices
15 Children Television Program in conjunction with WVSOM and
16 up to \$45,000 is for the WV Music Hall of Fame.

*57 - State Board of Rehabilitation –
Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 0310 FY 2016 Org 0932

1	Personal Services and		
2	Employee Benefits.	00100	\$ 10,597,682

178	APPROPRIATIONS	[Ch. 15
3	Independent Living Services. 00900	500,000
4	Current Expenses. 13000	545,202
5	Workshop Development. 16300	2,116,149
6	Supported Employment	
7	Extended Services. 20600	100,000
8	Ron Yost Personal	
9	Assistance Fund (R). 40700	388,698
10	Employment Attendant	
11	Care Program 59800	156,065
12	BRIM Premium. 91300	<u>67,033</u>
13	Total.	\$ 14,470,829

14 Any unexpended balance remaining in the appropriation for
15 Ron Yost Personal Assistance Fund (fund 0310, appropriation
16 40700) at the close of the fiscal year 2015 is hereby
17 reappropriated for expenditure during the fiscal year 2016.

18 From the above appropriation for Workshop Development
19 (fund 0310, appropriation 16300), funds shall be used
20 exclusively with the private nonprofit community rehabilitation
21 program organizations known as work centers or sheltered
22 workshops. The appropriation shall also be used to continue the
23 support of the program, services, and individuals with
24 disabilities currently in place at those organizations.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

58 - Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2016 Org 0311

1	Personal Services and	
2	Employee Benefits. 00100	\$ 72,050
3	Current Expenses. 13000	30,691
4	Repairs and Alterations. 06400	100

Ch. 15]	APPROPRIATIONS	179
5	Equipment. 07000	717
6	Other Assets. 69000	600
7	BRIM Premium. 91300	<u>684</u>
8	Total.	\$ 104,842

59 - Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2016 Org 0313

1	Personal Services and	
2	Employee Benefits. 00100	\$ 4,161,396
3	Water Resources Protection	
4	and Management. 06800	579,695
5	Current Expenses. 13000	331,339
6	Repairs and Alterations. 06400	13,150
7	Equipment. 07000	7,400
8	Dam Safety. 60700	212,499
9	West Virginia Stream	
10	Partners Program. 63700	77,396
11	Meth Lab Cleanup. 65600	206,203
12	Other Assets. 69000	9,183
13	WV Contributions to	
14	River Commissions. 77600	148,485
15	Office of Water Resources	
16	Non-Enforcement Activity. . . 85500	923,123
17	BRIM Premium. 91300	<u>56,802</u>
18	Total.	\$ 6,726,671

19 A portion of the appropriations for Current Expenses (fund
20 0273, appropriation 13000) and Dam Safety (fund 0273,
21 appropriation 60700) may be transferred to the special revenue
22 fund Dam Safety Rehabilitation Revolving Fund (fund 3025) for
23 the state deficient dams rehabilitation assistance program.

60 - Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2016 Org 0325

1	Personal Services and		
2	Employee Benefits.. 00100	\$	64,143
3	Current Expenses. 13000		10,746
4	Repairs and Alterations. 06400		50
5	Equipment. 07000		579
6	Other Assets. 69000		200
7	BRIM Premium. 91300		<u>2,013</u>
8	Total.	\$	<u>77,731</u>

DEPARTMENT OF HEALTH AND HUMAN RESOURCES*61 - Department of Health and Human Resources –
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0400 FY 2016 Org 0501

1	Personal Services and		
2	Employee Benefits.. 00100	\$	478,683
3	Unclassified. 09900		8,386
4	Current Expenses. 13000		48,461
5	Women's Commission (R). 19100		155,557
6	Commission for the Deaf		
7	and Hard of Hearing. 70400		<u>216,405</u>
8	Total.	\$	<u>907,492</u>

9 Any unexpended balance remaining in the appropriation for
10 the Women's Commission (fund 0400, appropriation 19100) at
11 the close of the fiscal year 2015 is hereby reappropriated for
12 expenditure during the fiscal year 2016.

*62 - Division of Health –
Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2016 Org 0506

1	Personal Services and		
2	Employee Benefits..	00100	\$ 12,097,139
3	Chief Medical Examiner.	04500	5,476,995
4	Unclassified.	09900	717,980
5	Current Expenses.	13000	4,614,237
6	State Aid for Local and Basic		
7	Public Health Services..	18400	16,648,328
8	Safe Drinking Water		
9	Program (R)..	18700	2,165,274
10	Women, Infants and Children.	21000	38,602
11	Early Intervention.	22300	2,844,884
12	Cancer Registry.	22500	197,761
13	CARDIAC Project.	37500	427,500
14	State EMS Technical Assistance.	37900	1,348,136
15	Statewide EMS Program		
16	Support (R).	38300	959,098
17	Primary Care Centers -		
18	Mortgage Finance.	41300	114,501
19	Black Lung Clinics..	46700	170,885
20	Center for End of Life.	54500	420,198
21	Pediatric Dental Services..	55000	51,888
22	Vaccine for Children	55100	333,311
23	Tuberculosis Control	55300	367,837
24	Maternal and Child		
25	Health Clinics, Clinicians		
26	Medical Contracts		
27	and Fees (R)..	57500	6,278,587
28	Epidemiology Support.	62600	1,500,154

182	APPROPRIATIONS	[Ch. 15
29	Primary Care Support..... 62800	*5,270,428
30	Sexual Assault Intervention	
31	and Prevention..... 72300	125,000
32	Health Right Free Clinics..... 72700	*2,750,000
33	Capital Outlay and	
34	Maintenance (R). 75500	100,000
35	Healthy Lifestyles. 77800	146,282
36	Maternal Mortality Review. 83400	46,895
37	Osteoporosis and	
38	Arthritis Prevention..... 84900	158,336
39	Diabetes Education	
40	and Prevention..... 87300	97,125
41	Tobacco Education Program (R). . . 90600	4,870,309
42	BRIM Premium. 91300	211,214
43	State Trauma and	
44	Emergency Care System. 91800	<u>1,987,034</u>
45	Total.....	\$ 73,515,490

46 Any unexpended balances remaining in the appropriations
47 for Unclassified – Surplus (fund 0407, appropriation 09700),
48 Safe Drinking Water Program (fund 0407, appropriation 18700),
49 Statewide EMS Program Support (fund 0407, appropriation
50 38300), Maternal and Child Health Clinics, Clinicians and
51 Medical Contracts and Fees (fund 0407, appropriation 57500),
52 Capital Outlay and Maintenance (fund 0407, appropriation
53 75500), Emergency Response Entities – Special Projects (fund
54 0407, appropriation 82200), Assistance to Primary Health Care
55 Centers Community Health Foundation (fund 0407,
56 appropriation 84500), and Tobacco Education Program (fund
57 0407, appropriation 90600) at the close of the fiscal year 2015
58 are hereby reappropriated for expenditure during the fiscal year
59 2016.

* **NOTE:** The Governor reduced Item 62, line 29, by \$729,572, from \$6,000,000 to \$5,270,428. And line 32, by \$250,000, from \$3,000,000 to \$2,750,000. The total does NOT reflect the reductions made by the Governor.

60 From the above appropriation for Current Expenses (fund
61 0407, appropriation 13000), an amount not less than \$100,000 is
62 for the West Virginia Cancer Coalition; \$50,000 shall be
63 expended for the West Virginia Aids Coalition; \$100,000 is for
64 Adolescent Immunization Education; \$73,065 is for informal
65 dispute resolution relating to nursing home administrative
66 appeals; and \$50,000 is for Hospital Hospitality House of
67 Huntington.

68 From the above appropriation for Maternal and Child Health
69 Clinics, Clinicians and Medical Contracts and Fees (fund 0407,
70 appropriation 57500) \$400,000 shall be transferred to the Breast
71 and Cervical Cancer Diagnostic Treatment Fund (fund 5197) and
72 \$11,000 is for the Marshall County Health Department for dental
73 services.

74 Included in the above appropriation for Primary Care
75 Centers - Mortgage Finance (fund 0407, appropriation 41300) is
76 \$8,375 for the mortgage payment for the Lincoln Primary Care
77 Center, Inc.; \$7,130 for the mortgage payment for Roane County
78 Family Health Care, Inc.; \$8,040 for the mortgage payment for
79 Community Care (formerly Primary Care Systems); \$3,350 for
80 the mortgage payment for the Belington Community Medical
81 Services; \$5,025 for the mortgage payment for Community Care
82 (formerly Tri-County Health Clinic); \$2,513 for the mortgage
83 payment for Valley Health Care (Randolph); \$4,449 for the
84 mortgage payment for WomenCare (Family Care Health Center
85 - Madison); \$1,340 for the mortgage payment for Northern
86 Greenbrier Health Clinic; \$3,350 for the mortgage payment for
87 the North Fork Clinic (Pendleton); \$6,700 for the mortgage
88 payment for the Pendleton Community Care; \$6,433 for the
89 mortgage payment for Clay-Battelle Community Health Center;
90 \$8,288 for the mortgage payment for Monongahela Valley
91 Association of Health Centers, Inc. (Marion); \$5,628 for the
92 mortgage payment for Mountaineer Community Health Center;

93 \$2,178 for the mortgage payment for the St. George Medical
 94 Clinic; \$4,691 for the mortgage payment for the Bluestone
 95 Health Center; \$7,538 for the mortgage payment for Wheeling
 96 Health Right; \$8,040 for the mortgage payment for the Minnie
 97 Hamilton Health Care Center, Inc.; \$9,045 for the mortgage
 98 payment for the Shenandoah Valley Medical Systems, Inc.;
 99 \$7,538 for the mortgage payment for the Change, Inc.; and
 100 \$4,850 for the mortgage payment for the Wirt County Health
 101 Services Association.

63 - Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2016 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 1,567,388
3	Current Expenses.....	13000	12,463
4	Behavioral Health		
5	Program (R).....	21900	69,725,365
6	Family Support Act.	22100	251,226
7	Institutional Facilities		
8	Operations (R).....	33500	110,414,656
9	Substance Abuse		
10	Continuum of Care (R).	35400	5,000,000
11	Capital Outlay and		
12	Maintenance (R).	75500	950,000
13	Renaissance Program.....	80400	165,996
14	BRIM Premium.	91300	<u>1,088,070</u>
15	Total.....		\$ 189,175,164

16 Any unexpended balances remaining in the appropriations
 17 for Behavioral Health Program (fund 0525, appropriation
 18 21900), Institutional Facilities Operations (fund 0525,
 19 appropriation 33500), Substance Abuse Continuum of Care

20 (fund 0525, appropriation 35400), Capital Outlay (fund 0525,
21 appropriation 51100), Behavioral Health Program – Surplus
22 (fund 0525, appropriation 63100), Institutional Facilities
23 Operations – Surplus (fund 0525, appropriation 63200),
24 Substance Abuse Continuum of Care – Surplus (fund 0525,
25 appropriation 72200), and Capital Outlay and Maintenance (fund
26 0525, appropriation 75500) at the close of the fiscal year 2015
27 are hereby reappropriated for expenditure during the fiscal year
28 2016.

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

32 From the above appropriation for Institutional Facilities
33 Operations, together with available funds from the division of
34 health – hospital services revenue account (fund 5156,
35 appropriation 33500), on July 1, 2015, the sum of \$160,000 shall
36 be transferred to the department of agriculture – land division –
37 farm operating fund (1412) as advance payment for the purchase
38 of food products; actual payments for such purchases shall not
39 be required until such credits have been completely expended.

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

44 Additional funds have been appropriated in fund 5156, fiscal
45 year 2016, organization 0506, and fund 5124, fiscal year 2016,
46 organization 0506, for the operation of the institutional facilities.
47 The secretary of the department of health and human resources
48 is authorized to utilize up to ten percent of the funds from the
49 Institutional Facilities Operations appropriation to facilitate cost
50 effective and cost saving services at the community level.

*64 - Division of Health –
West Virginia Drinking Water Treatment*

(WV Code Chapter 16)

Fund 0561 FY 2016 Org 0506

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

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

65 - Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2016 Org 0510

1	Personal Services and		
2	Employee Benefits..	00100	\$ 910,221
3	Unclassified.	09900	4,024
4	Current Expenses.	13000	191,766
5	BRIM Premium.	91300	9,311
6	Total..		\$ 1,115,322

66 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2016 Org 0511

1	Personal Services and		
2	Employee Benefits..	00100	\$ 40,965,805
3	Unclassified.	09900	5,688,944

4	Current Expenses.	13000	10,074,541
5	Child Care Development.	14400	11,224,912
6	Medical Services Contracts and		
7	Office of Managed Care.	18300	1,835,469
8	Medical Services.	18900	466,150,331
9	Social Services.	19500	142,174,864
10	Family Preservation Program.	19600	1,565,000
11	Family Resource Networks.	27400	1,762,464
12	Domestic Violence Legal		
13	Services Fund.	38400	400,000
14	James "Tiger" Morton		
15	Catastrophic Illness Fund.	45500	101,144
16	I/DD Waiver.	46600	88,753,483
17	Child Protective Services		
18	Case Workers.	46800	21,398,895
19	OSCAR and RAPIDS.	51500	5,102,872
20	Title XIX Waiver for Seniors.	53300	13,593,620
21	WV Teaching Hospitals		
22	Tertiary/Safety Net.	54700	6,356,000
23	Specialized Foster Care.	56600	310,948
24	Child Welfare System	60300	1,251,312
25	In-Home Family Education.	68800	1,000,000
26	WV Works Separate		
27	State Program.	69800	3,250,000
28	Child Support Enforcement.	70500	6,234,804
29	Medicaid Auditing.	70600	606,373
30	Temporary Assistance for		
31	Needy Families/		
32	Maintenance of Effort.	70700	22,969,096
33	Child Care Maintenance		
34	of Effort Match.	70800	5,693,743
35	Child and Family Services.	73600	2,850,000
36	Grants for Licensed		
37	Domestic Violence		
38	Programs and Statewide		
39	Prevention.	75000	2,500,000

40	Capital Outlay and		
41	Maintenance (R).	75500	11,875
42	Community Based Services and		
43	Pilot Programs for Youth.	75900	1,000,000
44	Medical Services		
45	Administrative Costs.	78900	35,614,907
46	Traumatic Brain Injury		
47	Waiver.	83500	800,000
48	Indigent Burials (R).	85100	2,050,000
49	Autism Spectrum		
50	Disorder Coverage.	85600	497,035
51	CHIP Administrative Costs.	85601	112,064
52	CHIP Services.	85602	9,379,734
53	BRIM Premium.	91300	834,187
54	Rural Hospitals		
55	Under 150 Beds.	94000	2,596,000
56	Children's Trust		
57	Fund – Transfer.	95100	<u>*220,000</u>
58	Total.		\$ 917,010,422

59 Any unexpended balances remaining in the appropriations
60 for Capital Outlay and Maintenance (fund 0403, appropriation
61 75500) and Indigent Burials (fund 0403, appropriation 85100) at
62 the close of the fiscal year 2015 are hereby reappropriated for
63 expenditure during the fiscal year 2016.

64 Notwithstanding the provisions of Title I, section three of
65 this bill, the secretary of the department of health and human
66 resources shall have the authority to transfer funds within the
67 above appropriations: *Provided*, That no more than five percent
68 of the funds appropriated to one appropriation may be
69 transferred to other appropriations: *Provided, however*, That no
70 funds from other appropriations shall be transferred to the
71 personal services and employee benefits appropriation.

* **NOTE:** The Governor reduced Item 66, lines 56 and 57, by \$80,000, from \$300,000 to \$220,000. The total does NOT reflect the reductions made by the Governor.

72 The secretary shall have authority to expend funds for the
73 educational costs of those children residing in out-of-state
74 placements, excluding the costs of special education programs.

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81 Included in the above appropriation for Social Services (fund
82 0403, appropriation 19500) is funding for continuing education
83 requirements relating to the practice of social work.

84 The above appropriation for Domestic Violence Legal
85 Services Fund (fund 0403, appropriation 38400) shall be
86 transferred to the Domestic Violence Legal Services Fund (fund
87 5455).

88 The above appropriation for James “Tiger” Morton
89 Catastrophic Illness Fund (fund 0403, appropriation 45500) shall
90 be transferred to the James “Tiger” Morton Catastrophic Illness
91 Fund (fund 5454) as provided by Article 5Q, Chapter 16 of the
92 Code.

93 The above appropriation for WV Works Separate State
94 Program (fund 0403, appropriation 69800), shall be transferred
95 to the WV Works Separate State College Program Fund (fund
96 5467), and the WV Works Separate State Two-Parent Program
97 Fund (fund 5468) as determined by the secretary of the
98 department of health and human resources.

* **NOTE:** The Governor deleted language in Item 66, lines 75 through
80, which related to enhancement of reimbursement rates for
nursing homes.

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99 From the above appropriation for Child Support
 100 Enforcement (fund 0403, appropriation 70500) an amount not to
 101 exceed \$300,000 may be transferred to a local banking
 102 depository to be utilized to offset funds determined to be
 103 uncollectible.

104 From the above appropriation for the Grants for Licensed
 105 Domestic Violence Programs and Statewide Prevention (fund
 106 0403, appropriation 75000), 50% of the total shall be divided
 107 equally and distributed among the fourteen (14) licensed
 108 programs and the West Virginia Coalition Against Domestic
 109 Violence (WVCADV). The balance remaining in the
 110 appropriation for Grants for Licensed Domestic Violence
 111 Programs and Statewide Prevention (fund 0403, appropriation
 112 75000), shall be distributed according to the formula established
 113 by the Family Protection Services Board.

114 The above appropriation for Children’s Trust Fund –
 115 Transfer (fund 0403, appropriation 95100) shall be transferred
 116 to the Children’s Fund (fund 5469, org 0511).

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

*67 - Department of Military Affairs and Public Safety –
 Office of the Secretary*

(WV Code Chapter 5F)

Fund 0430 FY 2016 Org 0601

1	Personal Services and		
2	Employee Benefits..	00100	\$ 706,626
3	Unclassified (R)..	09900	20,000
4	Current Expenses..	13000	111,450
5	Repairs and Alterations..	06400	9,900
6	Equipment..	07000	3,300

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7	Fusion Center (R).....	46900 534,544
8	Other Assets.....	69000 4,015
9	Directed Transfer.....	70000 32,000
10	BRIM Premium.	91300 9,404
11	WV Fire and EMS Survivor	
12	Benefit (R).....	93900 400,000
13	Homeland State Security	
14	Administrative Agency (R)....	95300 533,036
15	Total.....	<u> </u> \$ 2,364,275

16 Any unexpended balances remaining in the appropriations
17 for Unclassified (fund 0430, appropriation 09900), Fusion
18 Center (fund 0430, appropriation 46900), Substance Abuse
19 Program – Surplus (fund 0430, appropriation 69600), Justice
20 Reinvestment Training – Surplus (fund 0430, appropriation
21 69900), WV Fire and EMS Survivor Benefit (fund 0430,
22 appropriation 93900), and Homeland State Security
23 Administrative Agency (fund 0430, appropriation 95300) at the
24 close of the fiscal year 2015 are hereby reappropriated for
25 expenditure during the fiscal year 2016.

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

*68 - Adjutant General –
State Militia*

(WV Code Chapter 15)

Fund 0433 FY 2016 Org 0603

1	Unclassified (R).....	09900 \$ 14,993,758
2	College Education Fund.....	23200 0
3	Mountaineer Challenge	
4	Academy.	70900 0

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5	Armory Board Transfer.	70015		0
6	Military Authority.	74800		0
7	Total.		\$	14,993,758

8 Any unexpended balance remaining in the appropriation for
 9 Unclassified (fund 0433, appropriation 09900) at the close of the
 10 fiscal year 2015 is hereby reappropriated for expenditure during
 11 the fiscal year 2016.

12 From the above appropriations an amount approved by the
 13 adjutant general and the secretary of military affairs and public
 14 safety may be transferred to the State Armory Board for
 15 operation and maintenance of National Guard Armories.

16 From the above appropriation and other state and federal
 17 funding, the Adjutant General shall provide an amount not less
 18 than \$4,500,000 to the Mountaineer Challenge Academy to
 19 meet anticipated program demand.

*69 - Adjutant General –
 Military Fund*

(WV Code Chapter 15)

Fund 0605 FY 2016 Org 0603

1	Personal Services and			
2	Employee Benefits.	00100	\$	100,000
3	Current Expenses.	13000		71,125
4	Total.		\$	171,125

70 - West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2016 Org 0605

1	Personal Services and			
2	Employee Benefits.	00100	\$	378,085

19 Any unexpended balances remaining in the appropriations
 20 for Federal Funds/Grant Match (fund 0443, appropriation
 21 74900), Early Warning Flood System (fund 0443, appropriation
 22 87700), and Disaster Mitigation (fund 0443, appropriation
 23 95200) at the close of the fiscal year 2015 are hereby
 24 reappropriated for expenditure during the fiscal year 2016.

*72 - Division of Corrections –
 Central Office*

(WV Code Chapters 25, 28, 49 and 62)

Fund 0446 FY 2016 Org 0608

1	Personal Services and		
2	Employee Benefits..... 00100	\$	610,190
3	Current Expenses..... 13000		1,800
4	Total.....	\$	611,990

*73 - Division of Corrections –
 Correctional Units*

(WV Code Chapters 25, 28, 49 and 62)

Fund 0450 FY 2016 Org 0608

1	Employee Benefits..... 01000	\$	1,258,136
2	Children's Protection Act (R). 09000		938,437
3	Unclassified (R) 09900		1,842,160
4	Current Expenses (R)..... 13000		31,000,000
5	Facilities Planning and		
6	Administration (R)..... 38600		1,116,627
7	Charleston Correctional Center. 45600		3,134,387
8	Beckley Correctional Center. 49000		1,814,873
9	Huntington Work		
10	Release Center..... 49500		1,139,619
11	Anthony Correctional Center..... 50400		5,001,443

12	Huttonsville Correctional Center... 51400	21,042,042
13	Northern Correctional Center. . . . 53400	6,947,380
14	Inmate Medical Expenses (R). . . . 53500	21,226,064
15	Pruntytown Correctional Center. . . 54300	7,069,693
16	Corrections Academy..... 56900	1,447,934
17	Martinsburg Correctional Center... 66300	3,437,882
18	Parole Services..... 68600	5,145,478
19	Special Services 68700	7,822,908
20	Information Technology	
21	Services. 59901	100,000
22	Investigative Services. 71600	3,445,962
23	Capital Outlay and	
24	Maintenance (R). 75500	2,000,000
25	Salem Correctional Center..... 77400	9,977,414
26	McDowell County	
27	Correctional Center. 79000	1,949,983
28	Stevens Correctional Center. 79100	6,474,500
29	Parkersburg Correctional	
30	Center.. 82800	2,431,887
31	St. Mary's Correctional Center . . . 88100	12,665,613
32	Denmar Correctional Center. 88200	4,384,334
33	Ohio County Correctional	
34	Center..... 88300	1,743,194
35	Mt. Olive Correctional Complex... 88800	19,783,496
36	Lakin Correctional Center. 89600	8,909,548
37	BRIM Premium. 91300	<u>829,190</u>
38	Total.....	\$ 196,080,184

39 Any unexpended balances remaining in the appropriations
40 for Children's Protection Act (fund 0450, appropriation 09000),
41 Unclassified – Surplus (fund 0450, appropriation 09700),
42 Current Expenses (fund 0450, appropriation 13000), Facilities
43 Planning and Administration (fund 0450, appropriation 38600),
44 Inmate Medical Expenses (fund 0450, appropriation 53500),
45 Capital Improvements – Surplus (fund 0450, appropriation

46 66100), Capital Outlay, Repairs and Equipment – Surplus (fund
47 0450, appropriation 67700), Capital Outlay and Maintenance
48 (fund 0450, appropriation 75500), and Operating Expenses –
49 Surplus (fund 0450, appropriation 77900) at the close of the
50 fiscal year 2015 are hereby reappropriated for expenditure
51 during the fiscal year 2016, with the exception of fund 0450,
52 fiscal year 2015, appropriation 13000 (\$8,000,000) and fund
53 0450, fiscal year 2015, appropriation 53500 (\$3,000,000) which
54 shall expire on June 30, 2015.

55 The commissioner of corrections shall have the authority to
56 transfer between appropriations to the individual correctional
57 units above and may transfer funds from the individual
58 correctional units to Current Expenses (fund 0450, appropriation
59 13000) or Inmate Medical Expenses (fund 0450, appropriation
60 53500).

61 From the above appropriation to Unclassified, on July 1,
62 2015, the sum of \$300,000 shall be transferred to the department
63 of agriculture – land division – farm operating fund (1412) as
64 advance payment for the purchase of food products; actual
65 payments for such purchases shall not be required until such
66 credits have been completely expended.

67 From the above appropriation to Current Expenses (fund
68 0450, appropriation 13000) payment shall be made to house
69 Division of Corrections inmates in federal, county, and/or
70 regional jails.

71 Any realized savings from the Energy Savings Contract for
72 Mt. Olive Correctional Complex, Huttonsville Correction
73 Center, Pruntytown Correctional Center, or Denmark Correctional
74 Center may be transferred from the listed individual correctional
75 units to Facilities Planning and Administration (fund 0450,
76 appropriation 38600).

74 - West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2016 Org 0612

1	Personal Services and		
2	Employee Benefits..... 00100	\$	*59,000,000
3	Children's Protection Act. 09000		947,922
4	Current Expenses. 13000		10,403,272
5	Repairs and Alterations. 06400		450,523
6	Vehicle Purchase. 45100		*2,000,000
7	Barracks Lease Payments..... 55600		246,478
8	Communications and		
9	Other Equipment (R)..... 55800		1,268,968
10	Trooper Retirement Fund..... 60500		4,249,810
11	Handgun Administration		
12	Expense. 74700		81,442
13	Capital Outlay and		
14	Maintenance (R). 75500		*250,000
15	Retirement Systems –		
16	Unfunded Liability. 77500		13,209,000
17	Automated Fingerprint		
18	Identification System..... 89800		724,554
19	BRIM Premium. 91300		<u>4,946,608</u>
20	Total.....	\$	<u>100,667,272</u>

21 Any unexpended balances remaining in the appropriations
 22 for Communications and Other Equipment (fund 0453,
 23 appropriation 55800), and Capital Outlay and Maintenance (fund
 24 0453, appropriation 75500) at the close of the fiscal year 2015
 25 are hereby reappropriated for expenditure during the fiscal year
 26 2016.

* **NOTE:** The Governor reduced Item 74, lines 1 and 2, by \$511,081, from \$59,511,081 to \$59,000,000, and line 6, by \$377,614, from \$2,377,614 to \$2,000,000, and lines 13 and 14, by \$2,000,000, from \$2,250,000 to \$250,000. The total does NOT reflect the reductions made by the Governor.

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

75 - Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2016 Org 0619

1	Current Expenses.	13000	\$	69,439
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76 - Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2016 Org 0620

1	Personal Services and			
2	Employee Benefits..	00100	\$	527,515
3	Current Expenses.	13000		132,696
4	Repairs and Alterations.	06400		1,804
5	Child Advocacy Centers (R).	45800		1,702,108
6	Community Corrections (R).	56100		7,419,704
7	Statistical Analysis Program.	59700		46,499
8	Sexual Assault Forensic			
9	Examination Commission.	71400		76,592
10	Qualitative Analysis and			
11	Training for Youth Services.	76200		500,000
12	Law Enforcement			
13	Professional Standards..	83800		156,577
14	BRIM Premium.	91300		1,421
15	Total..		\$	10,564,916

16 Any unexpended balances remaining in the appropriations
 17 for Buildings (fund 0546, appropriation 25800), Child Advocacy

18 Centers (fund 0546, appropriation 45800), and Community
 19 Corrections (fund 0546, appropriation 56100) at the close of the
 20 fiscal year 2015 are hereby reappropriated for expenditure
 21 during the fiscal year 2016.

22 From the above appropriation for Child Advocacy Centers
 23 (fund 0546, appropriation 45800), the division may retain an
 24 amount not to exceed four percent of the appropriation for
 25 administrative purposes.

77 - Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2016 Org 0621

1	Statewide Reporting Centers.	26200	\$	5,428,893
2	Robert L. Shell Juvenile Center.	26700		1,954,598
3	Central Office	70100		2,334,206
4	Capital Outlay and			
5	Maintenance (R).	75500		250,000
6	Gene Spadaro Juvenile Center.	79300		2,132,797
7	BRIM Premium.	91300		96,187
8	Kenneth Honey Rubenstein			
9	Juvenile Center (R)	98000		4,920,220
10	Vicki Douglas Juvenile			
11	Center.	98100		1,872,622
12	Northern Regional			
13	Juvenile Center.	98200		1,576,302
14	Lorrie Yeager Jr.			
15	Juvenile Center.	98300		1,920,239
16	Sam Perdue Juvenile			
17	Center	98400		2,007,781
18	Tiger Morton Center	98500		2,116,477
19	Donald R. Kuhn			
20	Juvenile Center.	98600		4,066,579

21	J.M. "Chick" Buckbee		
22	Juvenile Center	98700	<u>2,018,118</u>
23	Total.		\$ 32,695,019

24 Any unexpended balances remaining in the appropriations
 25 for Capital Outlay and Maintenance (fund 0570, appropriation
 26 75500) and Kenneth Honey Rubenstein Juvenile Center (fund
 27 0570, appropriation 98000) at the close of the fiscal year 2015
 28 are hereby reappropriated for expenditure during the fiscal year
 29 2016.

30 From the above appropriations, on July 1, 2015, the sum of
 31 \$50,000 shall be transferred to the department of agriculture –
 32 land division – farm operating fund (1412) as advance payment
 33 for the purchase of food products; actual payments for such
 34 purchases shall not be required until such credits have been
 35 completely expended.

36 The director of juvenile services shall have the authority to
 37 transfer between appropriations to the individual juvenile centers
 38 above.

78 - Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2016 Org 0622

1	Personal Services and		
2	Employee Benefits.	00100	\$ 2,027,387
3	Unclassified (R).	09900	21,991
4	Current Expenses.	13000	109,232
5	Repairs and Alterations.	06400	8,500
6	Equipment (R).	07000	75,000
7	Other Assets.	69000	72,825
8	BRIM Premium.	91300	<u>9,969</u>
9	Total.		\$ 2,324,904

10 Any unexpended balances remaining in the appropriations
 11 for Equipment (fund 0585, appropriation 07000), and
 12 Unclassified (fund 0585, appropriation 09900) at the close of the
 13 fiscal year 2015 are hereby reappropriated for expenditure
 14 during the fiscal year 2016.

DEPARTMENT OF REVENUE

79 - Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2016 Org 0701

1	Personal Services and		
2	Employee Benefits..	00100	\$ 529,025
3	Unclassified.	09900	6,397
4	Current Expenses.	13000	92,454
5	Repairs and Alterations.	06400	1,262
6	Equipment.	07000	8,000
7	Other Assets.	69000	<u>500</u>
8	Total.		\$ 637,638

9 Any unexpended balance remaining in the appropriation for
 10 Unclassified – Total (fund 0465, appropriation 09600) at the
 11 close of the fiscal year 2015 is hereby reappropriated for
 12 expenditure during the fiscal year 2016.

80 - Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2016 Org 0702

1	Personal Services and		
2	Employee Benefits (R).	00100	\$ 16,722,654
3	Unclassified (R).	09900	234,571

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4	Current Expenses (R).....	13000	6,275,442
5	Repairs and Alterations.	06400	10,000
6	Equipment.	07000	50,000
7	Multi State Tax Commission.....	65300	77,958
8	Other Assets.....	69000	10,000
9	BRIM Premium.	91300	<u>13,000</u>
10	Total.....		\$ 23,393,625

11 Any unexpended balances remaining in the appropriations
 12 for Personal Services and Employee Benefits (fund 0470,
 13 appropriation 00100), Tax Technology Upgrade – Surplus (fund
 14 0470, appropriation 45000), Unclassified (fund 0470,
 15 appropriation 09900), Current Expenses (fund 0470,
 16 appropriation 13000), and GIS Development Project (fund 0470,
 17 appropriation 56200) at the close of the fiscal year 2015 are
 18 hereby reappropriated for expenditure during the fiscal year
 19 2016, with the exception of fund 0470, fiscal year 2015,
 20 appropriation 00100 (\$1,000,000) which shall expire on June 30,
 21 2015.

81 - State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2016 Org 0703

1	Personal Services and		
2	Employee Benefits.....	00100	\$ 649,581
3	Unclassified (R).....	09900	7,156
4	Current Expenses.....	13000	52,916
5	BRIM Premium.	91300	<u>3,348</u>
6	Total.....		\$ 713,001

7 Any unexpended balance remaining in the appropriation for
 8 Unclassified (fund 0595, appropriation 09900) at the close of the
 9 fiscal year 2015 is hereby reappropriated for expenditure during
 10 the fiscal year 2016.

82 - West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2016 Org 0709

1	Personal Services and		
2	Employee Benefits..... 00100	\$	426,857
3	Current Expenses (R)..... 13000		102,313
4	Unclassified..... 09900		5,397
5	Other Assets..... 69000		903
6	BRIM Premium..... 91300		<u>2,618</u>
7	Total.....	\$	538,088

8 Any unexpended balance remaining in the appropriation for
9 Current Expenses (fund 0593, appropriation 13000) at the close
10 of the fiscal year 2015 is hereby reappropriated for expenditure
11 during the fiscal year 2016.

83 - Division of Professional and Occupational Licenses –
State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2016 Org 0933

1	Personal Services and		
2	Employee Benefits..... 00100	\$	10,721
3	Current Expenses..... 13000		<u>28,385</u>
4	Total.....	\$	39,106

DEPARTMENT OF TRANSPORTATION

84 - State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2016 Org 0804

1	Personal Services and		
2	Employee Benefits..	00100	\$ 314,606
3	Current Expenses..	13000	330,469
4	Other Assets (R)..	69000	1,360,760
5	BRIM Premium.	91300	<u>173,966</u>
6	Total..		\$ 2,179,801

7 Any unexpended balances remaining in the appropriations
8 for Unclassified (fund 0506, appropriation 09900) and Other
9 Assets (fund 0506, appropriation 69000) at the close of the fiscal
10 year 2015 are hereby reappropriated for expenditure during the
11 fiscal year 2016.

85 - Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2016 Org 0805

1	Equipment (R).	07000	\$ 661,049
2	Current Expenses (R)..	13000	1,744,949
3	Buildings (R).	25800	20,281
4	Other Assets (R)..	69000	<u>50,000</u>
5	Total..		\$ 2,476,279

6 Any unexpended balances remaining in the appropriations
7 for Equipment (fund 0510, appropriation 07000), Current
8 Expenses (fund 0510, appropriation 13000), Buildings (fund
9 0510, appropriation 25800) and Other Assets (fund 0510,
10 appropriation 69000) at the close of the fiscal year 2015 are
11 hereby reappropriated for expenditure during the fiscal year
12 2016.

86 - Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2016 Org 0806

1	Personal Services and		
2	Employee Benefits..... 00100	\$	218,492
3	Current Expenses..... 13000		73,539
4	Repairs and Alterations..... 06400		500
5	BRIM Premium..... 91300		<u>2,500</u>
6	Total.....	\$	295,031

7 Any unexpended balance remaining in the appropriation for
8 Unclassified (fund 0581, appropriation 09900) at the close of the
9 fiscal year 2015 is hereby reappropriated for expenditure during
10 the fiscal year 2016.

87 - Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2016 Org 0807

1	Personal Services and		
2	Employee Benefits..... 00100	\$	212,798
3	Current Expenses (R)..... 13000		807,704
4	Repairs and Alterations..... 06400		100
5	Civil Air Patrol..... 23400		155,095
6	BRIM Premium..... 91300		<u>3,045</u>
7	Total.....	\$	1,178,742

8 Any unexpended balance remaining in the appropriations for
9 Unclassified (fund 0582, appropriation 09900) and Current
10 Expenses (fund 0582, appropriation 13000) at the close of the
11 fiscal year 2015 are hereby reappropriated for expenditure
12 during the fiscal year 2016.

13 From the above appropriation for Current Expenses (fund
14 0582, appropriation 13000), the sum of \$120,000 shall be
15 distributed equally to each of the twelve local Civil Air Patrol
16 Squadrons.

DEPARTMENT OF VETERANS' ASSISTANCE*88 - Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 0456 FY 2016 Org 0613

1	Personal Services and		
2	Employee Benefits..	00100	\$ *1,801,828
3	Unclassified.	09900	*20,000
4	Current Expenses.	13000	325,507
5	Repairs and Alterations.	06400	5,000
6	Veterans' Field Offices.	22800	*268,345
7	Veterans' Nursing Home (R)..	28600	*5,941,038
8	Veterans' Toll Free		
9	Assistance Line.	32800	2,015
10	Veterans' Reeducation		
11	Assistance (R).	32900	*29,502
12	Veterans' Grant Program (R)..	34200	*100,000
13	Veterans' Grave Markers..	47300	10,254
14	Veterans' Transportation.	48500	625,000
15	Veterans Outreach Programs.	61700	188,277
16	Memorial Day Patriotic		
17	Exercise.	69700	20,000
18	Veterans Cemetery..	80800	*373,263
19	BRIM Premium.	91300	<u>23,860</u>
20	Total..		\$ 10,342,764

* **NOTE:** The Governor reduced Item 88, lines 1 and 2, by \$75,000, from \$1,876,828 to \$1,801,828; line 3, by \$180,000, from \$200,000 to \$20,000; line 6, by \$20,000, from \$288,345 to \$268,345; line 7, by \$63,875 from \$6,004,913 to \$5,941,038; line 10 and 11, by \$10,000, from \$39,502 to \$29,502; line 12, by \$50,000, from \$150,000 to \$100,000; and line 18, by \$210,000, from \$583,263 to \$373,263. The total does NOT reflect the reductions made by the Governor.

21 Any unexpended balances remaining in the appropriations
 22 for Veterans’ Nursing Home (fund 0456, appropriation 28600),
 23 Veterans’ Reeducation Assistance (fund 0456, appropriation
 24 32900), Veterans’ Grant Program (fund 0456, appropriation
 25 34200), Veterans’ Bonus – Surplus (fund 0456, appropriation
 26 34400), Veterans’ Bonus (fund 0456, appropriation 48300), and
 27 Educational Opportunities for Children of Deceased Veterans
 28 (fund 0456, appropriation 85400) at the close of the fiscal year
 29 2015 are hereby reappropriated for expenditure during the fiscal
 30 year 2016.

*89 - Department of Veterans’ Assistance –
 Veterans’ Home*

(WV Code Chapter 9A)

Fund 0460 FY 2016 Org 0618

1	Personal Services and		
2	Employee Benefits..	00100	\$ 1,088,530
3	Unclassified.	09900	150,000
4	Current Expenses.	13000	<u>69,000</u>
5	Total.		\$ 1,307,530

BUREAU OF SENIOR SERVICES

90 - Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2016 Org 0508

1	Transfer to Division of Human		
2	Services for Health Care		
3	and Title XIX Waiver for		
4	Senior Citizens..	53900	\$ 14,063,432

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

10 The above appropriation is in addition to funding provided
11 in fund 5405 for this program.

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

*91 - West Virginia Council for
Community and Technical College Education –
Control Account*

(WV Code Chapter 18B)

Fund 0596 FY 2016 Org 0420

1	West Virginia Council for		
2	Community and Technical		
3	Education (R).....	39200	\$ 762,305
4	Transit Training Partnership.	78300	70,217
5	Community College		
6	Workforce Development (R)...	87800	806,048
7	College Transition Program.....	88700	292,718
8	West Virginia Advance Workforce		
9	Development (R).....	89300	3,433,842
10	Technical Program		
11	Development (R).....	89400	<u>1,984,598</u>
12	Total.....		\$ 7,349,728

13 Any unexpended balances remaining in the appropriations
14 for Unclassified – Surplus (fund 0596, appropriation 09700),
15 West Virginia Council for Community and Technical Education
16 (fund 0596, appropriation 39200), Capital Improvements –

17 Surplus (fund 0596, appropriation 66100), Community College
 18 Workforce Development (fund 0596, appropriation 87800), West
 19 Virginia Advance Workforce Development (fund 0596,
 20 appropriation 89300), and Technical Program Development
 21 (fund 0596, appropriation 89400) at the close of the fiscal year
 22 2015 are hereby reappropriated for expenditure during the fiscal
 23 year 2016.

24 From the above appropriation for the Community College
 25 Workforce Development (fund 0596, appropriation 87800),
 26 \$200,000 shall be expended on the Mine Training Program in
 27 Southern West Virginia.

28 Included in the above appropriation for West Virginia
 29 Advance Workforce Development (fund 0596, appropriation
 30 89300) is \$200,000 to be used exclusively for advanced
 31 manufacturing and energy industry specific training programs.

92 - Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2016 Org 0444

1	Mountwest Community and		
2	Technical College.	48700	\$ 5,687,484

93 - New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2016 Org 0445

1	New River Community and		
2	Technical College.	35800	\$ *5,641,703

* **NOTE:** The Governor reduced Item 93, lines 1 and 2, by \$34,797, from \$5,676,500 to \$5,641,702. The total does NOT reflect the reductions made by the Governor.

94 - Pierpont Community and Technical College

(WV Code Chapter 18B)

Fund 0597 FY 2016 Org 0446

1	Pierpont Community and		
2	Technical College.	93000	\$ *7,530,761

95 - Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2016 Org 0447

1	Blue Ridge Community and		
2	Technical College.	88500	\$ *4,607,544

96 - West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2016 Org 0464

1	West Virginia University –		
2	Parkersburg.	47100	\$ *9,788,994

97 - Southern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0380 FY 2016 Org 0487

1	Southern West Virginia		
2	Community and		
3	Technical College.	44600	\$ 8,203,924

* **NOTE:** The Governor reduced Item 94, lines 1 and 2, by \$133,835, from \$7,664,596 to \$7,530,761; Item 95, lines 1 and 2, by \$342,166, from \$4,949,710 to \$4,607,544; and Item 96, lines 1 and 2, by \$305,243, from \$10,094,237 to \$9,788,994. The total does NOT reflect the reductions made by the Governor.

98 - *West Virginia Northern Community and Technical College*

(WV Code Chapter 18B)

Fund 0383 FY 2016 Org 0489

1	West Virginia Northern		
2	Community and Technical		
3	College.....	44700	\$ *7,075,033

99 - *Eastern West Virginia Community and Technical College*

(WV Code Chapter 18B)

Fund 0587 FY 2016 Org 0492

1	Eastern West Virginia		
2	Community and		
3	Technical College.	41200	\$ *1,881,834

100 - *BridgeValley Community and Technical College*

(WV Code Chapter 18B)

Fund 0618 FY 2016 Org 0493

1	BridgeValley Community and		
2	Technical College.	71700	\$ *7,719,911

* **NOTE:** The Governor reduced Item 98, lines 1 through 3, by \$24,583, from \$7,099,616 to \$7,075,033; Item 99, lines 1 through 3, by \$5,340, from \$1,887,174 to \$1,881,834; and Item 100, lines 1 and 2, by \$19,987, from \$7,739,898 to \$7,719,911.

HIGHER EDUCATION POLICY COMMISSION

*101 - Higher Education Policy Commission –
Administration –
Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2016 Org 0441

1	Personal Services and	
2	Employee Benefits..... 00100	\$ 2,517,148
3	Current Expenses..... 13000	172,806
4	Higher Education	
5	Grant Program..... 16400	39,019,864
6	Tuition Contract Program (R). . . . 16500	1,249,464
7	Underwood-Smith Scholarship	
8	Program-Student Awards. . . . 16700	192,500
9	Facilities Planning and	
10	Administration (R)..... 38600	1,897,759
11	PROMISE Scholarship –	
12	Transfer..... 80000	18,500,000
13	HEAPS Grant Program (R). 86700	5,006,535
14	BRIM Premium. 91300	<u>16,362</u>
15	Total.....	\$ 68,572,438

16 Any unexpended balances remaining in the appropriations
 17 for Unclassified – Surplus (fund 0589, appropriation 09700),
 18 Tuition Contract Program (fund 0589, appropriation 16500),
 19 Facilities Planning and Administration (fund 0589, appropriation
 20 38600), Capital Improvements – Surplus (fund 0589,
 21 appropriation 66100), Capital Outlay and Maintenance (fund
 22 0589, appropriation 75500), HEAPS Grant Program (fund 0589,
 23 appropriation 86700), and Higher Education – Special Projects
 24 – Surplus (fund 0589, appropriation 94600) at the close of the
 25 fiscal year 2015 are hereby reappropriated for expenditure
 26 during the fiscal year 2016.

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

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

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

40 The above appropriation for PROMISE Scholarship –
41 Transfer (fund 0589, appropriation 80000) shall be transferred
42 to the PROMISE Scholarship Fund (fund 4296, org 0441)
43 established by W.Va. Code §18C-7-7.

*102 - Higher Education Policy Commission –
Administration –*

West Virginia Network for Educational Telecomputing (WVNET)

(WV Code Chapter 18B)

Fund 0551 FY 2016 Org 0495

1 WVNET..... 16900 \$ 1,696,561

*103 - West Virginia University –
School of Medicine
Medical School Fund*

(WV Code Chapter 18B)

Fund 0343 FY 2016 Org 0463

1	WVU School of Health Science –		
2	Eastern Division.	05600	\$ 2,303,985
3	WVU – School of		
4	Health Sciences.	17400	*16,163,439
5	WVU – School of		
6	Health Sciences –		
7	Charleston Division.	17500	2,374,260
8	Rural Health Outreach		
9	Programs (R).	37700	175,720
10	West Virginia University		
11	School of Medicine		
12	BRIM Subsidy.	46000	<u>1,209,668</u>
13	Total.		\$ <u>22,775,047</u>
14	Any unexpended balance remaining in the appropriations for		
15	Rural Health Outreach Programs (fund 0343, appropriation		
16	37700), and Educational Enhancements – Surplus (fund 0343,		
17	appropriation 92700) at the close of the fiscal year 2015 are		

* **NOTE:** The Governor reduced Item 103, lines 3 and 4, by \$547,975, from \$16,711,414 to \$16,163,439. And deleted language, lines 20 through 35 which read “Included in the appropriation for WVU - School of Health Sciences (fund 0343, appropriation 17400) is \$2,000,000 for the School of Public Health; Graduate Medical Education; programming or research for multiple sclerosis, alzheimers, and neurosciences (including the Blanchette Rockefeller Project); and \$82,000 for the West Virginia University National Center of Excellence in Women’s Health. Appropriations for WVU - School of Health Sciences (fund 0343, appropriation 17400) used for Graduate Medical Education may be transferred to the Department of Health and Human Resources Medical Service fund (fund 5084) for the purpose of matching federal or other funds used to support graduate medical education, subject to the approval of the vice-chancellor for health sciences and the Secretary of the Department of Health and Human Resources. If approval is denied, funds may be utilized by the respective institutions for expenditure on graduate medical education.” The total does NOT reflect the reductions made by the Governor.

18 hereby reappropriated for expenditure during the fiscal year
19 2016.

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36 The above appropriation for Rural Health Outreach
37 Programs (fund 0343, appropriation 37700) includes rural health
38 activities and programs; rural residency development and
39 education; and rural outreach activities.

40 The above appropriation for BRIM subsidy (fund 0343,
41 appropriation 46000) shall be paid to the Board of Risk and
42 Insurance Management as a general revenue subsidy against the
43 "Total Premium Billed" to the institution as part of the full cost
44 of their malpractice insurance coverage.

Fund 0344 FY 2016 Org 0463

1	West Virginia University.....	45900	\$ 100,354,338
2	Jackson's Mill (R).....	46100	*247,549
3	West Virginia University		
4	Institute for Technology.	47900	8,281,570
5	State Priorities –		
6	Brownfield Professional		
7	Development (R).....	53100	348,287
8	West Virginia University –		
9	Potomac State.	99400	<u>4,037,218</u>
10	Total.....		\$ 113,329,126

11 Any unexpended balances remaining in the appropriations
 12 for Jackson's Mill (fund 0344, appropriation 46100), and State
 13 Priorities – Brownfield Professional Development (fund 0344,
 14 appropriation 53100) at the close of the fiscal year 2015 are
 15 hereby reappropriated for expenditure during the fiscal year
 16 2016.

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* **NOTE:** The Governor reduced Item 104, line 2, by \$60,164, from \$307,713 to \$247,549. And deleted language from lines 17 through 29, which read “Included in the appropriation for West Virginia University (fund 0344, appropriation 45900) is \$360,000 for the WVU Law School - Skills Program; \$836,400 for the College of Engineering and Mineral Resources for the WVU Coal and Energy Research Bureau, the Mining Engineering Program, and the Petroleum Engineering Program; \$416,600 for farms in the Davis College of Forestry, Agriculture and Consumer Sciences; \$100,000 for the WVU Soil Testing Program; and \$25,000 for the West Virginia University Extension Service cyberbullying prevention program. Included in the above appropriation for Jackson's Mill (fund 0344, appropriation 46100) is \$121,500 for the Jackson's Mill Fire Academy.”

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*105 - Marshall University –
School of Medicine*

(WV Code Chapter 18B)

Fund 0347 FY 2016 Org 0471

1	Marshall Medical School.....	17300	\$	12,541,389
2	Rural Health Outreach			
3	Programs (R).....	37700		174,600
4	Forensic Lab.....	37701		*250,411
5	Center for Rural Health.	37702		*165,037
6	Marshall University Medical			
7	School BRIM Subsidy.....	44900		<u>877,385</u>
8	Total.....		\$	14,283,374

9 Any unexpended balance remaining in the appropriation for
10 Rural Health Outreach Program (fund 0347, appropriation
11 37700) at the close of the fiscal year 2015 is hereby
12 reappropriated for expenditure during the fiscal year 2016.

13 The above appropriation for Rural Health Outreach
14 Programs (fund 0347, appropriation 37700) includes rural health

* **NOTE:** The Governor reduced Item 105, line 4, by \$164,589, from \$415,000 to \$250,411; line 5 by \$109,963, from \$275,000 to \$165,037. The total does NOT reflect the reductions made by the Governor.

15 activities and programs; rural residency development and
16 education; and rural outreach activities.

17 The above appropriation for BRIM subsidy (fund 0347,
18 appropriation 44900) shall be paid to the Board of Risk and
19 Insurance Management as a general revenue subsidy against the
20 “Total Premium Billed” to the institution as part of the full cost
21 of their malpractice insurance coverage.

*106 - Marshall University –
General Administration Fund*

(WV Code Chapter 18B)

Fund 0348 FY 2016 Org 0471

1	Marshall University.	44800	\$	47,262,017
2	Vista E-Learning (R).	51900		259,207
3	State Priorities –			
4	Brownfield Professional			
5	Development (R).	53100		348,287
6	Marshall University Graduate			
7	College Writing Project.	80700		21,601
8	Luke Lee Listening			
9	Language and Learning			
10	Lab.	44801		*105,000
11	WV Autism Training			
12	Center (R).	93200		<u>1,846,830</u>
13	Total.		\$	49,912,942

14 Any unexpended balances remaining in the appropriations
15 for Vista E-Learning (fund 0348, appropriation 51900), State
16 Priorities – Brownfield Professional Development (fund 0348,
17 appropriation 53100) and WV Autism Training Center (fund

* **NOTE:** The Governor reduced Item 106, lines 8 through 10, by \$70,000, from \$175,000 to \$105,000. The total does NOT reflect the reductions made by the Governor.

18 0348, appropriation 93200) at the close of fiscal year 2015 are
19 hereby reappropriated for expenditure during the fiscal year
20 2016.

107 - West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2016 Org 0476

1	West Virginia School of		
2	Osteopathic Medicine.	17200	\$ *7,008,276
3	Rural Health Outreach		
4	Programs (R).	37700	175,367
5	West Virginia School of		
6	Osteopathic Medicine		
7	BRIM Subsidy.	40300	150,751
8	Rural Health Initiative –		
9	Medical Schools Support.	58100	<u>418,652</u>
10	Total.		\$ 8,203,104

11 Any unexpended balance remaining in the appropriation for
12 Rural Health Outreach Programs (fund 0336, appropriation
13 37700) at the close of fiscal year 2015 is hereby reappropriated
14 for expenditure during the fiscal year 2016.

15 The above appropriation for Rural Health Outreach
16 Programs (fund 0336, appropriation 37700) includes rural health
17 activities and programs; rural residency development and
18 education; and rural outreach activities.

19 The above appropriation for BRIM subsidy (fund 0336,
20 appropriation 40300) shall be paid to the Board of Risk and
21 Insurance Management as a general revenue subsidy against the

* **NOTE:** The Governor reduced Item 107, lines 1 and 2, by \$450,058, from \$7,458,334 to \$7,008,276. The total does NOT reflect the reductions made by the Governor.

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APPROPRIATIONS

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22 “Total Premium Billed” to the institution as part of the full cost
23 of their malpractice insurance coverage.

108 - Bluefield State College

(WV Code Chapter 18B)

Fund 0354 FY 2016 Org 0482

1 Bluefield State College. 40800 \$ *5,815,119

109 - Concord University

(WV Code Chapter 18B)

Fund 0357 FY 2016 Org 0483

1 Concord University. 41000 \$ 8,933,744

110 - Fairmont State University

(WV Code Chapter 18B)

Fund 0360 FY 2016 Org 0484

1 Fairmont State University. 41400 \$ 15,668,202

111 - Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2016 Org 0485

1 Glenville State College. 42800 \$ 6,034,427

* **NOTE:** The Governor reduced Item 108, line 1, by \$8,561, from \$5,823,680 to \$5,815,119. The total does NOT reflect the reductions made by the Governor.

112 - Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2016 Org 0486

1 Shepherd University... 43200 \$ *9,831,330

113 - West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2016 Org 0488

1 West Liberty University... 43900 \$ *8,196,740

114 - West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2016 Org 0490

1 West Virginia State University. . . 44100 \$ *10,307,141

2 West Virginia State University

3 Land Grant Match. 95600 1,649,709

4 Total... \$ 12,383,400

5 Total TITLE II, Section 1 —

6 General Revenue

7 (Including claims against the state)... \$ 4,305,776,000

1 **Sec. 2. Appropriations from state road fund.** — From the
 2 state road fund there are hereby appropriated conditionally upon
 3 the fulfillment of the provisions set forth in Article 2, Chapter

* **NOTE:** The Governor reduced Item 112, line 1, by \$90,226, from \$9,921,556 to \$9,831,330; Item 113, line 1, by \$1,589, from \$8,198,329 to \$8,196,740; Item 114, line 1, by \$426,550, from \$10,733,691 to \$10,307,141. The total does NOT reflect the reductions made by the Governor.

4 11B of the Code the following amounts, as itemized, for
5 expenditure during the fiscal year 2016.

DEPARTMENT OF TRANSPORTATION

115 - Division of Motor Vehicles

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

Fund 9007 FY 2016 Org 0802

	Appro- priation	State Road Fund
1 Personal Services and		
2 Employee Benefits.. 00100	\$	23,278,949
3 Current Expenses. 13000		16,204,124
4 Repairs and Alterations. 06400		144,000
5 Equipment. 07000		1,080,000
6 Buildings. 25800		10,000
7 Other Assets. 69000		2,600,000
8 BRIM Premium. 91300		<u>61,656</u>
9 Total.	\$	43,378,729

116 - Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2016 Org 0803

1 Debt Service. 04000	\$	37,000,000
2 Maintenance 23700		361,480,000
3 Maintenance, Contract		
4 Paving and Secondary		
5 Road Maintenance. 27200		48,500,000
6 Bridge Repair and		
7 Replacement. 27300		20,000,000

8	Inventory Revolving.	27500	4,000,000
9	Equipment Revolving.	27600	15,000,000
10	General Operations.	27700	52,285,000
11	Interstate Construction.	27800	120,000,000
12	Other Federal Aid Programs.	27900	371,856,000
13	Appalachian Programs.	28000	90,000,000
14	Nonfederal Aid Construction.	28100	15,000,000
15	Highway Litter Control.	28200	1,740,000
16	Courtesy Patrol.	28201	<u>3,000,000</u>
17	Total.		\$ 1,139,861,000

18 The above appropriations are to be expended in accordance
19 with the provisions of Chapters 17 and 17C of the code.

20 The commissioner of highways shall have the authority to
21 operate revolving funds within the state road fund for the
22 operation and purchase of various types of equipment used
23 directly and indirectly in the construction and maintenance of
24 roads and for the purchase of inventories and materials and
25 supplies.

26 There is hereby appropriated in addition to the above
27 appropriations, sufficient money for the payment of claims,
28 accrued or arising during this budgetary period, to be paid in
29 accordance with Sections 17 and 18, Article 2, Chapter 14 of the
30 code.

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

40 appropriations upon recommendation of the commissioner and
41 approval of the Governor.

117 - Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2016 Org 0808

1	Personal Services and		
2	Employee Benefits.. 00100	\$	1,585,201
3	Current Expenses. 13000		344,278
4	Repairs and Alterations. 06400		5,000
5	Equipment. 07000		7,500
6	BRIM Premium. 91300		<u>10,000</u>
7	Total..	\$	1,951,979
8	Total TITLE II, Section 2 —		
9	State Road Fund		
10	(Including claims against the state)...		<u>\$ 1,185,922,141</u>

1 **Sec. 3. Appropriations from other funds.** — From the
2 funds designated there are hereby appropriated conditionally
3 upon the fulfillment of the provisions set forth in Article 2,
4 Chapter 11B of the Code the following amounts, as itemized, for
5 expenditure during the fiscal year 2016.

LEGISLATIVE

118 - Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2016 Org 2300

		Appro- pria- tion	Other Funds
1	Personal Services and		
2	Employee Benefits.. 00100	\$	498,020

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3	Current Expenses. 13000	133,903
4	Repairs and Alterations. 06400	1,000
5	Economic Loss Claim	
6	Payment Fund. 33400	3,460,125
7	Other Assets. 69000	<u>3,700</u>
8	Total.	\$ 4,096,748

JUDICIAL

*119 - Supreme Court –
Family Court Fund*

(WV Code Chapter 51)

Fund 1763 FY 2016 Org 2400

1	Current Expenses. 13000	\$ 1,200,000
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EXECUTIVE

*120 - Governor's Office
Minority Affairs Fund*

(WV Code Chapter 5)

Fund 1058 FY 2016 Org 0100

1	Personal Services and	
2	Employee Benefits.. . . . 00100	\$ 172,800
3	Current Expenses. 13000	<u>512,126</u>
4	Total.	\$ 684,926

*121 - Auditor's Office –
Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2016 Org 1200

APPROPRIATIONS

1	Personal Services and		
2	Employee Benefits..	00100	\$ 642,647
3	Unclassified.	09900	15,139
4	Current Expenses.	13000	440,291
5	Repairs and Alterations.	06400	2,600
6	Equipment.	07000	426,741
7	Cost of Delinquent Land Sales.	76800	<u>1,341,168</u>
8	Total.		\$ 2,868,586

9 There is hereby appropriated from this fund, in addition to
10 the above appropriations if needed, the necessary amount for the
11 expenditure of funds other than personal services and employee
12 benefits to enable the division to pay the direct expenses relating
13 to land sales as provided in Chapter 11A of the West Virginia
14 Code.

15 The total amount of these appropriations shall be paid from
16 the special revenue fund out of fees and collections as provided
17 by law.

*122 - Auditor's Office –
Local Government Purchasing Card Expenditure Fund*

(WV Code Chapter 6)

Fund 1224 FY 2016 Org 1200

1	Personal Services and		
2	Employee Benefits..	00100	\$ 308,087
3	Current Expenses.	13000	62,030
4	Repairs and Alterations.	06400	6,000
5	Equipment.	07000	10,805
6	Other Assets.	69000	50,000
7	Statutory Revenue Distribution.	74100	<u>1,500,000</u>
8	Total.		\$ 1,936,922

9 There is hereby appropriated from this fund, in addition to
 10 the above appropriations if needed, the amount necessary to
 11 meet the transfer of revenue distribution requirements to provide
 12 a proportionate share of rebates back to the general fund of local
 13 governments based on utilization of the program in accordance
 14 with W.Va. Code §6-9-2b.

*123 - Auditor's Office –
 Securities Regulation Fund*

(WV Code Chapter 32)

Fund 1225 FY 2016 Org 1200

1	Personal Services and		
2	Employee Benefits..	00100	\$ 1,882,510
3	Unclassified.	09900	31,866
4	Current Expenses.	13000	838,830
5	Repairs and Alterations.	06400	12,400
6	Equipment.	07000	19,700
7	Other Assets.	69000	<u>673,326</u>
8	Total.		\$ 3,458,632

*124 - Auditor's Office –
 Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1233 FY 2016 Org 1200

1	Current Expenses.	13000	\$ 300,000
2	Other Assets.	69000	<u>100,000</u>
3	Total.		\$ 400,000

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

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

(WV Code Chapter 12)

Fund 1234 FY 2016 Org 1200

1	Personal Services and		
2	Employee Benefits..... 00100	\$	2,499,307
3	Current Expenses..... 13000		1,578,622
4	Repairs and Alterations..... 06400		5,500
5	Equipment..... 07000		650,000
6	Other Assets..... 69000		308,886
7	Statutory Revenue		
8	Distribution..... 74100		<u>4,000,000</u>
9	Total.....	\$	9,042,315
10	There is hereby appropriated from this fund, in addition to		
11	the above appropriations if needed, the amount necessary to		
12	meet the transfer and revenue distribution requirements to the		
13	Purchasing Improvement Fund (fund 2264), the Hatfield-McCoy		
14	Regional Recreation Authority, and the State Park Operating		
15	Fund (fund 3265) per W.Va. Code §12-3-10d.		

*126 - Auditor's Office –
Chief Inspector's Fund*

(WV Code Chapter 6)

Fund 1235 FY 2016 Org 1200

1	Personal Services and		
2	Employee Benefits..... 00100	\$	3,405,512
3	Current Expenses..... 13000		765,915
4	Equipment..... 07000		<u>50,000</u>
5	Total.....	\$	4,221,427

*127 - Auditor's Office –
Volunteer Fire Department Workers'
Compensation Premium Subsidy Fund*

(WV Code Chapters 12 and 33)

Fund 1239 FY 2016 Org 1200

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

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

(WV Code Chapter 18)

Fund 1301 FY 2016 Org 1300

1	Personal Services and		
2	Employee Benefits..	00100	\$ 769,227
3	Unclassified.	09900	14,000
4	Current Expenses.	13000	<u>625,404</u>
5	Total.		\$ 1,408,631

*129 - Treasurer's Office –
Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1329 FY 2016 Org 1300

1	Personal Services and		
2	Employee Benefits..	00100	\$ 183,074
3	Unclassified.	09900	4,700
4	Current Expenses.	13000	228,875
5	Other Assets.	69000	<u>60,000</u>
6	Total.		\$ 476,649

*130 - Department of Agriculture –
Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2016 Org 1400

1	Personal Services and		
2	Employee Benefits..... 00100	\$	2,244,245
3	Unclassified..... 09900		37,425
4	Current Expenses..... 13000		1,356,184
5	Repairs and Alterations..... 06400		58,500
6	Equipment..... 07000		36,209
7	Other Assets..... 69000		<u>10,000</u>
8	Total.....	\$	3,742,563

*131 - Department of Agriculture –
West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2016 Org 1400

1	Personal Services and		
2	Employee Benefits..... 00100	\$	73,807
3	Unclassified..... 09900		10,476
4	Current Expenses..... 13000		<u>963,404</u>
5	Total.....	\$	1,047,687

*132 - Department of Agriculture –
General John McCausland Memorial Farm Fund*

(WV Code Chapter 19)

Fund 1409 FY 2016 Org 1400

1	Unclassified..... 09900	\$	2,100
2	Current Expenses..... 13000		129,500

3	Repairs and Alterations.	06400	47,400
4	Equipment.	07000	<u>31,000</u>
5	Total.		\$ 210,000

6 The above appropriations shall be expended in accordance
7 with Article 26, Chapter 19 of the Code.

*133 - Department of Agriculture –
Farm Operating Fund*
(WV Code Chapter 19)

Fund 1412 FY 2016 Org 1400

1 Personal Services and			
2	Employee Benefits..	00100	\$ 309,248
3	Unclassified.	09900	15,173
4	Current Expenses.	13000	1,167,464
5	Repairs and Alterations.	06400	238,722
6	Equipment.	07000	249,393
7	Other Assets.	69000	<u>20,000</u>
8	Total.		\$ 2,000,000

*134 - Department of Agriculture –
Donated Food Fund*
(WV Code Chapter 19)

Fund 1446 FY 2016 Org 1400

1 Personal Services and			
2	Employee Benefits..	00100	\$ 958,864
3	Unclassified.	09900	45,807
4	Current Expenses.	13000	3,410,542
5	Repairs and Alterations.	06400	128,500
6	Equipment.	07000	10,000
7	Other Assets.	69000	<u>27,000</u>
8	Total.		\$ 4,580,713

*135 - Department of Agriculture –
Integrated Predation Management Fund*

(WV Code Chapter 7)

Fund 1465 FY 2016 Org 1400

1	Current Expenses.	13000	\$	100,000
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*136 - Department of Agriculture –
West Virginia Spay Neuter Assistance Fund*

(WV Code Chapter 19)

Fund 1481 FY 2016 Org 1400

1	Current Expenses.	13000	\$	100
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*137 - Department of Agriculture –
Veterans and Warriors to Agriculture Fund*

(WV Code Chapter 19)

Fund 1483 FY 2016 Org 1400

1	Current Expenses.	13000	\$	7,500
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*138 - Attorney General –
Antitrust Enforcement Fund*

(WV Code Chapter 47)

Fund 1507 FY 2016 Org 1500

1	Personal Services and			
2	Employee Benefits.. . . .	00100	\$	356,900
3	Current Expenses.	13000		142,803
4	Repairs and Alterations.	06400		3,000

Ch. 15]	APPROPRIATIONS	233
5	Equipment. 07000	<u>5,000</u>
6	Total.	\$ 507,703

*139 - Attorney General –
Preneed Burial Contract Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2016 Org 1500

1	Personal Services and	
2	Employee Benefits.. 00100	\$ 210,226
3	Current Expenses. 13000	48,615
4	Repairs and Alterations. 06400	3,000
5	Equipment. 07000	<u>5,000</u>
6	Total.	\$ 266,841

*140 - Attorney General –
Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 2016 Org 1500

1	Current Expenses. 13000	\$ 901,135
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*141 - Secretary of State –
Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2016 Org 1600

1	Personal Services and	
2	Employee Benefits.. 00100	\$ 791,051
3	Unclassified. 09900	4,524
4	Current Expenses. 13000	<u>8,036</u>
5	Total.	\$ 803,611

*142 - Secretary of State –
General Administrative Fees Account*

(WV Code Chapters 3, 5 and 59)

Fund 1617 FY 2016 Org 1600

1	Personal Services and		
2	Employee Benefits..	00100	\$ 2,769,898
3	Unclassified.	09900	25,529
4	Current Expenses.	13000	796,716
5	Technology Improvements.	59900	<u>750,000</u>
6	Total.		\$ 4,342,143

DEPARTMENT OF ADMINISTRATION

*143 - Department of Administration –
Office of the Secretary –
Tobacco Settlement Fund*

(WV Code Chapter 4)

Fund 2041 FY 2016 Org 0201

1	Tobacco Settlement		
2	Securitization Trustee		
3	Pass Thru.	65000	\$ 80,000,000
4	Tobacco Settlement		
5	Fund – Transfer.	90200	<u>6,000</u>
6	Total.		\$ 80,006,000

7 The above appropriation for Tobacco Settlement Fund –
8 Transfer (appropriation 90200) shall be transferred to the
9 Division of Health (fund 5124, org 0506) for expenditure.

*144 - Department of Administration –
Office of the Secretary
Employee Pension and Health Care Benefit Fund*

(WV Code Chapter 18)

Fund 2044 FY 2016 Org 0201

1 Current Expenses. 13000 \$ 34,472,000

2 The above appropriation for Current Expenses (fund 2044,
3 appropriation 13000) shall be transferred to the Consolidated
4 Public Retirement Board – West Virginia Teachers’ Retirement
5 System Employers Accumulation Fund (fund 2601).

145 - Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2016 Org 0210

1	Personal Services and		
2	Employee Benefits..	00100	\$ 23,378,322
3	Unclassified.	09900	382,354
4	Current Expenses.	13000	11,394,766
5	Repairs and Alterations.	06400	1,000
6	Equipment.	07000	2,034,000
7	Other Assets.	69000	<u>1,045,000</u>
8	Total.		\$ 38,235,442

9 The total amount of these appropriations shall be paid from
10 a special revenue fund out of collections made by the division of
11 information services and communications as provided by law.

12 Each spending unit operating from the general revenue fund,
13 from special revenue funds or receiving reimbursement for
14 postage from the federal government shall be charged monthly
15 for all postage meter service and shall reimburse the revolving
16 fund monthly for all such amounts.

*146 - Division of Purchasing –
Vendor Fee Fund*

(WV Code Chapter 5A)

Fund 2263 FY 2016 Org 0213

1	Personal Services and		
2	Employee Benefits..	00100	\$ 655,208
3	Unclassified.	09900	2,382
4	Current Expenses.	13000	238,115
5	Repairs and Alterations.	06400	5,000
6	Equipment.	07000	2,500
7	Other Assets.	69000	2,500
8	BRIM Premium.	91300	810
9	Total.		<u>\$ 906,515</u>

*147 - Division of Purchasing –
Purchasing Improvement Fund*

(WV Code Chapter 5A)

Fund 2264 FY 2016 Org 0213

1	Personal Services and		
2	Employee Benefits..	00100	\$ 540,889
3	Unclassified.	09900	5,562
4	Current Expenses.	13000	393,066
5	Repairs and Alterations.	06400	1,500,500
6	Equipment.	07000	500
7	Other Assets.	69000	500,500
8	BRIM Premium.	91300	850
9	Total.		<u>\$ 2,941,867</u>

*148 - Travel Management
Fleet Management Office Fund*

(WV Code Chapter 5A)

Fund 2301 FY 2016 Org 0215

1	Personal Services and		
2	Employee Benefits..	00100	\$ 722,586
3	Unclassified.	09900	4,000
4	Current Expenses.	13000	8,130,614
5	Repairs and Alterations.	06400	12,000
6	Equipment.	07000	800,000
7	Other Assets.	69000	<u>2,000</u>
8	Total.		\$ 9,671,200

*149 - Travel Management
Aviation Fund*

(WV Code Chapter 5A)

Fund 2302 FY 2016 Org 0215

1	Unclassified.	09900	\$ 1,000
2	Current Expenses.	13000	149,700
3	Repairs and Alterations.	06400	400,237
4	Equipment.	07000	1,000
5	Buildings.	25800	100
6	Other Assets.	69000	100
7	Land.	73000	<u>100</u>
8	Total.		\$ 552,237

150 - Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2016 Org 0222

1	Personal Services and		
2	Employee Benefits..	00100	\$ 3,942,590
3	Unclassified.	09900	51,418
4	Current Expenses.	13000	1,062,813

APPROPRIATIONS

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5	Repairs and Alterations.	06400		5,000
6	Equipment.	07000		20,000
7	Other Assets.	69000		<u>60,000</u>
8	Total.		\$	5,141,821

9 The total amount of these appropriations shall be paid from
 10 a special revenue fund out of fees collected by the division of
 11 personnel.

151 - West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2016 Org 0228

1	Personal Services and			
2	Employee Benefits.	00100	\$	249,242
3	Unclassified.	09900		5,523
4	Current Expenses.	13000		294,528
5	Repairs and Alterations.	06400		600
6	Equipment.	07000		1,500
7	Other Assets.	69000		<u>1,000</u>
8	Total.		\$	552,393

*152 - Office of Technology –
Chief Technology Officer Administration Fund*

(WV Code Chapter 5A)

Fund 2531 FY 2016 Org 0231

1	Personal Services and			
2	Employee Benefits.	00100	\$	399,911
3	Unclassified.	09900		6,949
4	Current Expenses.	13000		227,116
5	Repairs and Alterations.	06400		1,000
6	Equipment.	07000		50,000

7	Other Assets.....	69000		<u>10,000</u>
8	Total.....		\$	694,976

9 From the above fund, the provisions of W.Va. Code §11B-2-
 10 18 shall not operate to permit expenditures in excess of the funds
 11 authorized for expenditure herein.

DEPARTMENT OF COMMERCE

153 - Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2016 Org 0305

1	Personal Services and			
2	Employee Benefits.....	00100	\$	1,264,328
3	Current Expenses.....	13000		282,202
4	Repairs and Alterations.....	06400		<u>53,000</u>
5	Total.....		\$	1,599,530

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

(WV Code Chapter 19)

Fund 3082 FY 2016 Org 0305

1	Personal Services and			
2	Employee Benefits.....	00100	\$	224,433
3	Current Expenses.....	13000		87,036
4	Repairs and Alterations.....	06400		<u>11,250</u>
5	Total.....		\$	322,719

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

(WV Code Chapter 29)

Fund 3100 FY 2016 Org 0306

1	Personal Services and		
2	Employee Benefits..... 00100	\$	37,966
3	Unclassified..... 09900		2,182
4	Current Expenses..... 13000		141,631
5	Repairs and Alterations..... 06400		6,500
6	Equipment..... 07000		20,000
7	Other Assets..... 69000		<u>10,000</u>
8	Total.....	\$	218,279

9 The above appropriations shall be used in accordance with
10 W.Va. Code §29-2-4.

*156 - West Virginia Development Office –
Department of Commerce
Marketing and Communications Operating Fund*

(WV Code Chapter 5B)

Fund 3002 FY 2016 Org 0307

1	Personal Services and		
2	Employee Benefits..... 00100	\$	1,528,219
3	Unclassified..... 09900		30,000
4	Current Expenses..... 13000		<u>1,482,760</u>
5	Total.....	\$	3,040,979

*157 - West Virginia Development Office –
Broadband Deployment Fund*

(WV Code Chapter 31)

Fund 3174 FY 2016 Org 0307

1	Current Expenses..... 13000	\$	2,840,000
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*158 - Division of Labor –
Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 2016 Org 0308

1	Personal Services and		
2	Employee Benefits.. 00100	\$	1,519,374
3	Unclassified. 09900		21,589
4	Current Expenses. 13000		597,995
5	Repairs and Alterations. 06400		15,000
6	Buildings. 25800		<u>5,000</u>
7	Total..	\$	2,158,958

*159 - Division of Labor –
Elevator Safety Fund*

(WV Code Chapter 21)

Fund 3188 FY 2016 Org 0308

1	Personal Services and		
2	Employee Benefits.. 00100	\$	176,772
3	Unclassified. 09900		2,261
4	Current Expenses. 13000		44,112
5	Repairs and Alterations. 06400		2,000
6	Buildings. 25800		<u>1,000</u>
7	Total..	\$	226,145

*160 - Division of Labor –
Crane Operator Certification Fund*

(WV Code Chapter 21)

Fund 3191 FY 2016 Org 0308

1	Personal Services and		
2	Employee Benefits.. 00100	\$	84,380

242	APPROPRIATIONS	[Ch. 15
3	Unclassified. 09900	1,380
4	Current Expenses. 13000	49,765
5	Repairs and Alterations. 06400	1,500
6	Buildings. 25800	<u>1,000</u>
7	Total.	\$ 138,025

*161 - Division of Labor –
Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2016 Org 0308

1	Personal Services and	
2	Employee Benefits. 00100	\$ 79,316
3	Unclassified. 09900	1,281
4	Current Expenses. 13000	44,520
5	Repairs and Alterations. 06400	2,000
6	Buildings. 25800	<u>1,000</u>
7	Total.	\$ 128,117

*162 - Division of Labor –
State Manufactured Housing Administration Fund*

(WV Code Chapter 21)

Fund 3195 FY 2016 Org 0308

1	Personal Services and	
2	Employee Benefits. 00100	\$ 133,768
3	Unclassified. 09900	1,847
4	Current Expenses. 13000	43,700
5	Repairs and Alterations. 06400	1,000
6	Buildings. 25800	1,000
7	BRIM Premium. 91300	<u>3,404</u>
8	Total.	\$ 184,719

*163 - Division of Labor –
Weights and Measures Fund*

(WV Code Chapter 47)

Fund 3196 FY 2016 Org 0308

1	Current Expenses.	13000	\$	48,000
2	Repairs and Alterations.	06400		81,000
3	Equipment.	07000		<u>76,000</u>
4	Total.		\$	205,000

*164 - Division of Natural Resources –
License Fund – Wildlife Resources*

(WV Code Chapter 20)

Fund 3200 FY 2016 Org 0310

1	Wildlife Resources.	02300	\$	5,551,895
2	Administration.	15500		1,387,974
3	Capital Improvements and			
4	Land Purchase (R)	24800		1,387,973
5	Law Enforcement.	80600		<u>5,551,895</u>
6	Total.		\$	13,879,737

7 The total amount of these appropriations shall be paid from
8 a special revenue fund out of fees collected by the division of
9 natural resources.

10 Any unexpended balance remaining in the appropriation for
11 Capital Improvements and Land Purchase (fund 3200,
12 appropriation 24800) at the close of the fiscal year 2015 is
13 hereby reappropriated for expenditure during the fiscal year
14 2016.

*165 - Division of Natural Resources –
Natural Resources Game Fish and Aquatic Life Fund*

(WV Code Chapter 22)

Fund 3202 FY 2016 Org 0310

1	Current Expenses.	13000	\$	125,000
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*166 - Division of Natural Resources –
Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2016 Org 0310

1	Personal Services and			
2	Employee Benefits.	00100	\$	678,109
3	Current Expenses.	13000		201,930
4	Equipment.	07000		106,615
5	Total.		\$	986,654

*167 - Division of Natural Resources –
Planning and Development Division*

(WV Code Chapter 20)

Fund 3205 FY 2016 Org 0310

1	Personal Services and			
2	Employee Benefits.	00100	\$	189,520
3	Current Expenses.	13000		157,864
4	Repairs and Alterations.	06400		15,016
5	Equipment.	07000		8,300
6	Buildings.	25800		8,300
7	Other Assets.	69000		1,000,000
8	Land.	73000		31,700
9	Total.		\$	1,410,700

*168 - Division of Natural Resources –
Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Fund 3253 FY 2016 Org 0310

1	Personal Services and		
2	Employee Benefits..... 00100	\$	62,704
3	Current Expenses..... 13000		64,778
4	Equipment..... 07000		1,297
5	Buildings..... 25800		6,969
6	Total.....	\$	135,748

*169 - Division of Natural Resources –
Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Fund 3256 FY 2016 Org 0310

1	Unclassified..... 09900	\$	200
2	Current Expenses..... 13000		19,800
3	Total.....	\$	20,000

*170 - Division of Miners' Health, Safety and Training –
Special Health, Safety and Training Fund*

(WV Code Chapter 22A)

Fund 3355 FY 2016 Org 0314

1	Personal Services and		
2	Employee Benefits..... 00100	\$	471,606
3	WV Mining Extension Service. . . 02600		150,000
4	Unclassified..... 09900		40,985
5	Current Expenses..... 13000		1,954,557
6	Buildings..... 25800		481,358

246	APPROPRIATIONS	[Ch. 15
7	Land. 73000	<u>1,000,000</u>
8	Total.	\$ 4,098,506

*171 - Division of Energy –
Energy Assistance*

(WV Code Chapter 5B)

Fund 3010 FY 2016 Org 0328

1	Energy Assistance – Total. 64700	\$ 172,000
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*172 - Division of Energy –
Office of Coal Field Community Development*

(WV Code Chapter 5B)

Fund 3011 FY 2016 Org 0328

1	Personal Services and	
2	Employee Benefits. 00100	\$ 430,724
3	Unclassified. 09900	8,300
4	Current Expenses. 13000	394,191
5	Repairs and Alterations. 06400	1,000
6	Equipment. 07000	<u>4,000</u>
7	Total.	\$ 838,215

DEPARTMENT OF EDUCATION

*173 - State Board of Education –
Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2016 Org 0402

1	Personal Services and	
2	Employee Benefits. 00100	\$ 134,000

Ch. 15]	APPROPRIATIONS	247
3	Unclassified. 09900	1,000
4	Current Expenses. 13000	<u>265,000</u>
5	Total.	\$ 400,000

*174 - State Board of Education –
School Construction Fund*

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2016 Org 0402

1	SBA Construction Grants. 24000	\$ 37,217,000
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175 - School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2016 Org 0402

1	Personal Services and	
2	Employee Benefits. 00100	\$ 1,086,552
3	Current Expenses. 13000	249,750
4	Repairs and Alterations. 06400	7,500
5	Equipment. 07000	<u>26,000</u>
6	Total.	\$ 1,369,802

7 The above appropriations are for the administrative expenses
8 of the school building authority and shall be paid from the
9 interest earnings on debt service reserve accounts maintained on
10 behalf of said authority.

*176 - State Board of Education –
State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Fund 3960 FY 2016 Org 0402

1	Personal Services and		
2	Employee Benefits..... 00100	\$	1,169,194
3	Unclassified..... 09900		17,000
4	Current Expenses..... 13000		707,223
5	Repairs and Alterations..... 06400		57,500
6	Equipment..... 07000		1,000
7	Buildings..... 25800		1,000
8	Other Assets..... 69000		10,000
9	Land..... 73000		<u>1,000</u>
10	Total.....	\$	1,963,917

DEPARTMENT OF EDUCATION AND THE ARTS

*177 - Office of the Secretary –
Lottery Education Fund Interest Earnings –
Control Account*

(WV Code Chapter 29)

Fund 3508 FY 2016 Org 0431

- 1 Any unexpended balance remaining in the appropriation for
2 Educational Enhancements (fund 3508, appropriation 69500) at
3 the close of the fiscal year 2015 is hereby reappropriated for
4 expenditure during the fiscal year 2016.

*178 - Division of Culture and History –
Public Records and Preservation Revenue Account*

(WV Code Chapter 5A)

Fund 3542 FY 2016 Org 0432

1	Personal Services and		
2	Employee Benefits..... 00100	\$	211,418
3	Current Expenses..... 13000		862,241
4	Equipment..... 07000		75,000

Ch. 15]	APPROPRIATIONS	249
5	Buildings.	25800 1,000
6	Other Assets.	69000 52,328
7	Land.	73000 1,000
8	Total.	\$ 1,202,987

*179 - State Board of Rehabilitation –
Division of Rehabilitation Services –
West Virginia Rehabilitation Center Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2016 Org 0932

1	Personal Services and	
2	Employee Benefits.	00100 \$ 119,738
3	Current Expenses.	13000 2,180,122
4	Equipment.	00700 220,000
5	Repairs and Alterations.	06400 85,500
6	Buildings.	25800 150,000
7	Other Assets.	69000 150,000
8	Total.	\$ 2,905,360

DEPARTMENT OF ENVIRONMENTAL PROTECTION

180 - Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2016 Org 0312

1	Personal Services and	
2	Employee Benefits.	00100 \$ 804,189
3	Current Expenses.	13000 2,059,077
4	Repairs and Alterations.	06400 1,000
5	Equipment.	07000 5,000
6	Other Assets.	69000 4,403
7	Total.	\$ 2,873,669

*181 - Division of Environmental Protection –
Protect Our Water Fund*

(WV Code Chapter 22)

Fund 3017 FY 2016 Org 0313

1	Current Expenses.	13000	\$	200,000
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*182 - Division of Environmental Protection –
Hazardous Waste Management Fund*

(WV Code Chapter 22)

Fund 3023 FY 2016 Org 0313

1	Personal Services and			
2	Employee Benefits..	00100	\$	701,197
3	Current Expenses.	13000		187,733
4	Repairs and Alterations.	06400		500
5	Equipment.	07000		4,000
6	Other Assets.	69000		<u>2,000</u>
7	Total.		\$	895,430

*183 - Division of Environmental Protection –
Air Pollution Education and Environment Fund*

(WV Code Chapter 22)

Fund 3024 FY 2016 Org 0313

1	Personal Services and			
2	Employee Benefits..	00100	\$	935,324
3	Current Expenses.	13000		1,251,510
4	Repairs and Alterations.	06400		13,000
5	Equipment.	07000		53,105
6	Other Assets.	69000		<u>10,000</u>
7	Total.		\$	2,262,939

*184 - Division of Environmental Protection –
Special Reclamation Fund*

(WV Code Chapter 22)

Fund 3321 FY 2016 Org 0313

1	Personal Services and		
2	Employee Benefits..	00100	\$ 1,350,829
3	Current Expenses.	13000	16,402,506
4	Repairs and Alterations.	06400	79,950
5	Equipment.	07000	130,192
6	Other Assets.	69000	<u>32,000</u>
7	Total.		\$ 17,995,477

*185 - Division of Environmental Protection –
Oil and Gas Reclamation Fund*

(WV Code Chapter 22)

Fund 3322 FY 2016 Org 0313

1	Personal Services and		
2	Employee Benefits..	00100	\$ 163,594
3	Current Expenses.	13000	<u>512,329</u>
4	Total.		\$ 675,923

*186 - Division of Environmental Protection –
Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2016 Org 0313

1	Personal Services and		
2	Employee Benefits..	00100	\$ 2,899,788
3	Current Expenses.	13000	1,414,609
4	Repairs and Alterations.	06400	15,600

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5	Equipment.	07000		8,000
6	Other Assets.	69000		<u>15,000</u>
7	Total.		\$	4,352,997

*187 - Division of Environmental Protection –
Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2016 Org 0313

1	Personal Services and			
2	Employee Benefits.	00100	\$	4,635,449
3	Current Expenses.	13000		2,407,012
4	Repairs and Alterations.	06400		60,260
5	Equipment.	07000		85,134
6	Other Assets.	69000		<u>57,500</u>
7	Total.		\$	7,245,355

*188 - Division of Environmental Protection –
Underground Storage Tank
Administrative Fund*

(WV Code Chapter 22)

Fund 3325 FY 2016 Org 0313

1	Personal Services and			
2	Employee Benefits.	00100	\$	441,543
3	Current Expenses.	13000		350,940
4	Repairs and Alterations.	06400		5,350
5	Equipment.	07000		3,610
6	Other Assets.	69000		<u>3,500</u>
7	Total.		\$	804,943

*189 - Division of Environmental Protection –
Hazardous Waste Emergency Response Fund*

(WV Code Chapter 22)

Fund 3331 FY 2016 Org 0313

1	Personal Services and		
2	Employee Benefits..	00100	\$ 643,319
3	Current Expenses.	13000	433,002
4	Repairs and Alterations.	06400	7,014
5	Equipment.	07000	9,000
6	Other Assets.	69000	<u>11,700</u>
7	Total.		\$ 1,104,035

*190 - Division of Environmental Protection –
Solid Waste Reclamation and
Environmental Response Fund*

(WV Code Chapter 22)

Fund 3332 FY 2016 Org 0313

1	Personal Services and		
2	Employee Benefits..	00100	\$ 779,261
3	Current Expenses.	13000	3,657,693
4	Repairs and Alterations.	06400	10,150
5	Equipment.	07000	31,500
6	Other Assets.	69000	<u>1,000</u>
7	Total.		\$ 4,479,604

*191 - Division of Environmental Protection –
Solid Waste Enforcement Fund*

(WV Code Chapter 22)

Fund 3333 FY 2016 Org 0313

1	Personal Services and		
2	Employee Benefits..	00100	\$ 2,913,948
3	Current Expenses.	13000	1,178,850
4	Repairs and Alterations.	06400	31,930

254		APPROPRIATIONS		[Ch. 15
5	Equipment.	07000		28,356
6	Other Assets.....	69000		<u>25,554</u>
7	Total.....		\$	4,178,638

*192 - Division of Environmental Protection –
Air Pollution Control Fund*

(WV Code Chapter 22)

Fund 3336 FY 2016 Org 0313

1	Personal Services and			
2	Employee Benefits.....	00100	\$	5,658,302
3	Current Expenses.....	13000		1,560,534
4	Repairs and Alterations.	06400		74,045
5	Equipment.	07000		106,927
6	Other Assets.....	69000		<u>44,249</u>
7	Total.....		\$	7,444,057

*193 - Division of Environmental Protection –
Environmental Laboratory
Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2016 Org 0313

1	Personal Services and			
2	Employee Benefits.....	00100	\$	296,164
3	Current Expenses.....	13000		94,688
4	Repairs and Alterations.	06400		1,000
5	Equipment.	07000		6,500
6	Other Assets.....	69000		<u>126,000</u>
7	Total.....		\$	524,352

*194 - Division of Environmental Protection –
Stream Restoration Fund*

(WV Code Chapter 22)

Fund 3349 FY 2016 Org 0313

1	Current Expenses.	13000	\$	11,294,705
2	Repairs and Alterations.	06400		2,500
3	Equipment.	07000		500
4	Other Assets.	69000		500
5	Total.		\$	11,298,205

*195 - Division of Environmental Protection –
Litter Control Fund*

(WV Code Chapter 22)

Fund 3486 FY 2016 Org 0313

1	Current Expenses.	13000	\$	60,000
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*196 - Division of Environmental Protection –
Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2016 Org 0313

1	Personal Services and			
2	Employee Benefits.	00100	\$	544,553
3	Current Expenses.	13000		2,237,354
4	Repairs and Alterations.	06400		800
5	Equipment.	07000		500
6	Other Assets.	69000		2,500
7	Total.		\$	2,785,707

*197 - Division of Environmental Protection –
Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2016 Org 0313

1	Personal Services and		
2	Employee Benefits..	00100	\$ 1,228,345
3	Current Expenses.	13000	649,909
4	Repairs and Alterations.	06400	20,112
5	Equipment.	07000	23,725
6	Other Assets.	69000	<u>15,500</u>
7	Total.		\$ 1,937,591

*198 - Oil and Gas Conservation Commission –
Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2016 Org 0315

1	Personal Services and		
2	Employee Benefits..	00100	\$ 157,224
3	Current Expenses.	13000	161,225
4	Repairs and Alterations.	06400	1,000
5	Equipment.	07000	9,481
6	Other Assets.	69000	<u>1,500</u>
7	Total.		\$ 330,430

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

*199 - Division of Health –
Tobacco Settlement Expenditure Fund*

(WV Code Chapter 4)

Fund 5124 FY 2016 Org 0506

1	Institutional Facilities		
2	Operations.	33500	\$ 6,000

3 Additional funds have been appropriated in fund 0525, fiscal
4 year 2016, organization 0506, and fund 5156, fiscal year 2016,

5 organization 0506, for the operation of the institutional facilities.
 6 The secretary of the department of health and human resources
 7 is authorized to utilize up to ten percent of the funds from the
 8 appropriation for Institutional Facilities Operations to facilitate
 9 cost effective and cost saving services at the community level.

*200 - Division of Health –
 The Vital Statistics Account*

(WV Code Chapter 16)

Fund 5144 FY 2016 Org 0506

1	Personal Services and		
2	Employee Benefits..	00100	\$ 876,771
3	Unclassified.	09900	15,500
4	Current Expenses.	13000	785,954
5	Equipment.	07000	30,000
6	Other Assets.	69000	<u>441,834</u>
7	Total.		\$ 2,150,059

*201 - Division of Health –
 Hospital Services Revenue Account
 Special Fund*

Capital Improvement, Renovation and Operations

(WV Code Chapter 16)

Fund 5156 FY 2016 Org 0506

1	Institutional Facilities		
2	Operations.	33500	\$ 56,708,911
3	Medical Services Trust Fund –		
4	Transfer.	51200	<u>27,800,000</u>
5	Total.		\$ 84,508,911

6 The total amount of these appropriations shall be paid from
 7 the hospital services revenue account special fund created by
 8 W.Va. Code §16-1-13, and shall be used for operating expenses
 9 and for improvements in connection with existing facilities.

10 Additional funds have been appropriated in fund 0525, fiscal
 11 year 2016, organization 0506 and fund 5124, fiscal year 2016,
 12 organization 0506, for the operation of the institutional facilities.
 13 The secretary of the department of health and human resources
 14 is authorized to utilize up to ten percent of the funds from the
 15 appropriation for Institutional Facilities Operations to facilitate
 16 cost effective and cost saving services at the community level.

17 Necessary funds from the above appropriation may be used
 18 for medical facilities operations, either in connection with this
 19 fund or in connection with the appropriation designated
 20 Institutional Facilities Operations in the consolidated medical
 21 service fund (fund 0525, organization 0506).

22 From the above appropriation to Institutional Facilities
 23 Operations, together with available funds from the consolidated
 24 medical services fund (fund 0525, appropriation 33500) on July
 25 1, 2015, the sum of \$160,000 shall be transferred to the
 26 department of agriculture – land division – farm operation fund
 27 (1412) as advance payment for the purchase of food products;
 28 actual payments for such purchases shall not be required until
 29 such credits have been completely expended.

*202 - Division of Health –
 Laboratory Services Fund*

(WV Code Chapter 16)

Fund 5163 FY 2016 Org 0506

1	Personal Services and		
2	Employee Benefits..	00100	\$ 912,657

Ch. 15]	APPROPRIATIONS	259
3	Unclassified. 09900	18,114
4	Current Expenses. 13000	850,133
5	Equipment. 07000	<u>30,583</u>
6	Total.	\$ 1,811,487

*203 - Division of Health –
The Health Facility Licensing Account*

(WV Code Chapter 16)

Fund 5172 FY 2016 Org 0506

1	Personal Services and	
2	Employee Benefits. 00100	\$ 605,950
3	Unclassified. 09900	7,113
4	Current Expenses. 13000	<u>98,247</u>
5	Total.	\$ 711,310

*204 - Division of Health –
Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2016 Org 0506

1	Personal Services and	
2	Employee Benefits. 00100	\$ 88,582
3	Unclassified. 09900	18,477
4	Current Expenses. 13000	<u>1,740,699</u>
5	Total.	\$ 1,847,758

*205 - Division of Health –
Lead Abatement Account*

(WV Code Chapter 16)

Fund 5204 FY 2016 Org 0506

1	Personal Services and	
2	Employee Benefits. 00100	\$ 19,100

260	APPROPRIATIONS	[Ch. 15
3	Unclassified. 09900	373
4	Current Expenses. 13000	<u>17,875</u>
5	Total.	\$ 37,348

*206 - Division of Health –
West Virginia Birth-to-Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2016 Org 0506

1	Personal Services and	
2	Employee Benefits.. 00100	\$ 707,545
3	Unclassified. 09900	223,999
4	Current Expenses. 13000	<u>21,468,438</u>
5	Total.	\$ 22,399,982

*207 - Division of Health –
Tobacco Control Special Fund*

(WV Code Chapter 16)

Fund 5218 FY 2016 Org 0506

1	Current Expenses. 13000	\$ 7,579
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*208 - West Virginia Health Care Authority –
Health Care Cost Review Fund*

(WV Code Chapter 16)

Fund 5375 FY 2016 Org 0507

1	Personal Services and	
2	Employee Benefits.. 00100	\$ 3,033,821
3	Hospital Assistance. 02500	600,000
4	Unclassified. 09900	67,000
5	Current Expenses. 13000	2,837,945
6	Repairs and Alterations. 06400	25,000

Ch. 15]	APPROPRIATIONS	261
7	Equipment. 07000	50,000
8	Buildings. 25800	25,000
9	Other Assets..... 69000	<u>100,000</u>
10	Total.....	\$ 6,738,766

11 The above appropriation is to be expended in accordance
12 with and pursuant to the provisions of W.Va. Code §16-29B and
13 from the special revolving fund designated health care cost
14 review fund.

15 The Health Care Authority is authorized to transfer up to
16 \$1,500,000 from fund 5375 to the West Virginia Health
17 Information Network Account (fund 5380) as authorized per
18 W.Va. Code §16-29G-4.

*209 - West Virginia Health Care Authority –
West Virginia Health Information Network Account*

(WV Code Chapter 16)

Fund 5380 FY 2016 Org 0507

1	Personal Services and	
2	Employee Benefits..... 00100	\$ 729,000
3	Unclassified. 09900	20,000
4	Current Expenses. 13000	1,251,000
5	Technology Infrastructure	
6	Network..... 35100	<u>3,500,000</u>
7	Total.....	\$ 5,500,000

*210 - West Virginia Health Care Authority –
Revolving Loan Fund*

(WV Code Chapter 16)

Fund 5382 FY 2016 Org 0507

1	Current Expenses. 13000	\$ 2,000,000
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*211 - Division of Human Services –
Health Care Provider Tax –
Medicaid State Share Fund*

(WV Code Chapter 11)

Fund 5090 FY 2016 Org 0511

1	Medical Services.	18900	\$ 198,381,008
2	Medical Services		
3	Administrative Costs.	78900	<u>418,992</u>
4	Total.		\$ 198,800,000

5 The above appropriation for Medical Services
6 Administrative Costs (fund 5090, appropriation 78900) shall be
7 transferred to a special revenue account in the treasury for use by
8 the department of health and human resources for administrative
9 purposes. The remainder of all moneys deposited in the fund
10 shall be transferred to the West Virginia medical services fund
11 (fund 5084).

*212 - Division of Human Services –
Child Support Enforcement Fund*

(WV Code Chapter 48A)

Fund 5094 FY 2016 Org 0511

1	Personal Services and		
2	Employee Benefits.	00100	\$ 24,809,509
3	Unclassified (R).	09900	380,000
4	Current Expenses (R).	13000	<u>12,810,491</u>
5	Total.		\$ 38,000,000

6 Any unexpended balances remaining in the appropriations
7 for Unclassified (fund 5094, appropriation 09900) and Current
8 Expenses (fund 5094, appropriation 13000) at the close of the

9 fiscal year 2015 are hereby reappropriated for expenditure
10 during the fiscal year 2016.

*213 - Division of Human Services –
Medical Services Trust Fund*

(WV Code Chapter 9)

Fund 5185 FY 2016 Org 0511

1	Medical Services.	18900	\$	55,858,205
2	Medical Services			
3	Administrative Costs.	78900		<u>548,723</u>
4	Total.		\$	56,406,928

5 The above appropriation to Medical Services shall be used
6 to provide state match of Medicaid expenditures as defined and
7 authorized in subsection (c) of W.Va. Code §9-4A-2a.
8 Expenditures from the fund are limited to the following:
9 payment of backlogged billings, funding for services to future
10 federally mandated population groups and payment of the
11 required state match for medicaid disproportionate share
12 payments. The remainder of all moneys deposited in the fund
13 shall be transferred to the division of human services accounts.

*214 - Division of Human Services –
James “Tiger” Morton Catastrophic Illness Fund*

(WV Code Chapter 16)

Fund 5454 FY 2016 Org 0511

1	Personal Services and			
2	Employee Benefits.	00100	\$	89,392
3	Unclassified.	09900		16,031
4	Current Expenses.	13000		<u>1,497,688</u>
5	Total.		\$	1,603,111

*215 - Division of Human Services –
Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2016 Org 0511

1	Current Expenses.	13000	\$	1,077,982
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*216 - Division of Human Services –
West Virginia Works Separate State College Program Fund*

(WV Code Chapter 9)

Fund 5467 FY 2016 Org 0511

1	Current Expenses.	13000	\$	1,065,000
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*217 - Division of Human Services –
West Virginia Works Separate State Two-Parent Program Fund*

(WV Code Chapter 9)

Fund 5468 FY 2016 Org 0511

1	Current Expenses.	13000	\$	3,250,000
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*218 - Division of Human Services –
Marriage Education Fund*

(WV Code Chapter 9)

Fund 5490 FY 2016 Org 0511

1	Personal Services and			
2	Employee Benefits.. . . .	00100	\$	10,000
3	Current Expenses.	13000		25,000
4	Total.		\$	35,000

**DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY**

*219 - Department of Military Affairs and Public Safety –
Office of the Secretary –
Law-Enforcement, Safety and Emergency Worker
Funeral Expense Payment Fund*

(WV Code Chapter 15)

Fund 6003 FY 2016 Org 0601

1	Current Expenses.	13000	\$	32,000
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*220 - State Armory Board –
General Armory Fund*

(WV Code Chapter 15)

Fund 6057 FY 2016 Org 0603

1	Personal Services and			
2	Employee Benefits..	00100	\$	1,643,528
3	Current Expenses.	13000		750,000
4	Repairs and Alterations.	06400		485,652
5	Equipment.	07000		300,000
6	Buildings.	25800		770,820
7	Land.	73000		<u>50,000</u>
8	Total.		\$	4,000,000

9 From the above appropriations, the Adjutant General may
 10 receive and expend funds to conduct operations and activities to
 11 include functions of the Military Authority. The Adjutant
 12 General may transfer funds between appropriations, except no
 13 funds may be transferred to Personal Services and Employee
 14 Benefits (fund 6057, appropriation 00100).

*221 - Division of Homeland Security and
Emergency Management –
West Virginia Interoperable Radio Project*

(WV Code Chapter 24)

Fund 6295 FY 2016 Org 0606

1	Current Expenses.	13000	\$	2,000,000
2	Any unexpended balance remaining in the appropriation for			
3	Unclassified – Total (fund 6295, appropriation 09600) at the			
4	close of fiscal year 2015 is hereby reappropriated for expenditure			
5	during the fiscal year 2016.			

*222 - West Virginia Division of Corrections –
Parolee Supervision Fees*

(WV Code Chapter 62)

Fund 6362 FY 2016 Org 0608

1	Personal Services and			
2	Employee Benefits..	00100	\$	1,013,793
3	Unclassified.	09900		9,804
4	Current Expenses.	13000		758,480
5	Equipment.	07000		30,000
6	Other Assets.	69000		<u>40,129</u>
7	Total.		\$	1,852,206

*223 - West Virginia State Police –
Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2016 Org 0612

1	Personal Services and			
2	Employee Benefits..	00100	\$	1,786,923

Ch. 15]	APPROPRIATIONS	267
3	Current Expenses.	13000 288,211
4	Repairs and Alterations.	06400 4,500
5	Equipment.	07000 350,000
6	Buildings.	25800 534,000
7	Other Assets.	69000 5,000
8	BRIM Premium.	91300 <u>302,432</u>
9	Total.	\$ 3,271,066

10 The total amount of these appropriations shall be paid from
11 the special revenue fund out of fees collected for inspection
12 stickers as provided by law. Per W.Va. §17C-16-5(a) any
13 balance remaining in the fund on the last day of June of each
14 fiscal year, not required for the administration and enforcement
15 of the provisions of this article, shall be transferred to the state
16 road fund.

*224 - West Virginia State Police –
Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2016 Org 0612

1	Current Expenses.	13000 \$ 1,327,000
2	Equipment.	07000 3,491,895
3	BRIM Premium.	91300 <u>154,452</u>
4	Total.	\$ 4,973,347

5 The total amount of these appropriations shall be paid from
6 the special revenue fund out of receipts collected pursuant to
7 W.Va. Code §11-15-9a and 16 and paid into a revolving fund
8 account in the state treasury.

*225 - West Virginia State Police –
Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 2016 Org 0612

1	Buildings.	25800	\$	443,980
2	Land.	73000		1,000
3	BRIM Premium.	91300		<u>77,222</u>
4	Total.		\$	522,202

*226 - West Virginia State Police –
Surplus Transfer Account*

(WV Code Chapter 15)

Fund 6519 FY 2016 Org 0612

1	Current Expenses.	13000	\$	114,063
2	Repairs and Alterations.	06400		10,000
3	Equipment.	07000		157,002
4	Buildings.	25800		40,000
5	Other Assets.	69000		<u>45,000</u>
6	Total.		\$	366,065

*227 - West Virginia State Police –
Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 2016 Org 0612

1	Personal Services and			
2	Employee Benefits.	00100	\$	236,881
3	Current Expenses.	13000		51,443
4	Repairs and Alterations.	06400		500
5	Equipment.	07000		200,500
6	Other Assets.	69000		500
7	BRIM Premium.	91300		<u>18,524</u>
8	Total.		\$	508,348

228 - West Virginia State Police –
Bail Bond Enforcer Account

(WV Code Chapter 15)

Fund 6532 FY 2016 Org 0612

1	Current Expenses.	13000	\$	8,300
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229 - West Virginia State Police –
State Police Academy Post Exchange

(WV Code Chapter 15)

Fund 6544 FY 2016 Org 0612

1	Current Expenses.	13000	\$	160,000
2	Repairs and Alterations.	06400		40,000
3	Total.		\$	200,000

230 - Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2016 Org 0615

1	Personal Services and			
2	Employee Benefits.	00100	\$	1,971,039
3	Debt Service.	04000		9,000,000
4	Current Expenses.	13000		495,852
5	Repairs and Alterations.	06400		4,000
6	Equipment.	07000		1,743
7	Total.		\$	11,472,634

231 - Fire Commission –
Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2016 Org 0619

1	Personal Services and		
2	Employee Benefits..	00100	\$ 2,848,036
3	Unclassified.	09900	3,800
4	Current Expenses.	13000	1,238,550
5	Repairs and Alterations.	06400	54,500
6	Equipment.	07000	50,800
7	Other Assets.	69000	12,000
8	BRIM Premium.	91300	<u>50,000</u>
9	Total.		\$ 4,257,686

*232 - Division of Justice and Community Services –
WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2016 Org 0620

1	Personal Services and		
2	Employee Benefits..	00100	\$ 152,000
3	Unclassified.	09900	750
4	Current Expenses.	13000	1,846,250
5	Repairs and Alterations.	06400	<u>1,000</u>
6	Total.		\$ 2,000,000

*233 - Division of Justice and Community Services –
Court Security Fund*

(WV Code Chapter 51)

Fund 6804 FY 2016 Org 0620

1	Personal Services and		
2	Employee Benefits..	00100	\$ 21,865
3	Current Expenses.	13000	<u>1,478,135</u>
4	Total.		\$ 1,500,000

DEPARTMENT OF REVENUE

234 - Division of Financial Institutions

(WV Code Chapter 31A)

Fund 3041 FY 2016 Org 0303

1	Personal Services and		
2	Employee Benefits..	00100	\$ 2,409,034
3	Unclassified.	09900	32,290
4	Current Expenses.	13000	719,042
5	Repairs and Alterations.	06400	1,000
6	Equipment.	07000	20,000
7	Other Assets.	69000	<u>47,710</u>
8	Total.		\$ 3,229,076

*235 - Office of the Secretary –
Revenue Shortfall Reserve Fund*

(WV Code Chapter 11B)

Fund 7005 FY 2016 Org 0701

1	Medical Services		
2	Trust Fund – Transfer.	51200	\$ *14,792,331

3 The above appropriation for Medical Services Trust Fund –
4 Transfer (appropriation 51200) shall be transferred to the
5 Medical Services Trust Fund (fund 5185).

6 The above appropriation does not affect the provisions of
7 W.Va. Code Chapter 11B-2-20(e).

* **NOTE:** The Governor reduced Item 235, lines 1 and 2, by \$8,136,597, from \$22,928,928 to \$14,792,331. The total does NOT reflect the reductions made by the Governor.

236 - Office of the Secretary –
State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2016 Org 0701

1 Directed Transfer. 70000 \$ 20,000,000

2 The above appropriation for Directed Transfer shall be
3 transferred to the Consolidated Public Retirement Board – West
4 Virginia Public Employees Retirement System Employers
5 Accumulation Fund (fund 2510).

237 - Tax Division –
Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2016 Org 0702

1	Personal Services and		
2	Employee Benefits.. 00100	\$	23,459
3	Current Expenses. 13000		<u>7,717</u>
4	Total.	\$	31,176

238 - Tax Division –
Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2016 Org 0702

1	Personal Services and		
2	Employee Benefits.. 00100	\$	655,203
3	Unclassified. 09900		9,500
4	Current Expenses. 13000		273,297
5	Repairs and Alterations. 06400		7,000

Ch. 15]	APPROPRIATIONS	273
6	Equipment. 07000	<u>5,000</u>
7	Total.	\$ 950,000

*239 - Tax Division –
Wine Tax Administration Fund*

(WV Code Chapter 60)

Fund 7087 FY 2016 Org 0702

1	Personal Services and	
2	Employee Benefits. 00100	\$ 254,162
3	Current Expenses. 13000	<u>5,406</u>
4	Total.	\$ 259,568

*240 - Tax Division –
Reduced Cigarette Ignition Propensity
Standard and Fire Prevention Act Fund*

(WV Code Chapter 47)

Fund 7092 FY 2016 Org 0702

1	Current Expenses. 13000	\$ 35,000
2	Equipment. 07000	<u>15,000</u>
3	Total.	\$ 50,000

*241 - Tax Division –
Local Sales Tax and Excise Tax
Administration Fund*

(WV Code Chapter 11)

Fund 7099 FY 2016 Org 0702

1	Personal Services and	
2	Employee Benefits. 00100	\$ 908,968
3	Unclassified. 09900	10,000

274	APPROPRIATIONS	[Ch. 15
4	Current Expenses. 13000	84,563
5	Repairs and Alterations. 06400	1,000
6	Equipment. 07000	<u>5,000</u>
7	Total.	\$ 1,009,531

*242 - State Budget Office –
Public Employees Insurance Reserve Fund*

(WV Code Chapter 11B)

Fund 7400 FY 2016 Org 0703

1	Public Employees Insurance	
2	Reserve Fund – Transfer. 90300	\$ 6,800,000

3 The above appropriation for Public Employees Insurance
4 Reserve Fund – Transfer shall be transferred to the Medical
5 Services Trust Fund (fund 5185, org 0511) for expenditure.

*243 - Insurance Commissioner –
Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2016 Org 0704

1	Personal Services and	
2	Employee Benefits. 00100	\$ 718,525
3	Current Expenses. 13000	1,359,793
4	Repairs and Alterations. 06400	3,000
5	Equipment. 07000	81,374
6	Buildings. 25800	8,289
7	Other Assets. 69000	<u>11,426</u>
8	Total.	\$ 2,182,407

*244 - Insurance Commissioner –
Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2016 Org 0704

1	Personal Services and		
2	Employee Benefits..... 00100	\$	550,184
3	Current Expenses..... 13000		204,196
4	Repairs and Alterations..... 06400		5,000
5	Equipment..... 07000		34,225
6	Buildings..... 25800		4,865
7	Other Assets..... 69000		<u>19,460</u>
8	Total.....	\$	817,930

*245 - Insurance Commissioner –
Insurance Commission Fund*

(WV Code Chapter 33)

Fund 7152 FY 2016 Org 0704

1	Personal Services and		
2	Employee Benefits..... 00100	\$	24,951,887
3	Current Expenses..... 13000		8,547,598
4	Repairs and Alterations..... 06400		68,614
5	Equipment..... 07000		1,906,240
6	Buildings..... 25800		25,000
7	Other Assets..... 69000		<u>500,661</u>
8	Total.....	\$	36,000,000

*246 - Insurance Commissioner –
Workers' Compensation Old Fund*

(WV Code Chapter 23)

Fund 7162 FY 2016 Org 0704

1	Employee Benefits..... 01000	\$	100,000
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276	APPROPRIATIONS	[Ch. 15
2	Current Expenses.	13000 <u>549,900,000</u>
3	Total.	\$ 550,000,000

*247 - Insurance Commissioner –
Workers' Compensation Uninsured Employers' Fund*

(WV Code Chapter 23)

Fund 7163 FY 2016 Org 0704

1	Current Expenses.	13000 \$ 27,000,000
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*248 - Insurance Commissioner –
Self-Insured Employer Guaranty Risk Pool*

(WV Code Chapter 23)

Fund 7164 FY 2016 Org 0704

1	Current Expenses.	13000 \$ 5,000,000
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*249 - Insurance Commissioner –
Self-Insured Employer Security Risk Pool*

(WV Code Chapter 23)

Fund 7165 FY 2016 Org 0704

1	Current Expenses.	13000 \$ 10,000,000
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*250 - Lottery Commission –
Revenue Center Construction Fund*

(WV Code Chapter 29)

Fund 7209 FY 2016 Org 0705

1	Buildings.	25800 \$ 500,000
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251 - *Municipal Bond Commission*

(WV Code Chapter 13)

Fund 7253 FY 2016 Org 0706

1	Personal Services and		
2	Employee Benefits..	00100	\$ 246,489
3	Current Expenses.	13000	105,878
4	Equipment.	07000	<u>100</u>
5	Total.		\$ 352,467

252 - *Racing Commission – Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2016 Org 0707

1	Medical Expenses – Total.	24500	\$ 57,000
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2 The total amount of this appropriation shall be paid from the
3 special revenue fund out of collections of license fees and fines
4 as provided by law.

5 No expenditures shall be made from this fund except for
6 hospitalization, medical care and/or funeral expenses for persons
7 contributing to this fund.

253 - *Racing Commission – Administration and Promotion Account*

(WV Code Chapter 19)

Fund 7304 FY 2016 Org 0707

1	Personal Services and		
2	Employee Benefits..	00100	\$ 256,665

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3	Current Expenses..... 13000	93,335
4	Other Assets..... 69000	<u>5,000</u>
5	Total.....	\$ 355,000

*254 - Racing Commission –
General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2016 Org 0707

1	Personal Services and	
2	Employee Benefits..... 00100	\$ 2,271,339
3	Current Expenses..... 13000	566,248
4	Repairs and Alterations. 06400	7,000
5	Other Assets..... 69000	<u>50,000</u>
6	Total.....	\$ 2,894,587

*255 - Racing Commission –
Administration, Promotion, Education, Capital Improvement
and Greyhound Adoption Programs
to include Spaying and Neutering Account*

(WV Code Chapter 19)

Fund 7307 FY 2016 Org 0707

1	Personal Services and	
2	Employee Benefits..... 00100	\$ 864,474
3	Current Expenses..... 13000	214,406
4	Other Assets..... 69000	<u>200,000</u>
5	Total.....	\$ 1,278,880

*256 - Alcohol Beverage Control Administration –
Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2016 Org 0708

1	Personal Services and		
2	Employee Benefits..	00100	\$ 122,339
3	Current Expenses.	13000	69,186
4	Repairs and Alterations.	06400	7,263
5	Equipment.	07000	10,000
6	Buildings.	25800	100,000
7	Other Assets.	69000	100
8	Total.		\$ 308,888

9 To the extent permitted by law, four classified exempt
 10 positions shall be provided from Personal Services and
 11 Employee Benefits appropriation for field auditors.

257 - Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2016 Org 0708

1	Personal Services and		
2	Employee Benefits..	00100	\$ 5,413,237
3	Current Expenses.	13000	2,897,577
4	Repairs and Alterations.	06400	84,000
5	Equipment.	07000	108,000
6	Buildings.	25800	100
7	Purchase of Supplies for Resale.	41900	71,000,000
8	Transfer Liquor Profits and Taxes.	42500	16,070,724
9	Other Assets.	69000	100
10	Land.	73000	100
11	Total.		\$ 95,573,838

12 The total amount of these appropriations shall be paid from
 13 a special revenue fund out of liquor revenues and any other
 14 revenues available.

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15 The above appropriations include the salary of the
16 commissioner and the salaries, expenses and equipment of
17 administrative offices, warehouses and inspectors.

18 The above appropriations include funding for the
19 Tobacco/Alcohol Education Program.

20 There is hereby appropriated from liquor revenues, in
21 addition to the above appropriations as needed, the necessary
22 amount for the purchase of liquor as provided by law and the
23 remittance of profits and taxes to the General Revenue Fund.

DEPARTMENT OF TRANSPORTATION

*258 - Division of Motor Vehicles –
Dealer Recovery Fund*

(WV Code Chapter 17)

Fund 8220 FY 2016 Org 0802

1 Current Expenses. 13000 \$ 189,000

*259 - Division of Motor Vehicles –
Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

Fund 8223 FY 2016 Org 0802

1	Personal Services and		
2	Employee Benefits.. 00100	\$	2,852,799
3	Current Expenses. 13000		4,896,057
4	Equipment. 00700		75,000
5	Repairs and Alterations. 06400		16,000
6	Other Assets. 69000		10,000
7	BRIM Premium. 91300		<u>61,655</u>
8	Total.	\$	7,911,511

*260 - Division of Highways –
A. James Manchin Fund*

(WV Code Chapter 22)

Fund 8319 FY 2016 Org 0803

1	Current Expenses.	13000	\$	1,650,000
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*261 - Public Port Authority –
Special Railroad and Intermodal Enhancement Fund*

(WV Code Chapter 17)

Fund 8254 FY 2016 Org 0806

1	Current Expenses.	13000	\$	10,000
2	Other Assets.	69000		7,990,000
3	Total.		\$	8,000,000

DEPARTMENT OF VETERANS' ASSISTANCE

262 - Veterans' Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703 FY 2016 Org 0613

1	Personal Services and			
2	Employee Benefits.	00100	\$	94,210
3	Current Expenses.	13000		2,255,997
4	Repairs and Alterations.	06400		10,000
5	Equipment.	07000		10,000
6	Other Assets.	69000		10,000
7	Total.		\$	2,380,207

*263 - Department of Veterans' Assistance –
WV Veterans' Home –*

Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754 FY 2016 Org 0618

1	Current Expenses.	13000	\$	700,000
2	Repairs and Alterations.	06400		<u>50,000</u>
3	Total.		\$	750,000

BUREAU OF SENIOR SERVICES*264 - Bureau of Senior Services –
Community Based Service Fund*

(WV Code Chapter 22)

Fund 5409 FY 2016 Org 0508

1	Personal Services and			
2	Employee Benefits.	00100	\$	151,290
3	Current Expenses.	13000		<u>10,348,710</u>
4	Total.		\$	10,500,000

5 The total amount of these appropriations are funded from
6 annual table game license fees to enable the aged and disabled
7 citizens of West Virginia to stay in their homes through the
8 provision of home and community-based services.

HIGHER EDUCATION POLICY COMMISSION*265 - Higher Education Policy Commission –
System – Registration Fee Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4902 FY 2016 Org 0442

1 General Capital Expenditures. . . . 30600 \$ 500,000

2 The total amount of this appropriation shall be paid from the
3 special capital improvements fund created in W.Va. Code §18B-
4 10-8. Projects are to be paid on a cash basis and made available
5 on July 1 of each year and may be transferred to special revenue
6 funds for capital improvement projects at the institutions.

*266 - Higher Education Policy Commission –
System – Tuition Fee Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2016 Org 0442

1	Debt Service.....	04000	\$ 28,901,910
2	General Capital Expenditures. . . .	30600	13,000,000
3	Facilities Planning and		
4	Administration.....	38600	<u>421,082</u>
5	Total.....		\$ 42,322,992

6 The total amount of these appropriations shall be paid from
7 the special capital improvement fund created in W.Va. Code
8 §18B-10-8. Projects are to be paid on a cash basis and made
9 available on July 1.

10 The above appropriations, except for debt service, may be
11 transferred to special revenue funds for capital improvement
12 projects at the institutions.

267 - Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2016 Org 0442

1 Any unexpended balance remaining in the appropriation for
2 Capital Outlay (fund 4906, appropriation 51100) at the close of
3 the fiscal year 2015 is hereby reappropriated for expenditure
4 during the fiscal year 2016.

5 The appropriation shall be paid from available unexpended
6 cash balances and interest earnings accruing to the fund. The
7 appropriation shall be expended at the discretion of the Higher
8 Education Policy Commission and the funds may be allocated to
9 any institution within the system.

10 The total amount of this appropriation shall be paid from the
11 unexpended proceeds of revenue bonds previously issued
12 pursuant to W.Va. Code §18-12B-8, which have since been
13 refunded.

*268 - Community and Technical College
Capital Improvement Fund*

(WV Code Chapter 18B)

Fund 4908 FY 2016 Org 0442

1 Any unexpended balance remaining in the appropriation for
2 Capital Improvements – Total (fund 4908, appropriation 95800)
3 at the close of fiscal year 2015 is hereby reappropriated for
4 expenditure during the fiscal year 2016.

5 The total amount of this appropriation shall be paid from the
6 sale of the 2009 Series A Community and Technical College
7 Capital Improvement Revenue Bonds and anticipated interest
8 earnings.

*269 - West Virginia University –
West Virginia University Health Sciences Center*

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2016 Org 0463

1	Personal Services and		
2	Employee Benefits..... 00100	\$	10,274,340
3	Current Expenses..... 13000		4,524,300
4	Repairs and Alterations..... 06400		425,000
5	Equipment..... 07000		512,000
6	Buildings..... 25800		150,000
7	Other Assets..... 69000		<u>50,000</u>
8	Total.....	\$	15,935,640

MISCELLANEOUS BOARDS AND COMMISSIONS

*270 - Board of Barbers and Cosmetologists –
Barbers and Beauticians Special Fund*

(WV Code Chapters 16 and 30)

Fund 5425 FY 2016 Org 0505

1	Personal Services and		
2	Employee Benefits..... 00100	\$	504,497
3	Current Expenses..... 13000		<u>239,969</u>
4	Total.....	\$	744,466

5 The total amount of these appropriations shall be paid from
6 a special revenue fund out of collections made by the board of
7 barbers and cosmetologists as provided by law.

*271 - Hospital Finance Authority –
Hospital Finance Authority Fund*

(WV Code Chapter 16)

Fund 5475 FY 2016 Org 0509

1	Personal Services and		
2	Employee Benefits.. 00100	\$	72,682
3	Unclassified... 09900		1,450
4	Current Expenses. 13000		<u>71,039</u>
5	Total..	\$	145,171

6 The total amount of these appropriations shall be paid from
7 the special revenue fund out of fees and collections as provided
8 by Article 29A, Chapter 16 of the Code.

*272 - WV State Board of Examiners for
Licensed Practical Nurses –
Licensed Practical Nurses*

(WV Code Chapter 30)

Fund 8517 FY 2016 Org 0906

1	Personal Services and		
2	Employee Benefits.. 00100	\$	427,915
3	Current Expenses. 13000		<u>55,542</u>
4	Total..	\$	483,457

*273 - WV Board of Examiners for
Registered Professional Nurses –
Registered Professional Nurses*

(WV Code Chapter 30)

Fund 8520 FY 2016 Org 0907

1	Personal Services and		
2	Employee Benefits.. 00100	\$	1,082,344
3	Current Expenses. 13000		295,214
4	Repairs and Alterations. 06400		3,000
5	Equipment. 07000		19,500
6	Other Assets. 69000		<u>4,500</u>
7	Total..	\$	1,404,558

274 - Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2016 Org 0926

1	Personal Services and		
2	Employee Benefits..	00100	\$ 11,807,314
3	Unclassified.	09900	147,643
4	Current Expenses.	13000	2,594,398
5	Repairs and Alterations.	06400	55,000
6	Equipment.	07000	160,000
7	Buildings.	25800	4,500,000
8	PSC Weight Enforcement.	34500	4,405,884
9	Debt Payment/Capital Outlay.	52000	350,000
10	BRIM Premium.	91300	<u>114,609</u>
11	Total.		\$ 24,134,848

12 The total amount of these appropriations shall be paid from
13 a special revenue fund out of collections for special license fees
14 from public service corporations as provided by law.

15 The Public Service Commission is authorized to transfer up
16 to \$500,000 from this fund to meet the expected deficiencies in
17 the Motor Carrier Division (fund 8625, org 0926) due to the
18 amendment and reenactment of W.Va. Code §24A-3-1 by
19 Enrolled House Bill Number 2715, Regular Session, 1997.

275 - Public Service Commission –

Gas Pipeline Division –

Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2016 Org 0926

1	Personal Services and		
2	Employee Benefits..	00100	\$ 284,198

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3	Unclassified.	09900		3,851
4	Current Expenses.	13000		93,115
5	Repairs and Alterations.	06400		4,000
6	Total.		\$	385,164

7 The total amount of these appropriations shall be paid from
8 a special revenue fund out of receipts collected for or by the
9 public service commission pursuant to and in the exercise of
10 regulatory authority over pipeline companies as provided by law.

*276 - Public Service Commission –
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8625 FY 2016 Org 0926

1	Personal Services and			
2	Employee Benefits.	00100	\$	2,243,526
3	Unclassified.	09900		29,233
4	Current Expenses.	13000		577,557
5	Repairs and Alterations.	06400		23,000
6	Equipment.	07000		50,000
7	Total.		\$	2,923,316

8 The total amount of these appropriations shall be paid from
9 a special revenue fund out of receipts collected for or by the
10 public service commission pursuant to and in the exercise of
11 regulatory authority over motor carriers as provided by law.

*277 - Public Service Commission –
Consumer Advocate Fund*

(WV Code Chapter 24)

Fund 8627 FY 2016 Org 0926

1	Personal Services and			
2	Employee Benefits.	00100	\$	743,372

*280 - WV Board of Respiratory Care –
Board of Respiratory Care Fund*

(WV Code Chapter 30)

Fund 8676 FY 2016 Org 0935

1	Personal Services and		
2	Employee Benefits..... 00100	\$	78,880
3	Current Expenses..... 13000		51,750
4	Repairs and Alterations..... 06400		400
5	Total.....	\$	131,030

*281 - WV Board of Licensed Dietitians –
Dietitians Licensure Board Fund*

(WV Code Chapter 30)

Fund 8680 FY 2016 Org 0936

1	Personal Services and		
2	Employee Benefits..... 00100	\$	8,648
3	Current Expenses..... 13000		14,352
4	Total.....	\$	23,000

*282 - Massage Therapy Licensure Board –
Massage Therapist Board Fund*

(WV Code Chapter 30)

Fund 8671 FY 2016 Org 0938

1	Personal Services and		
2	Employee Benefits..... 00100	\$	102,398
3	Current Expenses..... 13000		24,668
4	Total.....	\$	127,066

*283 - Board of Medicine –
Medical Licensing Board Fund*

(WV Code Chapter 30)

Fund 9070 FY 2016 Org 0945

1	Personal Services and		
2	Employee Benefits..	00100	\$ 997,752
3	Current Expenses.	13000	813,789
4	Repairs and Alterations.	06400	<u>20,000</u>
5	Total..		\$ 1,831,541

*284 - West Virginia Enterprise Resource Planning Board
Enterprise Resource Planning System Fund*

(WV Code Chapter 12)

Fund 9080 FY 2016 Org 0947

1	Personal Services and		
2	Employee Benefits..	00100	\$ 6,713,066
3	Unclassified.	09900	430,000
4	Current Expenses.	13000	42,306,934
5	Repairs and Alterations.	06400	100,000
6	Equipment.	07000	250,000
7	Buildings.	25800	100,000
8	Other Assets..	69000	<u>100,000</u>
9	Total..		\$ 50,000,000

*285 - Board of Treasury Investments –
Board of Treasury Investments Fee Fund*

(WV Code Chapter 12)

Fund 9152 FY 2016 Org 0950

1	Personal Services and		
2	Employee Benefits..	00100	\$ 711,966

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3	Unclassified.	09900	12,667
4	Current Expenses.	13000	482,574
5	BRIM Premium.	91300	59,500
6	Fees of Custodians, Fund Advisors		
7	and Fund Managers.	93800	<u>3,500,000</u>
8	Total.		\$ 4,766,707

9 There is hereby appropriated from this fund, in addition to
10 the above appropriation if needed, an amount of funds necessary
11 for the Board of Treasury Investments to pay the fees and
12 expenses of custodians, fund advisors and fund managers for the
13 Consolidated fund of the State as provided in Article 6C,
14 Chapter 12 of the Code.

15 The total amount of these appropriations shall be paid from
16 the special revenue fund out of fees and collections as provided
17 by law.

18 Total TITLE II, Section 3 — Other Funds
19 (Including claims against the state). . . \$ 1,805,760.851

1 **Sec. 4. Appropriations from lottery net profits.** — Net
2 profits of the lottery are to be deposited by the director of the
3 lottery to the following accounts in the amounts indicated. The
4 director of the lottery shall prorate each deposit of net profits in
5 the proportion the appropriation for each account bears to the
6 total of the appropriations for all accounts.

7 After first satisfying the requirements for Fund 2252, Fund
8 3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the
9 director of the lottery shall make available from the remaining
10 net profits of the lottery any amounts needed to pay debt service
11 for which an appropriation is made for Fund 9065, Fund 4297,
12 Fund 9067, and Fund 3514 and is authorized to transfer any such
13 amounts to Fund 9065, Fund 4297, Fund 9067, and Fund 3514
14 for that purpose. Upon receipt of reimbursement of amounts so

15 transferred, the director of the lottery shall deposit the
16 reimbursement amounts to the following accounts as required by
17 this section.

*286 - Education, Arts, Sciences and Tourism –
Debt Service Fund*

(WV Code Chapter 5)

Fund 2252 FY 2016 Org 0211

	Appro- priation	Lottery Funds
1 Debt Service – Total.	31000	\$ 10,000,000

*287 - West Virginia Development Office –
Division of Tourism*

(WV Code Chapter 5B)

Fund 3067 FY 2016 Org 0304

1 Tourism – Telemarketing Center... 46300	\$	82,080
2 WV Film Office. 49800		340,434
3 Tourism – Advertising (R)... 61800		3,571,419
4 Tourism – Operations (R). 66200		<u>4,006,373</u>
5 Total.	\$	8,000,306

6 Any unexpended balances remaining in the appropriations
7 for Tourism – Advertising (fund 3067, appropriation 61800), and
8 Tourism – Operations (fund 3067, appropriation 66200) at the
9 close of the fiscal year 2015 are hereby reappropriated for
10 expenditure during the fiscal year 2016.

288 - Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2016 Org 0310

1	Personal Services and		
2	Employee Benefits..	00100	\$ 2,133,913
3	Current Expenses.	13000	47,127
4	Pricketts Fort State Park..	32400	111,000
5	Non-Game Wildlife (R)..	52700	389,234
6	State Parks and Recreation		
7	Advertising (R).	61900	<u>507,578</u>
8	Total..		\$ 3,188,852

9 Any unexpended balances remaining in the appropriations
10 for Unclassified (fund 3267, appropriation 09900), Capital
11 Outlay – Parks (fund 3267, appropriation 28800), Non-Game
12 Wildlife (fund 3267, appropriation 52700), and State Parks and
13 Recreation Advertising (fund 3267, appropriation 61900) at the
14 close of the fiscal year 2015 are hereby reappropriated for
15 expenditure during the fiscal year 2016.

289 - State Board of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2016 Org 0402

1	FBI Checks..	37200	\$ 108,031
2	Vocational Education		
3	Equipment Replacement.	39300	800,000
4	Assessment Program (R).	39600	2,935,751
5	21st Century Technology		
6	Infrastructure Network Tools		
7	and Support (R)..	93300	<u>14,108,744</u>
8	Total..		\$ 17,952,526

9 Any unexpended balances remaining in the appropriations
10 for Unclassified (fund 3951, appropriation 09900), Current
11 Expenses (fund 3951, appropriation 13000), Assessment

12 Program (fund 3951, appropriation 39600), and 21st Century
 13 Technology Infrastructure Network Tools and Support (fund
 14 3951, appropriation 93300) at the close of the fiscal year 2015
 15 are hereby reappropriated for expenditure during the fiscal year
 16 2016.

*290 - State Department of Education –
 School Building Authority –
 Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2016 Org 0402

1	Debt Service – Total.	31000	\$	7,507,700
2	Directed Transfer.	70000		<u>10,492,300</u>
3	Total.		\$	18,000,000

4 The School Building Authority shall have the authority to
 5 transfer between the above appropriations in accordance with
 6 W.Va. Code §29-22-18.

*291 - Department of Education and the Arts –
 Office of the Secretary –
 Control Account –
 Lottery Education Fund*

(WV Code Chapter 5F)

Fund 3508 FY 2016 Org 0431

1	Unclassified (R).	09900	\$	15,881
2	Current Expenses.	13000		104,119
3	Commission for National and			
4	Community Service.	19300		350,341
5	Governor’s Honors Academy (R). .	47800		400,000
6	Arts Programs (R).	50000		81,165

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7	College Readiness.	57900 154,906
8	Statewide STEM 21 st	
9	Century Academy.	89700 130,000
10	Literacy Project (R).	89900 <u>350,000</u>
11	Total.	\$ 1,586,412

12 Any unexpended balances remaining in the appropriations
13 for Unclassified (fund 3508, appropriation 09900), Governor’s
14 Honors Academy (fund 3508, appropriation 47800), Arts
15 Programs (fund 3508, appropriation 50000), and Literacy Project
16 (fund 3508, appropriation 89900) at the close of fiscal year 2015
17 are hereby reappropriated for expenditure during the fiscal year
18 2016.

*292 - Division of Culture and History –
Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2016 Org 0432

1	Huntington Symphony.	02700 \$ 82,025
2	Preservation West Virginia (R).	09200 652,799
3	Fairs and Festivals (R).	12200 1,853,663
4	Archeological Curation/Capital	
5	Improvements (R).	24600 41,668
6	Historic Preservation Grants (R).	31100 368,368
7	West Virginia Public Theater.	31200 166,693
8	George Tyler Moore Center for the	
9	Study of the Civil War.	39700 51,932
10	Greenbrier Valley Theater.	42300 138,254
11	Theater Arts of West Virginia.	46400 125,000
12	Marshall Artists Series.	51800 50,008
13	Grants for Competitive	
14	Arts Program (R).	62400 731,000
15	West Virginia State Fair.	65700 43,391

16	Save the Music.....	68000	30,000
17	Contemporary American		
18	Theater Festival.....	81100	79,558
19	Independence Hall.	81200	37,885
20	Mountain State Forest Festival. ...	86400	53,038
21	WV Symphony.....	90700	82,025
22	Wheeling Symphony.	90800	82,025
23	Appalachian Children's Chorus....	91600	<u>75,770</u>
24	Total.....		\$ 4,745,102

25 Any unexpended balances remaining in the appropriations
26 for Preservation West Virginia (fund 3534, appropriation
27 09200), Fairs and Festivals (fund 3534, appropriation 12200),
28 Archeological Curation/Capital Improvements (fund 3534,
29 appropriation 24600), Historic Preservation Grants (fund 3534,
30 appropriation 31100), Grants for Competitive Arts Program
31 (fund 3534, appropriation 62400), and Project ACCESS (fund
32 3534, appropriation 86500) at the close of the fiscal year 2015
33 are hereby reappropriated for expenditure during the fiscal year
34 2016.

35 From the above appropriation for Preservation West Virginia
36 (fund 3534, appropriation 09200) funding shall be provided to
37 the African-American Heritage Family Tree Museum (Fayette)
38 \$3,713, Aracoma Story (Logan) \$41,254, Arts Monongahela
39 (Monongalia) \$16,502, Barbour County Arts and Humanities
40 Council \$1,238, Beckley Main Street (Raleigh) \$4,125, Buffalo
41 Creek Memorial (Logan) \$4,125, Carnegie Hall (Greenbrier)
42 \$65,138, Ceredo Historical Society (Wayne) \$1,650, Ceredo
43 Kenova Railroad Museum (Wayne) \$1,650, Ceredo Museum
44 (Wayne) \$1,000, Children's Theatre of Charleston (Kanawha)
45 \$4,343, Chuck Mathena Center (Mercer) \$86,850, Collis P.
46 Huntington Railroad Historical Society (Cabell) \$8,251, Country
47 Music Hall of Fame and Museum (Marion) \$5,776, First Stage
48 Children's Theater Company \$1,650, Flannigan Murrell House
49 (Summers) \$8,251, Fort Ashby Fort (Mineral) \$1,238, Fort New

50 Salem (Harrison) \$3,053, Fort Randolph (Mason) \$4,125,
51 General Adam Stephen Memorial Foundation (Berkeley)
52 \$15,286, Grafton Mother's Day Shrine Committee (Taylor)
53 \$7,013, Hardy County Tour and Crafts Association \$16,502,
54 Heritage Farm Museum & Village (Cabell) \$41,254, Historic
55 Fayette Theater (Fayette) \$4,538, Historic Middleway
56 Conservancy (Jefferson) \$825, Jefferson County Black History
57 Preservation Society \$4,125, Jefferson County Historical
58 Landmark Commission \$6,601, Maddie Carroll House (Cabell)
59 \$6,188, Marshall County Historical Society \$7,013, McCoy
60 Theater (Hardy) \$16,502, Morgantown Theater Company
61 (Monongalia) \$16,502, Mountaineer Boys' State (Lewis) \$8,251,
62 Nicholas Old Main Foundation (Nicholas) \$1,650, Norman
63 Dillon Farm Museum (Berkeley) \$8,251, Old Opera House
64 Theater Company (Jefferson) \$12,376, Parkersburg Arts Center
65 (Wood) \$16,502, Pocahontas Historic Opera House \$4,950,
66 Raleigh County All Wars Museum \$8,251, Rhododendron Girl's
67 State (Ohio) \$8,251, Roane County 4-H and FFA Youth
68 Livestock Program \$4,125, Scottish Heritage Society/N. Central
69 WV (Harrison) \$4,125, Society for the Preservation of McGrew
70 House (Preston) \$2,888, Southern West Virginia Veterans'
71 Museum \$3,713, Summers County Historic Landmark
72 Commission \$4,125, Those Who Served War Museum (Mercer)
73 \$3,300, Three Rivers Avian Center (Summers) \$12,376, Tug
74 Valley Arts Council (Mingo) \$4,125, Tug Valley Chamber of
75 Commerce Coal House (Mingo) \$1,650, Tunnelton Historical
76 Society (Preston) \$1,650, Veterans Committee for Civic
77 Improvement of Huntington (Wayne) \$4,125, West Virginia
78 Museum of Glass (Lewis) \$4,125, West Virginia Music Hall of
79 Fame (Kanawha) \$28,878, YMCA Camp Horseshoe (Tucker)
80 \$82,508, Youth Museum of Southern West Virginia (Raleigh)
81 \$9,901, Z.D. Ramsdell House (Wayne) \$1,000.

82 From the above appropriation for Fairs and Festivals (fund
83 3534, appropriation 12200) funding shall be provided to the
84 African-American Cultural Heritage Festival (Jefferson) \$4,125,

85 Alderson 4th of July Celebration (Greenbrier) \$4,125, Allegheny
86 Echo (Pocahontas) \$6,189, Alpine Festival/Leaf Peepers Festival
87 (Tucker) \$9,282, American Civil War (Grant) \$4,343, American
88 Legion Post 8 Veterans Day Parade (McDowell) \$1,737, Angus
89 Beef and Cattle Show (Lewis) \$1,238, Annual Birch River Days
90 (Nicholas) \$1,800, Annual Don Redman Heritage Concert &
91 Awards (Jefferson) \$1,303, Annual Ruddle Park Jamboree
92 (Pendleton) \$6,514, Antique Market Fair (Lewis) \$1,650, Apollo
93 Theater-Summer Program (Berkeley) \$1,650, Appalachian
94 Autumn Fest (Gilmer) \$3,325, Apple Butter Festival (Morgan)
95 \$4,950, Arkansaw Homemaker's Heritage Weekend (Hardy)
96 \$2,888, Armed Forces Day-South Charleston (Kanawha) \$2,475,
97 Arthurdale Heritage New Deal Festival (Preston) \$4,125, Athens
98 Town Fair (Mercer) \$1,650, Augusta Fair (Randolph) \$4,125,
99 Autumn Harvest Fest (Monroe) \$1,900, Barbour County Fair
100 \$20,627, Barboursville Octoberfest (Cabell) \$4,125, Bass
101 Festival (Pleasants) \$1,527, Battelle District Fair (Monongalia)
102 \$4,125, Battle of Dry Creek (Greenbrier) \$1,238, Battle of Point
103 Pleasant Memorial Committee (Mason) \$4,125, Belle Town Fair
104 (Kanawha) \$3,713, Belleville Homecoming (Wood) \$16,502,
105 Bergoo Down Home Days (Webster) \$2,063, Berkeley County
106 Youth Fair \$15,264, Black Bear 4K Mountain Bike Race
107 (Kanawha) \$950, Black Heritage Festival (Harrison) \$4,950,
108 Black Walnut Festival (Roane) \$8,251, Blast from the Past
109 (Upshur) \$2,000, Blue-Gray Reunion (Barbour) \$2,888, Boone
110 County Fair \$8,251, Boone County Labor Day Celebration
111 \$3,300, Bradshaw Fall Festival (McDowell) \$1,650,
112 Brandonville Heritage Day (Preston) \$1,455, Braxton County
113 Fair \$9,489, Braxton County Monster Fest / West Virginia
114 Autumn Festival \$2,063, Brooke County Fair \$2,888, Bruceton
115 Mills Good Neighbor Days (Preston) \$1,650, Buckwheat
116 Festival (Preston) \$7,014, Buffalo 4th of July Celebration
117 (Putnam) \$475, Buffalo October Fest (Putnam) \$4,500,
118 Burlington Apple Harvest Festival (Mineral) \$24,752,
119 Burlington Pumpkin Harvest Festival (Raleigh) \$4,125,

120 Burnsville Harvest Festival (Braxton) \$1,954, Cabell County
121 Fair \$8,251, Calhoun County Wood Festival \$1,650, Campbell's
122 Creek Community Fair (Kanawha) \$2,063, Cape Coalwood
123 Festival Association (McDowell) \$2,063, Capon Bridge
124 Founders Day Festival (Hampshire) \$1,650, Capon Springs
125 Ruritan 4th of July (Hampshire) \$950, Cass Homecoming
126 (Pocahontas) \$1,650, Cedarville Town Festival (Gilmer) \$950,
127 Celebration in the Park (Wood) \$3,300, Celebration of America
128 (Monongalia) \$4,950, Ceredo Freedom Festival (Wayne) \$973,
129 Chapmanville Apple Butter Festival (Logan) \$950,
130 Chapmanville Fire Department 4th of July (Logan) \$2,475,
131 Charles Town Christmas Festival (Jefferson) \$4,125, Charles
132 Town Heritage Festival (Jefferson) \$4,125, Charlie West Blues
133 Festival (Kanawha) \$8,251, Cherry River Festival (Nicholas)
134 \$5,363, Chester Fireworks (Hancock) \$1,238, Chester 4th of July
135 Festivities (Hancock) \$4,125, Chief Logan State Park-Civil War
136 Celebration (Logan) \$6,601, Chilifest West Virginia State Chili
137 Championship (Cabell) \$2,171, Christmas In Our Town
138 (Marion) \$4,343, Christmas in Shepherdstown (Jefferson)
139 \$3,300, Christmas in the Park (Brooke) \$4,125, Christmas in the
140 Park (Logan) \$20,627, City of Dunbar Critter Dinner (Kanawha)
141 \$8,251, City of New Martinsville Festival of Memories (Wetzel)
142 \$9,076, Clay County Golden Delicious Apple Festival \$5,776,
143 Coal Field Jamboree (Logan) \$28,878, Coalton Days Fair
144 (Randolph) \$5,776, Country Roads Festival (Fayette) \$1,650,
145 Cowen Railroad Festival (Webster) \$2,888, Craigsville Fall
146 Festival (Nicholas) \$2,888, Culturefest World Music & Arts
147 Festival (Mercer) \$6,514, Delbarton Homecoming (Mingo)
148 \$2,888, Doddridge County Fair \$5,776, Durbin Days
149 (Pocahontas) \$4,125, Eastern Kanawha Valley Homecoming
150 Festival (Kanawha) \$2,171, Elbert/Filbert Reunion Festival
151 (McDowell) \$1,238, Elizabethtown Festival (Marshall) \$4,125,
152 Elkins Randolph County 4th of July Car Show (Randolph)
153 \$1,650, Fairview 4th of July Celebration (Marion) \$950, Farm
154 Safety Day (Preston) \$1,650, Farmer Day Festival (Monroe)

155 \$1,737, Farmers' Day Parade (Wyoming) \$1,000, FestivALL
156 Charleston (Kanawha) \$16,502, Fiber Festival (Preston) \$1,500,
157 Flatwoods Days (Braxton) \$973, Flemington Day Fair and
158 Festival (Taylor) \$2,888, Follansbee Community Days (Brooke)
159 \$6,807, Fort Gay Mountain Heritage Days (Wayne) \$4,125, Fort
160 Henry Days (Ohio) \$4,373, Fort Henry Living History (Ohio)
161 \$2,171, Fort New Salem Spirit of Christmas Festival (Harrison)
162 \$3,378, Frankford Autumnfest (Greenbrier) \$4,125, Franklin
163 Fishing Derby (Pendleton) \$6,189, Franklin Firemen Carnival
164 (Pendleton) \$4,125, Freshwater Folk Festival (Greenbrier)
165 \$4,125, Friends Auxiliary of W.R. Sharpe Hospital (Lewis)
166 \$4,125, Frontier Days (Harrison) \$2,475, Frontier Fest/Canaan
167 Valley (Taylor) \$4,125, Fund for the Arts-Wine & All that Jazz
168 Festival (Kanawha) \$2,063, Gassaway Days Celebration
169 (Braxton) \$4,125, Gilbert Elementary Fall Blast (Mingo) \$2,171,
170 Gilbert Kiwanis Harvest Festival (Mingo) \$3,300, Gilbert Spring
171 Fling (Mingo) \$4,125, Gilmer County Farm Show \$3,300, Grant
172 County Arts Council \$1,650, Grape Stomping Wine Festival
173 (Nicholas) \$1,650, Great Greenbrier River Race (Pocahontas)
174 \$8,251, Greater Quinwood Days (Greenbrier) \$1,086, Green
175 Spring Days (Hampshire) \$950, Guyandotte Civil War Days
176 (Cabell) \$8,251, Hamlin 4th of July Celebration (Lincoln)
177 \$4,125, Hampshire Civil War Celebration Days (Hampshire)
178 \$950, Hampshire County 4th of July Celebration \$16,502,
179 Hampshire County Fair \$6,948, Hampshire Heritage Days
180 (Hampshire) \$3,300, Hancock County Oldtime Fair \$4,125,
181 Hardy County Commission - 4th of July \$8,251, Hatfield McCoy
182 Matewan Reunion Festival (Mingo) \$17,125, Hatfield McCoy
183 Trail National ATV and Dirt Bike Weekend (Wyoming) \$4,125,
184 Heat'n the Hills Chilifest (Lincoln) \$3,474, Heritage Craft
185 Festival (Monroe) \$950, Heritage Days Festival (Roane) \$1,238,
186 Hilltop Festival (Cabell) \$950, Hilltop Festival of Lights
187 (McDowell) \$1,650, Hinton Railroad Days (Summers) \$4,538,
188 Holly River Festival (Webster) \$1,238, Hometown Mountain
189 Heritage Festival (Fayette) \$3,378, Hundred 4th of July (Wetzel)

190 \$5,982, Hundred American Legion Earl Kiger Post Bluegrass
191 Festival (Wetzel) \$1,650, Hurricane 4th of July Celebration
192 (Putnam) \$4,125, Jaeger Town Fair (McDowell) \$1,238, Irish
193 Heritage Festival of West Virginia (Raleigh) \$4,125, Irish Spring
194 Festival (Lewis) \$950, Italian Heritage Festival-Clarksburg
195 (Harrison) \$24,752, Jackson County Fair \$4,125, Jamboree
196 (Pocahontas) \$4,125, Jane Lew Arts and Crafts Fair (Lewis)
197 \$950, Jefferson County Fair Association \$20,627, Jersey
198 Mountain Ruritan Pioneer Days (Hampshire) \$950, John Henry
199 Days Festival (Monroe) \$4,125, Johnnie Johnson Blues and Jazz
200 Festival (Marion) \$4,125, Johnstown Community Fair (Harrison)
201 \$2,063, Junior Heifer Preview Show (Lewis) \$1,650, Kanawha
202 Coal Riverfest-St. Albans 4th of July Festival (Kanawha)
203 \$4,125, Keeper of the Mountains-Kayford (Kanawha) \$2,063,
204 Kenova Autumn Festival (Wayne) \$6,080, Kermit Fall Festival
205 (Mingo) \$2,475, Keystone Reunion Gala (McDowell) \$2,171,
206 King Coal Festival (Mingo) \$4,125, Kingwood Downtown Street
207 Fair and Heritage Days (Preston) \$1,650, L.Z. Rainelle West
208 Virginia Veterans Reunion (Greenbrier) \$4,125, Lady of
209 Agriculture (Preston) \$950, Larry Joe Harless Center Octoberfest
210 Hatfield McCoy Trail (Mingo) \$8,251, Larry Joe Harless
211 Community Center Spring Middle School Event (Mingo)
212 \$4,125, Last Blast of Summer (McDowell) \$4,125, Lewis
213 County Fair Association \$2,888, Lewisburg Shanghai
214 (Greenbrier) \$1,650, Lincoln County Fall Festival \$6,601,
215 Lincoln County Winterfest \$4,125, Little Levels Heritage
216 Festival (Pocahontas) \$1,650, Logan Freedom Festival \$6,189,
217 Lost Creek Community Festival (Harrison) \$5,776, Main Street
218 Arts Festival (Upshur) \$4,343, Main Street Martinsburg
219 Chocolate Fest and Book Fair (Berkeley) \$3,908, Mannington
220 District Fair (Marion) \$4,950, Maple Syrup Festival (Randolph)
221 \$950, Marion County FFA Farm Fest \$2,063, Marmet Labor
222 Day Celebration (Kanawha) \$4,275, Marshall County Antique
223 Power Show \$2,063, Marshall County Fair \$6,189, Mason
224 County Fair \$4,125, Mason Dixon Festival (Monongalia) \$5,776,

225 Matewan Massacre Reenactment (Mingo) \$6,950, Matewan-
226 Magnolia Fair (Mingo) \$22,128, McARTS-McDowell County
227 \$16,502, McDowell County Fair \$2,063, McGrew House History
228 Day (Preston) \$1,650, McNeill's Rangers (Mineral) \$6,601,
229 Meadow Bridge Hometown Festival (Fayette) \$1,032, Meadow
230 River Days Festival (Greenbrier) \$2,475, Mercer Bluestone
231 Valley Fair (Mercer) \$1,650, Mercer County Fair \$1,650, Mercer
232 County Heritage Festival \$4,825, Mid Ohio Valley Antique
233 Engine Festival (Wood) \$2,475, Milton Christmas in the Park
234 (Cabell) \$2,063, Milton 4th of July Celebration (Cabell) \$2,063,
235 Mineral County Veterans Day Parade \$1,238, Molasses Festival
236 (Calhoun) \$1,650, Monongahfest (Marion) \$5,211, Moon Over
237 Mountwood Fishing Festival (Wood) \$2,475, Morgan County
238 Fair-History Wagon \$1,238, Moundsville Bass Festival
239 (Marshall) \$3,300, Moundsville July 4th Celebration (Marshall)
240 \$4,125, Mount Liberty Fall Festival (Barbour) \$2,063, Mountain
241 Fest (Monongalia) \$16,502, Mountain Festival (Mercer) \$3,816,
242 Mountain Music Festival (McDowell) \$2,063, Mountain State
243 Apple Harvest Festival (Berkeley) \$6,189, Mountain State Arts
244 & Crafts Fair Cedar Lakes (Jackson) \$37,128, Mountaineer Hot
245 Air Balloon Festival (Monongalia) \$3,300, Mullens Dogwood
246 Festival (Wyoming) \$5,776, Multi-Cultural Festival of West
247 Virginia (Kanawha) \$16,502, Music and Barbecue - Banks
248 District VFD (Upshur) \$1,776, New Cumberland Christmas
249 Parade (Hancock) \$2,475, New Cumberland 4th of July
250 (Hancock) \$4,125, New River Bridge Day Festival (Fayette)
251 \$33,003, Newburg Volunteer Fireman's Field Day (Preston)
252 \$950, Nicholas County Fair \$4,125, Nicholas County Potato
253 Festival \$2,888, Oak Leaf Festival (Fayette) \$8,685, Oceana
254 Heritage Festival (Wyoming) \$4,950, Oglebay City Park -
255 Festival of Lights (Ohio) \$66,006, Oglebay Festival (Ohio)
256 \$8,251, Ohio County Country Fair \$7,426, Ohio Valley Beef
257 Association (Wood) \$2,063, Ohio Valley Black Heritage
258 Festival (Ohio) \$4,538, Old Central City Fair (Cabell) \$4,125,
259 Old Century City Fair (Barbour) \$1,737, Old Tyme Christmas

260 (Jefferson) \$1,980, Paden City Labor Day Festival (Wetzel)
261 \$5,363, Parkersburg Homecoming (Wood) \$12,159, Patty Fest
262 (Monongalia) \$1,650, Paw Paw District Fair (Marion) \$2,888,
263 Pax Reunion Committee (Fayette) \$4,125, Pendleton County 4-H
264 Weekend \$1,650, Pendleton County Committee for Arts
265 \$12,376, Pendleton County Fair \$8,685, Pennsboro Country
266 Road Festival (Ritchie) \$1,650, Petersburg 4th of July
267 Celebration (Grant) \$16,502, Petersburg HS Celebration (Grant)
268 \$8,251, Piedmont-Annual Back Street Festival (Mineral) \$3,300,
269 Pinch Reunion (Kanawha) \$1,238, Pine Bluff Fall Festival
270 (Harrison) \$3,300, Pine Grove 4th of July Festival (Wetzel)
271 \$5,776, Pineville Festival (Wyoming) \$4,950, Pleasants County
272 Agriculture Youth Fair \$4,125, Poca Heritage Days (Putnam)
273 \$2,475, Pocahontas County Pioneer Days \$5,776, Point Pleasant
274 Stern Wheel Regatta (Mason) \$4,125, Potomac Highlands Maple
275 Festival (Grant) \$4,950, Pratt Fall Festival (Kanawha) \$2,063,
276 Princeton Autumnfest (Mercer) \$2,171, Princeton Street Fair
277 (Mercer) \$4,125, Putnam County Fair \$4,125, Quartets on
278 Parade (Hardy) \$3,300, Rainelle Fall Festival (Greenbrier)
279 \$4,343, Rand Community Center Festival (Kanawha) \$2,063,
280 Randolph County Community Arts Council \$2,475, Randolph
281 County Fair \$5,776, Randolph County Ramp and Rails \$1,650,
282 Ranson Christmas Festival (Jefferson) \$4,125, Ranson Festival
283 (Jefferson) \$4,125, Ravenswood Octoberfest (Jackson) \$6,601,
284 Renick Liberty Festival (Greenbrier) \$950, Ripley 4th of July
285 (Jackson) \$12,376, Ritchie County Fair and Exposition \$4,125,
286 Ritchie County Pioneer Days \$950, River City Festival (Preston)
287 \$950, Riverside Blues Festival (Randolph) \$4,343, Roane
288 County Agriculture Field Day \$2,475, Rock the Park (Kanawha)
289 \$4,500, Rocket Boys Festival (Raleigh) \$2,375, Romney
290 Heritage Days (Hampshire) \$2,606, Ronceverte River Festival
291 (Greenbrier) \$4,125, Rowlesburg Labor Day Festival (Preston)
292 \$950, Rupert Country Fling (Greenbrier) \$2,475, Saint Spyridon
293 Greek Festival (Harrison) \$2,063, Salem Apple Butter Festival
294 (Harrison) \$3,300, Sistersville 4th of July (Tyler) \$4,538,

295 Skirmish on the River (Mingo) \$1,737, Smoke on the Water
296 (Wetzel) \$2,475, South Charleston Summerfest (Kanawha)
297 \$8,251, Southern Wayne County Fall Festival \$950, Spirit of
298 Grafton Celebration (Taylor) \$8,251, Springfield Peach Festival
299 (Hampshire) \$1,026, St. Albans City of Lights - December
300 (Kanawha) \$4,125, Sternwheel Festival (Wood) \$2,475, Stoco
301 Reunion (Raleigh) \$2,063, Stonewall Jackson Heritage Arts &
302 Crafts Jubilee (Lewis) \$9,076, Storytelling Festival (Lewis)
303 \$475, Strawberry Festival (Upshur) \$24,752, Sylvester Big Coal
304 River Festival \$2,700, Tacy Fair (Barbour) \$950, Taste of
305 Parkersburg (Wood) \$4,125, Taylor County Fair \$4,538, Terra
306 Alta VFD 4th of July Celebration (Preston) \$950, The Gathering
307 at Sweet Creek (Wood) \$2,475, Three Rivers Coal Festival
308 (Marion) \$6,394, Thunder on the Tygart - Mothers' Day
309 Celebration (Taylor) \$12,376, Town of Delbarton 4th of July
310 Celebration (Mingo) \$2,475, Town of Fayetteville Heritage
311 Festival (Fayette) \$6,189, Town of Matoaka Hog Roast (Mercer)
312 \$950, Town of Rivesville 4th of July Festival (Marion) \$4,343,
313 Town of Winfield - Putnam County Homecoming \$4,500,
314 Treasure Mountain Festival (Pendleton) \$20,627, Tri-County
315 Fair (Grant) \$31,318, Tucker County Arts Festival and
316 Celebration \$14,851, Tucker County Fair \$3,919, Tucker County
317 Health Fair \$1,650, Tunnelton Depot Days (Preston) \$950,
318 Tunnelton Volunteer Fire Department Festival (Preston) \$950,
319 Turkey Festival (Hardy) \$2,475, Tyler County Fair \$4,290, Tyler
320 County 4th of July \$475, Tyler County OctoberFest \$1,000,
321 Union Community Irish Festival (Barbour) \$900, Uniquely West
322 Virginia Festival (Morgan) \$1,650, Upper Kanawha Valley
323 Oktoberfest (Kanawha) \$2,063, Upper Ohio Valley Italian
324 Festival (Ohio) \$9,901, Upper West Fork Park Bluegrass
325 Festival (Calhoun) \$475, Upshur County Youth Livestock Show
326 \$2,000, Valley District Fair (Preston) \$2,888, Veterans Welcome
327 Home Celebration (Cabell) \$1,303, Vietnam Veterans of
328 America # 949 Christmas Party (Cabell) \$950, Volcano Days at
329 Mountwood Park (Wood) \$4,125, War Homecoming Fall

330 Festival (McDowell) \$1,238, Wardensville Fall Festival (Hardy)
331 \$4,125, Wayne County Fair \$4,125, Wayne County Fall Festival
332 \$4,125, Webster County Wood Chopping Festival \$12,376,
333 Webster Wild Water Weekend \$1,650, Weirton July 4th
334 Celebration (Hancock) \$16,502, Welcome Home Family Day
335 (Wayne) \$2,640, Wellsburg 4th of July Celebration (Brooke)
336 \$6,189, Wellsburg Apple Festival of Brooke County \$4,125,
337 West Virginia Blackberry Festival (Harrison) \$4,125, West
338 Virginia Chestnut Festival (Preston) \$950, West Virginia Coal
339 Festival (Boone) \$8,251, West Virginia Coal Show (Mercer)
340 \$2,171, West Virginia Dairy Cattle Show (Lewis) \$8,251, West
341 Virginia Dandelion Festival (Greenbrier) \$4,125, West Virginia
342 Fair and Exposition (Wood) \$6,684, West Virginia Fireman's
343 Rodeo (Fayette) \$2,063, West Virginia Oil and Gas Festival
344 (Tyler) \$9,076, West Virginia Peach Festival (Hampshire)
345 \$4,500, West Virginia Polled Hereford Association (Braxton)
346 \$1,238, West Virginia Poultry Festival (Hardy) \$4,125, West
347 Virginia Pumpkin Festival (Cabell) \$8,251, West Virginia State
348 Monarch Butterfly Festival (Brooke) \$4,125, West Virginia
349 Water Festival - City of Hinton (Summers) \$13,201, Weston
350 VFD 4th of July Firemen Festival (Lewis) \$1,650, Wetzel
351 County Autumnfest \$4,538, Wetzel County Town and Country
352 Days \$14,026, Wheeling Celtic Festival (Ohio) \$1,650,
353 Wheeling City of Lights (Ohio) \$6,601, Wheeling Sternwheel
354 Regatta (Ohio) \$8,251, Wheeling Vintage Raceboat Regatta
355 (Ohio) \$16,502, Whipple Community Action (Fayette) \$2,063,
356 Wileyville Homecoming (Wetzel) \$3,300, Wine Festival and
357 Mountain Music Event (Harrison) \$4,125, Winter Festival of the
358 Waters (Berkeley) \$4,125, Wirt County Fair \$2,063, Wirt
359 County Pioneer Days \$1,650, Wyoming County Civil War Days
360 \$1,800, Youth Stockman Beef Expo (Lewis) \$1,650.

361 Any Fairs & Festivals awards shall be funded in addition to,
362 and not in lieu of, individual grant allocations derived from the
363 Arts Council and the Cultural Grant Program allocations.

293 - Library Commission –
Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2016 Org 0433

1	Books and Films..	17900	\$	360,784
2	Services to Libraries.	18000		550,000
3	Grants to Public Libraries.	18200		9,439,571
4	Digital Resources..	30900		219,992
5	Infomine Network.	88400		850,646
6	Total..		\$	11,420,993

7 Any unexpended balance remaining in the appropriation for
8 Libraries – Special Projects (fund 3559, appropriation 62500) at
9 the close of fiscal year 2015 is hereby reappropriated for
10 expenditure during the fiscal year 2016.

294 - Bureau of Senior Services –
Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2016 Org 0508

1	Personal Services and			
2	Employee Benefits..	00100	\$	193,414
3	Current Expenses.	13000		333,681
4	Repairs and Alterations.	06400		1,000
5	Local Programs Service			
6	Delivery Costs..	20000		2,435,250
7	Silver Haired Legislature..	20200		18,500
8	Transfer to Division of Human			
9	Services for Health Care			
10	and Title XIX Waiver for			
11	Senior Citizens..	53900		20,503,026

12	Roger Tompkins Alzheimers		
13	Respite Care..	64300	2,296,543
14	WV Alzheimers Hotline..	72400	45,000
15	Regional Aged and Disabled		
16	Resource Center..	76700	425,000
17	Senior Services		
18	Medicaid Transfer.	87100	8,670,000
19	Legislative Initiatives for		
20	the Elderly.	90400	9,671,239
21	Long Term Care Ombudsman.	90500	297,226
22	BRIM Premium.	91300	6,500
23	In-Home Services and Nutrition		
24	for Senior Citizens..	91700	<u>4,320,941</u>
25	Total..		\$ 49,217,320

26 Any unexpended balance remaining in the appropriation for
 27 Senior Citizen Centers and Programs (fund 5405, appropriation
 28 46200) at the close of the fiscal year 2015 is hereby
 29 reappropriated for expenditure during the fiscal year 2016.

30 Included in the above appropriation for Current Expenses
 31 (fund 5405, appropriation 13000), is funding to support an in-
 32 home direct care workforce registry.

33 The above appropriation for Transfer to Division of Human
 34 Services for Health Care and Title XIX Waiver for Senior
 35 Citizens (appropriation 53900) along with the federal monies
 36 generated thereby shall be used for reimbursement for services
 37 provided under the program.

*295 - Higher Education Policy Commission –
 Lottery Education –
 Higher Education Policy Commission –
 Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2016 Org 0441

1	RHI Program and		
2	Site Support (R).....	03600	\$ 1,912,491
3	RHI Program and Site Support –		
4	RHEP Program		
5	Administration (R).....	03700	146,653
6	RHI Program and Site Support –		
7	Grad Med Ed and Fiscal		
8	Oversight (R).....	03800	85,813
9	Minority Doctoral Fellowship (R)..	16600	129,604
10	Underwood–Smith Scholarship		
11	Program–Student Awards. . . .	16700	135,849
12	Health Sciences Scholarship (R). . .	17600	220,598
13	Vice Chancellor for Health Sciences –		
14	Rural Health Residency		
15	Program (R).....	60100	62,725
16	WV Engineering, Science, and		
17	Technology Scholarship		
18	Program.	86800	<u>452,831</u>
19	Total.....		\$ 3,146,564

20 Any unexpended balances remaining in the appropriations
 21 for RHI Program and Site Support (fund 4925, appropriation
 22 03600), RHI Program and Site Support – RHEP Program
 23 Administration (fund 4925, appropriation 03700), RHI Program
 24 and Site Support – Grad Med Ed and Fiscal Oversight (fund
 25 4925, appropriation 03800), Minority Doctoral Fellowship (fund
 26 4925, appropriation 16600), Health Sciences Scholarship (fund
 27 4925, appropriation 17600), and Vice Chancellor for Health
 28 Sciences – Rural Health Residency Program (fund 4925,
 29 appropriation 60100) at the close of fiscal year 2015 are hereby
 30 reappropriated for expenditure during the fiscal year 2016.

31 The above appropriation for Underwood–Smith Scholarship
 32 Program–Student Awards (appropriation 16700) shall be

33 transferred to the Underwood – Smith Teacher Scholarship and
 34 Loan Assistance Fund (fund 4922, org 0441) established by
 35 W.Va. Code §18C-4-1.

36 The above appropriation for WV Engineering, Science, and
 37 Technology Scholarship Program (appropriation 86800) shall be
 38 transferred to the West Virginia Engineering, Science and
 39 Technology Scholarship Fund (fund 4928, org 0441) established
 40 by W.Va. Code §18C-6-1.

*296 - Community and Technical College –
 Capital Improvement Fund*

(WV Code Chapter 18B)

Fund 4908 FY 2016 Org 0442

1 Debt Service – Total. 31000 \$ 5,000,000

2 Any unexpended balance remaining in the appropriation for
 3 Capital Outlay and Improvements – Total (fund 4908,
 4 appropriation 84700) at the close of fiscal year 2015 is hereby
 5 reappropriated for expenditure during the fiscal year 2016.

*297 - Higher Education Policy Commission –
 Lottery Education –
 West Virginia University – School of Medicine*

(WV Code Chapter 18B)

Fund 4185 FY 2016 Org 0463

1 WVU Health Sciences –
 2 RHI Program and Site
 3 Support (R). 03500 \$ 1,125,203
 4 MA Public Health Program and
 5 Health Science
 6 Technology (R). 62300 54,432

7	Health Sciences Career		
8	Opportunities Program (R).	86900	328,462
9	HSTA Program (R).	87000	1,674,240
10	Center for Excellence in		
11	Disabilities (R)..	96700	<u>305,806</u>
12	Total..		\$ 3,488,143

13 Any unexpended balances remaining in the appropriations
14 for WVU Health Sciences – RHI Program and Site Support
15 (fund 4185, appropriation 03500), MA Public Health Program
16 and Health Science Technology (fund 4185, appropriation
17 62300), Health Sciences Career Opportunities Program (fund
18 4185, appropriation 86900), HSTA Program (fund 4185,
19 appropriation 87000), and Center for Excellence in Disabilities
20 (fund 4185, appropriation 96700) at the close of fiscal year 2015
21 are hereby reappropriated for expenditure during the fiscal year
22 2016.

*298 - Higher Education Policy Commission –
Lottery Education –
Marshall University*

(WV Code Chapter 18B)

Fund 4267 FY 2016 Org 0471

1 Any unexpended balance remaining in the appropriation for
2 Marshall University Graduate College Writing Project (fund
3 4267, appropriation 80700) at the close of fiscal year 2015 is
4 hereby reappropriated for expenditure during the fiscal year
5 2016.

*299 - Higher Education Policy Commission –
Lottery Education –
Marshall University – School of Medicine*

(WV Code Chapter 18B)

Fund 4896 FY 2016 Org 0471

1	Marshall Medical School –		
2	RHI Program and		
3	Site Support (R).....	03300	\$ 410,253
4	Vice Chancellor for Health Sciences –		
5	Rural Health Residency		
6	Program (R).....	60100	<u>169,529</u>
7	Total.....		\$ 579,782

8 Any unexpended balances remaining in the appropriations
9 for Marshall Medical School – RHI Program and Site Support
10 (fund 4896, appropriation 03300) and Vice Chancellor for
11 Health Sciences – Rural Health Residency Program (fund 4896,
12 appropriation 60100) at the close of fiscal year 2015 are hereby
13 reappropriated for expenditure during the fiscal year 2016.

14	Total TITLE II, Section 4 —		
15	Lottery Revenue.		<u>\$ 136,326,000</u>

1 **Sec. 5. Appropriations from state excess lottery revenue**
2 **fund.** — In accordance with W.Va. Code §29-22-18a, §29-22A-
3 10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the following
4 appropriations shall be deposited and disbursed by the Director
5 of the Lottery to the following accounts in this section in the
6 amounts indicated.

7 After first funding the appropriations required by W.Va.
8 Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and
9 §29-25-22b, the Director of the Lottery shall provide funding
10 from the State Excess Lottery Revenue Fund for the remaining
11 appropriations in this section to the extent that funds are
12 available. In the event that revenues to the State Excess Lottery
13 Revenue Fund are not sufficient to meet all the appropriations
14 made pursuant to this section, then the Director of the Lottery
15 shall first provide the necessary funds to meet fund 7208,

16 appropriation 70011 of this section; next, to provide the funds
 17 necessary for fund 5365, appropriation 18900. Allocation of the
 18 funds for each appropriation shall be allocated in succession
 19 before any funds are provided for the next subsequent
 20 appropriation.

*300 - Lottery Commission –
 Refundable Credit*

Fund 7207 FY 2016 Org 0705

	Appro- pria- tion	Excess Lottery Funds
1 Directed Transfer.	70000	\$ 10,000,000

2 The above appropriation shall be transferred to the General
 3 Revenue Fund to provide reimbursement for the refundable
 4 credit allowable under W.Va. Code §11-21-21. The amount of
 5 the required transfer shall be determined solely by the state tax
 6 commissioner and shall be completed by the director of the
 7 lottery upon the commissioner’s request.

*301 - Lottery Commission –
 General Purpose Account*

Fund 7206 FY 2016 Org 0705

1 General Revenue Fund –		
2 Transfer.	70011	\$ 65,000,000

3 The above appropriation shall be transferred to the General
 4 Revenue Fund as determined by the director of the lottery in
 5 accordance with W.Va. Code §29-22-18a.

*302 - Higher Education Policy Commission –
 Education Improvement Fund*

Fund 4295 FY 2016 Org 0441

1 PROMISE Scholarship – Transfer.. 80000 \$ 29,000,000

2 The above appropriation shall be transferred to the
3 PROMISE Scholarship Fund (fund 4296, org 0441) established
4 by W.Va. Code §18C-7-7.

5 The Legislature has explicitly set a finite amount of
6 available appropriations and directed the administrators of the
7 Program to provide for the award of scholarships within the
8 limits of available appropriations.

*303 - Economic Development Authority –
Economic Development Project Fund*

Fund 9065 FY 2016 Org 0944

1 Debt Service – Total. 31000 \$ 19,000,000

2 Pursuant to W.Va. Code §29-22-18a, subsection (f), excess
3 lottery revenues are authorized to be transferred to the lottery
4 fund as reimbursement of amounts transferred to the economic
5 development project fund pursuant to section four of this title
6 and W.Va. Code §29-22-18, subsection (f).

*304 - Department of Education –
School Building Authority*

Fund 3514 FY 2016 Org 0402

1 Debt Service – Total. 31000 \$ 19,000,000

*305 - West Virginia Infrastructure Council –
West Virginia Infrastructure Transfer Fund*

Fund 3390 FY 2016 Org 0316

1	Directed Transfer.	70000	\$ 36,000,000
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The above appropriation shall be allocated pursuant to W.Va. Code §29-22-18d and §31-15-9.

*306 - Higher Education Policy Commission –
Higher Education Improvement Fund*

Fund 4297 FY 2016 Org 0441

1	Directed Transfer.	70000	\$ 15,000,000
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2 The above appropriation shall be transferred to fund 4903,
3 org 0442 as authorized by Senate Concurrent Resolution No. 41.

*307 - Division of Natural Resources
State Park Improvement Fund*

Fund 3277 FY 2016 Org 0310

1	Current Expenses (R).	13000	\$ 2,438,300
2	Repairs and Alterations (R).	06400	2,161,200
3	Equipment (R).	07000	200,000
4	Buildings (R).	25800	100,000
5	Other Assets (R).	69000	<u>100,500</u>
6	Total.		\$ 5,000,000

7 Any unexpended balances remaining in the above
8 appropriations for Repairs and Alterations (fund 3277,
9 appropriation 06400), Equipment (fund 3277, appropriation
10 07000), Unclassified – Total (fund 3277, appropriation 09600),
11 Unclassified (fund 3277, appropriation 09900), Current
12 Expenses (fund 3277, appropriation 13000), Buildings (fund
13 3277, appropriation 25800), and Other Assets (fund 3277,
14 appropriation 69000) at the close of the fiscal year 2015 are
15 hereby reappropriated for expenditure during the fiscal year
16 2016.

*308 - Racing Commission –*Fund 7308 FY 2016 Org 0707

1	Special Breeders Compensation		
2	(WVC §29-22-18a,		
3	subsection (1)).	21800	\$ 2,000,000

*309 - Lottery Commission –**Distributions to Statutory Funds and Purposes*Fund 7213 FY 2016 Org 0705

1	Parking Garage Fund – Transfer. . .	70001	\$ 500,000
2	2004 Capitol Complex Parking		
3	Garage Fund – Transfer.	70002	255,249
4	Capitol Dome and Improvements		
5	Fund – Transfer.	70003	2,200,641
6	Capitol Renovation and		
7	Improvement Fund – Transfer..	70004	2,807,722
8	Development Office		
9	Promotion Fund – Transfer. . .	70005	1,531,485
10	Research Challenge		
11	Fund – Transfer.	70006	2,041,980
12	Tourism Promotion Fund –		
13	Transfer.	70007	5,694,666
14	Cultural Facilities and Capitol		
15	Resources Matching		
16	Grant Program Fund –		
17	Transfer.	70008	1,500,000
18	Workers' Compensation Debt		
19	Reduction Fund – Transfer. . .	70009	11,000,000
20	State Debt Reduction Fund –		
21	Transfer.	70010	20,000,000
22	General Revenue Fund –		
23	Transfer.	70011	1,794,761

24	West Virginia Racing Commission		
25	Racetrack Video Lottery		
26	Account. 70012	4,083,958	
27	Historic Resort Hotel Fund. 70013	34,200	
28	Licensed Racetrack Regular		
29	Purse Fund. 70014	<u>12,159,198</u>	
30	Total.	\$ 65,603,860	

*310 - Lottery Commission –
Excess Lottery Revenue Fund Surplus*

Fund 7208 FY 2016 Org 0705

- 1 General Revenue Fund –
- 2 Transfer. 70011 \$ 18,355,000

3 The above appropriation for General Revenue Fund –
4 Transfer (fund 7208, appropriation 70011) shall be transferred
5 to the General Revenue Fund.

311 - Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2016 Org 0100

- 1 Any unexpended balance remaining in the appropriation for
- 2 Publication of Papers and Transition Expenses – Lottery Surplus
- 3 (fund 1046, appropriation 06600) at the close of the fiscal year
- 4 2015 is hereby reappropriated for expenditure during the fiscal
- 5 year 2016.

312 - West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2016 Org 0307

1 Any unexpended balances remaining in the appropriations
2 for Unclassified – Total (fund 3170, appropriation 09600),
3 Recreational Grants or Economic Development Loans (fund
4 3170, appropriation 25300), and Connectivity Research and
5 Development – Lottery Surplus (fund 3170, appropriation
6 92300) at the close of the fiscal year 2015 are hereby
7 reappropriated for expenditure during the fiscal year 2016.

*313 - Higher Education Policy Commission –
Administration – Control Account*

(WV Code Chapter 18B)

Fund 4932 FY 2016 Org 0441

1 Any unexpended balance remaining in the appropriation for
2 Advanced Technology Centers (fund 4932, appropriation 02800)
3 at the close of the fiscal year 2015 is hereby reappropriated for
4 expenditure during the fiscal year 2016.

*314 - Division of Health –
Central Office*

(WV Code Chapter 16)

Fund 5219 FY 2016 Org 0506

1 Any unexpended balance remaining in the appropriation for
2 Capital Outlay and Maintenance (fund 5219, appropriation
3 75500) at the close of the fiscal year 2015 is hereby
4 reappropriated for expenditure during the fiscal year 2016.

315 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2016 Org 0511

1 Medical Services. 18900 \$ *14,422,140

*316 - Division of Corrections –
Correctional Units*

(WV Code Chapters 25, 28, 49 and 62)

Fund 6283 FY 2016 Org 0608

1 Any unexpended balance remaining in the appropriation for
2 Capital Outlay and Maintenance (fund 6283, appropriation
3 75500) at the close of the fiscal year 2015 is hereby
4 reappropriated for expenditure during the fiscal year 2016.

5 Total TITLE II, Section 5 —

6 Excess Lottery Funds. \$ 300,381,000

1 **Sec. 6. Appropriations of federal funds.** — In accordance
2 with Article 11, Chapter 4 of the Code from federal funds there
3 are hereby appropriated conditionally upon the fulfillment of the
4 provisions set forth in Article 2, Chapter 11B of the Code the
5 following amounts, as itemized, for expenditure during the fiscal
6 year 2016.

LEGISLATIVE

317 - Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2016 Org 2300

	Appro- piation	Federal Funds
1 Economic Loss Claim		
2 Payment Fund. 33400	\$	3,000,000

* **NOTE:** The Governor reduced Item 315, line 1, by \$2,000,000, from \$16,422,140 to \$14,422,140.

JUDICIAL*318 - Supreme Court*Fund 8867 FY 2016 Org 2400

1	Personal Services and		
2	Employee Benefits..... 00100	\$	250,000
3	Current Expenses..... 13000		<u>1,750,000</u>
4	Total.....	\$	2,000,000

EXECUTIVE*319 - Governor's Office*

(WV Code Chapter 5)

Fund 8742 FY 2016 Org 0100

1	Personal Services and		
2	Employee Benefits..... 00100	\$	86,677
3	Current Expenses..... 13000		<u>138,323</u>
4	Total.....	\$	225,000

320 - Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2016 Org 1400

1	Personal Services and		
2	Employee Benefits..... 00100	\$	1,563,760
3	Unclassified..... 09900		50,534
4	Current Expenses..... 13000		3,229,161
5	Repairs and Alterations..... 06400		50,000
6	Equipment..... 07000		<u>160,000</u>
7	Total.....	\$	5,053,455

*321 - Department of Agriculture –
Meat Inspection Fund*

(WV Code Chapter 19)

Fund 8737 FY 2016 Org 1400

1	Personal Services and		
2	Employee Benefits..... 00100	\$	610,830
3	Unclassified..... 09900		8,755
4	Current Expenses..... 13000		136,012
5	Repairs and Alterations..... 06400		5,500
6	Equipment..... 07000		<u>114,478</u>
7	Total.....	\$	<u>875,575</u>

*322 - Department of Agriculture –
State Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2016 Org 1400

1	Personal Services and		
2	Employee Benefits..... 00100	\$	97,250
3	Current Expenses..... 13000		<u>14,099,974</u>
4	Total.....	\$	<u>14,197,224</u>

*323 - Department of Agriculture –
Land Protection Authority*

Fund 8896 FY 2016 Org 1400

1	Personal Services and		
2	Employee Benefits..... 00100	\$	46,526
3	Unclassified..... 09900		5,004
4	Current Expenses..... 13000		<u>448,920</u>
5	Total.....	\$	<u>500,450</u>

*324 - Secretary of State –
State Election Fund*

(WV Code Chapter 3)

Fund 8854 FY 2016 Org 1600

1	Personal Services and		
2	Employee Benefits..... 00100	\$	210,240
3	Unclassified..... 09900		7,484
4	Current Expenses..... 13000		415,727
5	Repairs and Alterations..... 06400		15,000
6	Other Assets..... 69000		<u>100,000</u>
7	Total.....	\$	<u>748,451</u>

DEPARTMENT OF ADMINISTRATION

325 - Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2016 Org 0230

1	Personal Services and		
2	Employee Benefits..... 00100	\$	0
3	Current Expenses..... 13000		<u>0</u>
	Total.....	\$	0

DEPARTMENT OF COMMERCE

326 - Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2016 Org 0305

1	Personal Services and		
2	Employee Benefits..... 00100	\$	1,442,347

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3	Unclassified. 09900	51,050
4	Current Expenses. 13000	5,622,560
5	Repairs and Alterations. 06400	155,795
6	Equipment. 07000	50,000
7	Other Assets. 69000	<u>1,808,300</u>
8	Total.	\$ 9,130,052

327 - Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2016 Org 0306

1	Personal Services and	
2	Employee Benefits. 00100	\$ 54,432
3	Unclassified. 09900	2,803
4	Current Expenses. 13000	195,639
5	Repairs and Alterations. 06400	5,000
6	Equipment. 07000	7,500
7	Other Assets. 69000	<u>15,000</u>
8	Total.	\$ 280,374

328 - West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2016 Org 0307

1	Personal Services and	
2	Employee Benefits. 00100	\$ 1,052,547
3	Unclassified. 09900	96,900
4	Current Expenses. 13000	<u>8,553,505</u>
5	Total.	\$ 9,702,952

329 - Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2016 Org 0308

1	Personal Services and		
2	Employee Benefits.. 00100	\$	384,072
3	Unclassified. 09900		5,572
4	Current Expenses. 13000		167,098
5	Repairs and Alterations. 06400		500
6	Total..	\$	<u>557,242</u>

330 - Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2016 Org 0310

1	Personal Services and		
2	Employee Benefits.. 00100	\$	7,912,218
3	Unclassified. 09900		107,693
4	Current Expenses. 13000		5,556,594
5	Repairs and Alterations. 06400		189,400
6	Equipment. 07000		1,096,242
7	Buildings. 25800		1,000
8	Other Assets.. 69000		1,951,000
9	Land. 73000		1,000
10	Total..	\$	<u>16,815,147</u>

*331 - Division of Miners' Health,
Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2016 Org 0314

1	Personal Services and		
2	Employee Benefits.. 00100	\$	613,177
3	Current Expenses. 13000		150,000
4	Total..	\$	<u>763,177</u>

332 - WorkForce West Virginia

(WV Code Chapter 23)

Fund 8835 FY 2016 Org 0323

1	Unclassified.	09900	\$	5,127
2	Current Expenses.	13000		507,530
3	Reed Act 2002 –			
4	Unemployment			
5	Compensation.	62200		2,850,000
6	Reed Act 2002 –			
7	Employment Services.	63000		<u>1,650,000</u>
8	Total.		\$	<u>5,012,657</u>

9 Pursuant to the requirements of 42 U.S.C. 1103, Section 903
 10 of the Social Security Act, as amended, and the provisions of
 11 W.Va. Code §21A-9-9, the above appropriation to Unclassified
 12 and Current Expenses shall be used by WorkForce West Virginia
 13 for the specific purpose of administration of the state’s
 14 unemployment insurance program or job service activities,
 15 subject to each and every restriction, limitation or obligation
 16 imposed on the use of the funds by those federal and state
 17 statutes.

*333 - Office of the Secretary –
 Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8780 FY 2016 Org 0327

1	Personal Services and			
2	Employee Benefits.	00100	\$	497,289
3	Unclassified.	09900		106,795
4	Current Expenses.	13000		10,068,916
5	Repairs and Alterations.	06400		500

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6	Equipment.	07000		<u>6,000</u>
7	Total.		\$	10,679,500

334 - Division of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2016 Org 0328

1	Personal Services and			
2	Employee Benefits.	00100	\$	411,574
3	Unclassified.	09900		15,000
4	Current Expenses.	13000		1,082,968
5	Repairs and Alterations.	06400		200
6	Equipment.	07000		<u>1,000</u>
7	Total.		\$	1,510,742

DEPARTMENT OF EDUCATION*335 - State Board of Education –
State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2016 Org 0402

1	Personal Services and			
2	Employee Benefits.	00100	\$	7,078,855
3	Unclassified.	09900		2,000,000
4	Current Expenses.	13000		208,917,820
5	Repairs and Alterations.	06400		10,000
6	Equipment.	07000		10,000
7	Other Assets.	69000		10,000
8	Federal Economic Stimulus.	89100		<u>2,000,000</u>
9	Total.		\$	220,026,675

*336 - State Board of Education –
School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2016 Org 0402

1	Personal Services and	
2	Employee Benefits..... 00100	\$ 1,992,648
3	Unclassified..... 09900	1,150,500
4	Current Expenses..... 13000	113,101,265
5	Repairs and Alterations..... 06400	20,000
6	Equipment..... 07000	100,000
7	Other Assets..... 69000	<u>25,000</u>
8	Total.....	\$ 116,389,413

*337 - State Board of Education –
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2016 Org 0402

1	Personal Services and	
2	Employee Benefits..... 00100	\$ 1,519,972
3	Unclassified..... 09900	155,000
4	Current Expenses..... 13000	13,820,081
5	Repairs and Alterations..... 06400	10,000
6	Equipment..... 07000	10,000
7	Other Assets..... 69000	<u>10,000</u>
8	Total.....	\$ 15,525,053

*338 - State Board of Education –
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2016 Org 0402

1	Personal Services and		
2	Employee Benefits..	00100	\$ 4,044,940
3	Unclassified.	09900	1,000,000
4	Current Expenses.	13000	107,646,390
5	Repairs and Alterations.	06400	10,000
6	Equipment.	07000	10,000
7	Other Assets.	69000	<u>10,000</u>
8	Total.		\$ 112,721,330

DEPARTMENT OF EDUCATION AND THE ARTS

*339 - Department of Education and the Arts –
Office of the Secretary*

(WV Code Chapter 5F)

Fund 8841 FY 2016 Org 0431

1	Personal Services and		
2	Employee Benefits..	00100	\$ 414,424
3	Current Expenses.	13000	5,589,576
4	Repairs and Alterations.	06400	<u>1,000</u>
5	Total.		\$ 6,005,000

340 - Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2016 Org 0432

1	Personal Services and		
2	Employee Benefits..	00100	\$ 743,046
3	Current Expenses.	13000	1,947,372
4	Repairs and Alterations.	06400	1,000
5	Equipment.	07000	1,000

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6	Buildings.	25800	1,000
7	Other Assets.	69000	1,000
8	Land.	73000	<u>360</u>
9	Total.		\$ 2,694,778

341 - Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2016 Org 0433

1	Personal Services and		
2	Employee Benefits.	00100	\$ 328,653
3	Current Expenses.	13000	1,081,157
4	Equipment.	07000	<u>543,406</u>
5	Total.		\$ 1,953,216

342 - Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2016 Org 0439

1	Equipment.	07000	\$ 750,000
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*343 - State Board of Rehabilitation –
Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 2016 Org 0932

1	Personal Services and		
2	Employee Benefits.	00100	\$ 12,616,894
3	Current Expenses.	13000	53,118,076
4	Repairs and Alterations.	06400	350,300
5	Equipment.	07000	<u>1,275,870</u>
6	Total.		\$ 67,361,140

*344 - State Board of Rehabilitation –
Division of Rehabilitation Services –
Disability Determination Services*

(WV Code Chapter 18)

Fund 8890 FY 2016 Org 0932

1	Personal Services and		
2	Employee Benefits..	00100	\$ 15,906,206
3	Current Expenses.	13000	9,207,634
4	Repairs and Alterations.	06400	1,100
5	Equipment.	07000	<u>83,350</u>
6	Total..		\$ 25,198,290

DEPARTMENT OF ENVIRONMENTAL PROTECTION

345 - Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2016 Org 0313

1	Personal Services and		
2	Employee Benefits..	00100	\$ 28,102,458
3	Current Expenses.	13000	166,827,394
4	Repairs and Alterations.	06400	233,583
5	Equipment.	07000	888,188
6	Other Assets..	69000	146,216
7	Land.	73000	<u>100,000</u>
8	Total..		\$ 196,297,839

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

346 - Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2016 Org 0506

1	Personal Services and		
2	Employee Benefits..... 00100	\$	627,336
3	Unclassified..... 09900		73,307
4	Current Expenses..... 13000		<u>6,630,103</u>
5	Total.....	\$	7,330,746

*347 - Division of Health –
Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2016 Org 0506

1	Personal Services and		
2	Employee Benefits..... 00100	\$	13,744,404
3	Unclassified..... 09900		910,028
4	Current Expenses..... 13000		79,148,201
5	Equipment..... 07000		456,972
6	Buildings..... 25800		155,000
7	Other Assets..... 69000		380,000
8	Federal Economic Stimulus..... 89100		<u>150,000</u>
9	Total.....	\$	94,944,605

*348 - Division of Health –
West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2016 Org 0506

1	West Virginia Drinking Water		
2	Treatment Revolving		
3	Fund – Transfer..... 68900	\$	16,000,000

349 - West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2016 Org 0507

1	Unclassified.	09900	\$	9,966
2	Current Expenses.	13000		<u>986,649</u>
3	Total.		\$	996,615

350 - Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2016 Org 0510

1	Personal Services and			
2	Employee Benefits.	00100	\$	549,827
3	Unclassified.	09900		5,482
4	Current Expenses.	13000		<u>90,389</u>
5	Total.		\$	645,698

351 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2016 Org 0511

1	Personal Services and			
2	Employee Benefits.	00100	\$	67,320,701
3	Unclassified.	09900		22,855,833
4	Current Expenses.	13000		71,798,431
5	Medical Services.	18900		2,803,202,632
6	Medical Services			
7	Administrative Costs.	78900		132,045,119
8	CHIP Administrative Costs.	85601		533,752
9	CHIP Services.	85602		47,422,974
10	Federal Economic Stimulus.	89100		<u>45,693,209</u>
11	Total.		\$	3,190,872,651

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

352 - Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2016 Org 0601

1	Personal Services and		
2	Employee Benefits.. 00100	\$	440,525
3	Unclassified. 09900		250,053
4	Current Expenses. 13000		24,303,277
5	Repairs and Alterations. 06400		3,971
6	Other Assets. 69000		<u>7,500</u>
7	Total.	\$	25,005,326

*353 - Adjutant General –
State Militia*

(WV Code Chapter 15)

Fund 8726 FY 2016 Org 0603

1	Unclassified. 09900	\$	982,705
2	Mountaineer ChalleNGe		
3	Academy. 70900		3,050,000
4	Martinsburg Starbase. 74200		375,000
5	Charleston Starbase. 74300		325,000
6	Military Authority. 74800		<u>93,537,900</u>
7	Total.	\$	98,270,605

8 The adjutant general shall have the authority to transfer
9 between appropriations.

*354 - Adjutant General –
West Virginia National Guard Counterdrug Forfeiture Fund*

(WV Code Chapter 15)

Fund 8785 FY 2016 Org 0603

1	Personal Services and		
2	Employee Benefits..... 00100	\$	1,350,000
3	Current Expenses..... 13000		300,000
4	Equipment..... 07000		<u>350,000</u>
5	Total.....	\$	2,000,000

*355 - Division of Homeland Security and
Emergency Management*

(WV Code Chapter 15)

Fund 8727 FY 2016 Org 0606

1	Personal Services and		
2	Employee Benefits..... 00100	\$	721,650
3	Current Expenses..... 13000		20,429,281
4	Repairs and Alterations..... 06400		5,000
5	Equipment..... 07000		<u>100,000</u>
6	Total.....	\$	21,255,931

356 - Division of Corrections

(WV Code Chapters 25, 28, 49 and 62)

Fund 8836 FY 2016 Org 0608

1	Unclassified..... 09900	\$	1,100
2	Current Expenses..... 13000		<u>108,900</u>
3	Total.....	\$	110,000

357 - West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2016 Org 0612

1	Personal Services and		
2	Employee Benefits..	00100	\$ 2,325,349
3	Current Expenses.	13000	2,125,971
4	Repairs and Alterations.	06400	42,000
5	Equipment.	07000	2,502,285
6	Buildings.	25800	750,500
7	Other Assets.	69000	144,500
8	Land.	73000	500
9	Total.		<u>\$ 7,891,105</u>

358 - Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2016 Org 0619

1	Current Expenses.	13000	\$ 80,000
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359 - Division of Justice and Community Services

(WV Code Chapter 15)

Fund 8803 FY 2016 Org 0620

1	Personal Services and		
2	Employee Benefits..	00100	\$ 724,370
3	Unclassified.	09900	25,185
4	Current Expenses.	13000	7,965,450
5	Repairs and Alterations.	06400	1,750
6	Total.		<u>\$ 8,716,755</u>

DEPARTMENT OF REVENUE

*360 - Tax Division –
Consolidated Federal Fund*

APPROPRIATIONS

[Ch. 15]

(WV Code Chapter 11)

Fund 8899 FY 2016 Org 0702

1	Current Expenses.	13000	\$	10,000
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361 - Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2016 Org 0704

1	Personal Services and			
2	Employee Benefits..	00100	\$	838,090
3	Current Expenses.	13000		12,962,837
4	Repairs and Alterations.	06400		25,000
5	Equipment.	07000		250,000
6	Buildings.	25800		25,000
7	Other Assets.	69000		<u>100,000</u>
8	Total.		\$	14,200,927

DEPARTMENT OF TRANSPORTATION*362 - Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2016 Org 0802

1	Personal Services and			
2	Employee Benefits..	00100	\$	501,394
3	Current Expenses.	13000		17,671,640
4	Repairs and Alterations.	06400		<u>500</u>
5	Total.		\$	18,173,534

363 - Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2016 Org 0805

1	Personal Services and		
2	Employee Benefits..	00100	\$ 657,137
3	Current Expenses.	13000	8,928,012
4	Repairs and Alterations.	06400	2,500
5	Equipment.	07000	5,286,432
6	Buildings.	25800	500,000
7	Other Assets.	69000	<u>174,119</u>
8	Total.		\$ 15,548,200

DEPARTMENT OF VETERANS' ASSISTANCE*364 - Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 8858 FY 2016 Org 0613

1	Personal Services and		
2	Employee Benefits..	00100	\$ 2,749,840
3	Current Expenses.	13000	3,927,160
4	Repairs and Alterations.	06400	50,000
5	Equipment.	07000	200,000
6	Buildings.	25800	600,000
7	Other Assets.	69000	100,000
8	Land.	73000	<u>100,000</u>
9	Total.		\$ 7,727,000

*365 - Department of Veterans' Assistance –
Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 2016 Org 0618

1	Personal Services and		
2	Employee Benefits..	00100	\$ 877,375

338	APPROPRIATIONS	[Ch. 15
3	Current Expenses.	13000 844,632
4	Repairs and Alterations.	06400 220,000
5	Equipment.	07000 198,000
6	Buildings.	25800 296,000
7	Other Assets.	69000 20,000
8	Land.	73000 <u>10,000</u>
9	Total.	\$ 2,466,007

BUREAU OF SENIOR SERVICES

366 - Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2016 Org 0508

1	Personal Services and	
2	Employee Benefits.	00100 \$ 721,393
3	Current Expenses.	13000 13,811,853
4	Repairs and Alterations.	06400 <u>3,000</u>
5	Total.	\$ 14,536,246

MISCELLANEOUS BOARDS AND COMMISSIONS

*367 - Public Service Commission –
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2016 Org 0926

1	Personal Services and	
2	Employee Benefits.	00100 \$ 1,286,913
3	Current Expenses.	13000 368,953
4	Repairs and Alterations.	06400 <u>40,000</u>
5	Total.	\$ 1,695,866

*368 - Public Service Commission –
Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2016 Org 0926

1	Personal Services and		
2	Employee Benefits.. 00100	\$	337,532
3	Current Expenses. 13000		14,648
4	Unclassified. 09900		<u>352</u>
5	Total.	\$	352,532

369 - National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2016 Org 0941

1	Personal Services and		
2	Employee Benefits.. 00100	\$	158,635
3	Current Expenses. 13000		631,365
4	Repairs and Alterations. 06400		5,000
5	Equipment. 07000		3,000
6	Other Assets. 69000		<u>2,000</u>
7	Total.	\$	800,000

370 - Coal Heritage Highway Authority

(WV Code Chapter 29)

Fund 8861 FY 2016 Org 0942

1	Personal Services and		
2	Employee Benefits.. 00100	\$	0
3	Current Expenses. 13000		<u>0</u>
4	Total.	\$	0

5 Total TITLE II, Section 6 –
 6 Federal Funds. \$ 4,395,605,081

1 **Sec. 7. Appropriations from federal block grants.** – The
 2 following items are hereby appropriated from federal block
 3 grants to be available for expenditure during the fiscal year 2016.

*371 - West Virginia Development Office –
 Community Development*

Fund 8746 FY 2016 Org 0307

1	Personal Services and		
2	Employee Benefits.. 00100	\$	648,117
3	Unclassified. 09900		483,500
4	Current Expenses. 13000		47,226,995
5	Repairs and Alterations. 06400		<u>300</u>
6	Total..	\$	48,358,912

*372 - WorkForce West Virginia –
 Workforce Investment Act*

Fund 8749 FY 2016 Org 0323

1	Personal Services and		
2	Employee Benefits.. 00100	\$	1,511,208
3	Unclassified. 09900		23,023
4	Current Expenses. 13000		19,864,909
5	Repairs and Alterations. 06400		1,600
6	Equipment. 07000		500
7	Buildings. 25800		<u>1,100</u>
8	Total..	\$	21,402,340

*373 - Department of Commerce
 Office of the Secretary –
 Office of Economic Opportunity –
 Community Services*

Fund 8781 FY 2016 Org 0327

1	Personal Services and		
2	Employee Benefits..	00100	\$ 362,389
3	Unclassified.	09900	84,000
4	Current Expenses.	13000	12,043,111
5	Repairs and Alterations.	06400	1,500
6	Equipment.	07000	<u>9,000</u>
7	Total.		\$ 12,500,000

*374 - Division of Health –
Maternal and Child Health*

Fund 8750 FY 2016 Org 0506

1	Personal Services and		
2	Employee Benefits..	00100	\$ 2,124,294
3	Unclassified.	09900	110,017
4	Current Expenses.	13000	<u>8,767,420</u>
5	Total.		\$ 11,001,731

*375 - Division of Health –
Preventive Health*

Fund 8753 FY 2016 Org 0506

1	Personal Services and		
2	Employee Benefits..	00100	\$ 162,320
3	Unclassified.	09900	22,457
4	Current Expenses.	13000	1,895,366
5	Equipment.	07000	<u>165,642</u>
6	Total.		\$ 2,245,785

*376 - Division of Health –
Substance Abuse Prevention and Treatment*

Fund 8793 FY 2016 Org 0506

APPROPRIATIONS

[Ch. 15]

1	Personal Services and		
2	Employee Benefits..... 00100	\$	822,766
3	Unclassified..... 09900		115,924
4	Current Expenses..... 13000		<u>10,653,740</u>
5	Total.....	\$	11,592,430

*377 - Division of Health –
Community Mental Health Services*

Fund 8794 FY 2016 Org 0506

1	Personal Services and		
2	Employee Benefits..... 00100	\$	936,557
3	Unclassified..... 09900		33,533
4	Current Expenses..... 13000		<u>2,383,307</u>
5	Total.....	\$	3,353,397

*378- Division of Human Services –
Energy Assistance*

Fund 8755 FY 2016 Org 0511

1	Personal Services and		
2	Employee Benefits..... 00100	\$	1,475,000
3	Unclassified..... 09900		350,000
4	Current Expenses..... 13000		<u>33,175,000</u>
5	Total.....	\$	35,000,000

*379 - Division of Human Services –
Social Services*

Fund 8757 FY 2016 Org 0511

1	Personal Services and		
2	Employee Benefits..... 00100	\$	14,231,684
3	Unclassified..... 09900		171,982
4	Current Expenses..... 13000		<u>2,870,508</u>
5	Total.....	\$	17,274,174

380 - Division of Human Services –
Temporary Assistance for Needy Families

Fund 8816 FY 2016 Org 0511

1	Personal Services and		
2	Employee Benefits..... 00100	\$	17,964,349
3	Unclassified..... 09900		1,250,000
4	Current Expenses..... 13000		<u>105,785,651</u>
5	Total.....	\$	125,000,000

381 - Division of Human Services –
Child Care and Development

Fund 8817 FY 2016 Org 0511

1	Personal Services and		
2	Employee Benefits..... 00100	\$	4,654,643
3	Unclassified..... 09900		350,000
4	Current Expenses..... 13000		<u>31,995,357</u>
5	Total.....	\$	37,000,000

382 - Division of Justice and Community Services –
Juvenile Accountability Incentive

Fund 8829 FY 2016 Org 0620

1	Personal Services and		
2	Employee Benefits..... 00100	\$	14,246
3	Current Expenses..... 13000		235,729
4	Repairs and Alterations..... 06400		<u>25</u>
5	Total.....	\$	250,000
6	Total TITLE II, Section 7 —		
7	Federal Block Grants.....	\$	<u><u>324,978,769</u></u>

1 **Sec. 8. Awards for claims against the state.** — There are
 2 hereby appropriated for fiscal year 2016, from the fund as
 3 designated, in the amounts as specified, general revenue funds
 4 in the amount of \$203,331, special revenue funds in the amount
 5 of \$747,870, and state road funds in the amount of \$730,433 for
 6 payment of claims against the state.

1 **Sec. 9. Appropriations from general revenue surplus**
 2 **accrued.** — The following items are hereby appropriated from
 3 the state fund, general revenue, and are to be available for
 4 expenditure during the fiscal year 2016 out of surplus funds
 5 only, accrued from the fiscal year ending June 30, 2015, subject
 6 to the terms and conditions set forth in this section.

7 It is the intent and mandate of the Legislature that the
 8 following appropriations be payable only from surplus accrued
 9 as of July 31, 2015 from the fiscal year ending June 30, 2015,
 10 only after first meeting requirements of W.Va. Code §11B-2-
 11 20(b).

12 In the event that surplus revenues available on July 31, 2015,
 13 are not sufficient to meet the appropriations made pursuant to
 14 this section, then the appropriations shall be made to the extent
 15 that surplus funds are available as of the date mandated to meet
 16 the appropriation in this section.

383 - Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2016 Org 0211

1	Capital Outlay, Repairs and		
2	Equipment – Surplus.	67700	\$ 9,000,000

384 - Department of Education and the Arts -
Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2016 Org 0431

1	WV Early Childhood Planning		
2	Task Force - Surplus.	14499	\$ <u>350,000</u>
3	Total TITLE II, Section 9 –		
4	Surplus Accrued.		\$ <u>9,350,000</u>

5 **Sec. 10. Appropriations from lottery net profits surplus**
6 **accrued.** — The following item is hereby appropriated from the
7 lottery net profits, and is to be available for expenditure during
8 the fiscal year 2016 out of surplus funds only, as determined by
9 the director of lottery, accrued from the fiscal year ending June
10 30, 2015, subject to the terms and conditions set forth in this
11 section.

12 It is the intent and mandate of the Legislature that the
13 following appropriation be payable only from surplus accrued
14 from the fiscal year ending June 30, 2015.

15 In the event that surplus revenues available from the fiscal
16 year ending June 30, 2015, are not sufficient to meet the
17 appropriation made pursuant to this section, then the
18 appropriation shall be made to the extent that surplus funds are
19 available.

385 - Bureau of Senior Services –
Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2016 Org 0508

1	Senior Services Medicaid Transfer –		
2	Lottery Surplus.	68199	\$ <u>10,000,000</u>
3	Total TITLE II, Section 10 –		
4	Surplus Accrued.		\$ <u>10,000,000</u>

5 **Sec. 11. Appropriations from state excess lottery revenue**
6 **surplus accrued.** — The following item is hereby appropriated
7 from the state excess lottery revenue fund, and is to be available
8 for expenditure during the fiscal year 2016 out of surplus funds
9 only, as determined by the director of lottery, accrued from the
10 fiscal year ending June 30, 2015, subject to the terms and
11 conditions set forth in this section.

12 It is the intent and mandate of the Legislature that the
13 following appropriation be payable only from surplus accrued
14 from the fiscal year ending June 30, 2015.

15 In the event that surplus revenues available from the fiscal
16 year ending June 30, 2015, are not sufficient to meet the
17 appropriation made pursuant to this section, then the
18 appropriation shall be made to the extent that surplus funds are
19 available.

386 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2016 Org 0511

1	Medical Services –		
2	Lottery Surplus.	68100	\$ <u>20,000,000</u>
3	Total TITLE II, Section 11 –		
4	Surplus Accrued.		\$ <u>20,000,000</u>

1 **Sec. 12. Special revenue appropriations.** — There are
2 hereby appropriated for expenditure during the fiscal year 2016
3 appropriations made by general law from special revenues which
4 are not paid into the state fund as general revenue under the
5 provisions of W.Va. Code §12-2-2: Provided, That none of the
6 money so appropriated by this section shall be available for
7 expenditure except in compliance with the provisions of W.Va.
8 Code §12-2 and 3, and W.Va. Code §11B-2, unless the spending
9 unit has filed with the director of the budget and the legislative
10 auditor prior to the beginning of each fiscal year:

11 (a) An estimate of the amount and sources of all revenues
12 accruing to such fund; and

13 (b) A detailed expenditure schedule showing for what
14 purposes the fund is to be expended.

1 **Sec. 13. State improvement fund appropriations.** —
2 Bequests or donations of nonpublic funds, received by the
3 Governor on behalf of the state during the fiscal year 2016, for
4 the purpose of making studies and recommendations relative to
5 improvements of the administration and management of
6 spending units in the executive branch of state government, shall
7 be deposited in the state treasury in a separate account therein
8 designated state improvement fund.

9 There are hereby appropriated all moneys so deposited
10 during the fiscal year 2016 to be expended as authorized by the
11 Governor, for such studies and recommendations which may
12 encompass any problems of organization, procedures, systems,
13 functions, powers or duties of a state spending unit in the
14 executive branch, or the betterment of the economic, social,
15 educational, health and general welfare of the state or its
16 citizens.

1 **Sec. 14. Specific funds and collection accounts.** — A fund
2 or collection account which by law is dedicated to a specific use
3 is hereby appropriated in sufficient amount to meet all lawful
4 demands upon the fund or collection account and shall be
5 expended according to the provisions of Article 3, Chapter 12 of
6 the Code.

1 **Sec. 15. Appropriations for refunding erroneous**
2 **payment.** — Money that has been erroneously paid into the state
3 treasury is hereby appropriated out of the fund into which it was
4 paid, for refund to the proper person.

5 When the officer authorized by law to collect money for the
6 state finds that a sum has been erroneously paid, he or she shall
7 issue his or her requisition upon the Auditor for the refunding of
8 the proper amount. The Auditor shall issue his or her warrant to
9 the Treasurer and the Treasurer shall pay the warrant out of the
10 fund into which the amount was originally paid.

1 **Sec. 16. Sinking fund deficiencies.** — There is hereby
2 appropriated to the Governor a sufficient amount to meet any
3 deficiencies that may arise in the mortgage finance bond
4 insurance fund of the West Virginia housing development fund
5 which is under the supervision and control of the municipal bond
6 commission as provided by W.Va. Code §31-18-20b, or in the
7 funds of the municipal bond commission because of the failure
8 of any state agency for either general obligation or revenue
9 bonds or any local taxing district for general obligation bonds to
10 remit funds necessary for the payment of interest and sinking
11 fund requirements. The Governor is authorized to transfer from
12 time to time such amounts to the municipal bond commission as
13 may be necessary for these purposes.

14 The municipal bond commission shall reimburse the state of
15 West Virginia through the Governor from the first remittance
16 collected from the West Virginia housing development fund or

17 from any state agency or local taxing district for which the
18 Governor advanced funds, with interest at the rate carried by the
19 bonds for security or payment of which the advance was made.

1 **Sec. 17. Appropriations for local governments.** — There
2 are hereby appropriated for payment to counties, districts and
3 municipal corporations such amounts as will be necessary to pay
4 taxes due counties, districts and municipal corporations and
5 which have been paid into the treasury:

6 (a) For redemption of lands;

7 (b) By public service corporations;

8 (c) For tax forfeitures.

1 **Sec. 18. Total appropriations.** — Where only a total sum
2 is appropriated to a spending unit, the total sum shall include
3 personal services and employee benefits, annual increment,
4 current expenses, repairs and alterations, buildings, equipment,
5 other assets, land, and capital outlay, where not otherwise
6 specifically provided and except as otherwise provided in TITLE
7 I – GENERAL PROVISIONS, Sec. 3.

1 **Sec. 19. General school fund.** — The balance of the
2 proceeds of the general school fund remaining after the payment
3 of the appropriations made by this act is appropriated for
4 expenditure in accordance with W.Va. Code §18-9A-16.

1 **Sec. 20. Special permissive, one-time appropriation from**
2 **Revenue Shortfall Reserve Fund.** *

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TITLE III – ADMINISTRATION

§1. Appropriations conditional

§2. Constitutionality

TITLE III – ADMINISTRATION.

1 **Sec. 1. Appropriations conditional.** — The expenditure of
 2 the appropriations made by this act, except those appropriations
 3 made to the legislative and judicial branches of the state
 4 government, are conditioned upon the compliance by the
 5 spending unit with the requirements of Article 2, Chapter 11B of
 6 the Code.

7 Where spending units or parts of spending units have been
 8 absorbed by or combined with other spending units, it is the
 9 intent of this act that appropriations and reappropriations shall be
 10 to the succeeding or later spending unit created, unless otherwise
 11 indicated.

1 **Sec. 2. Constitutionality.** — If any part of this act is
 2 declared unconstitutional by a court of competent jurisdiction, its
 3 decision shall not affect any portion of this act which remains,
 4 but the remaining portion shall be in full force and effect as if
 5 the portion declared unconstitutional had never been a part of the
 6 act.

* **NOTE:** The Governor deleted the language on lines 2 through 10, which read “— There is hereby appropriated an amount not to exceed \$20,000,000 from the Revenue Shortfall Reserve Fund (fund 7005) for the renovation of State Capitol Complex Building 3 to provide for its use as state office space. In lieu of incurring additional state debt, bond issuance and interest expense, the Governor may at his discretion, direct the transfer of funds to the Capitol Dome and Capitol Improvements Fund (fund 2257) created under §5A-4-2, for expenditure.”

CHAPTER 16

**(H. B. 2760 - By Mr. Speaker (Mr. Armstead)
and Delegate Miley)
[By Request of the Executive]**

[Passed March 6, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2015, organization 0508, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 14, 2015, which included a Statement of the Lottery Fund setting forth therein the unappropriated cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less regular appropriations for fiscal year 2015; and

WHEREAS, It appears from the Governor's Statement of Lottery Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 5405, fiscal year 2015, organization 0508, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Sec. 4. Appropriations from lottery net profits.

*292–Bureau of Senior Services -
Lottery Senior Citizens Fund*

(WV Code Chapter 29)

Fund 5405 FY 2015 Org 0508

	Approp- riation	Lottery Funds
1 19 Senior Services Medicaid		
2 Transfer.	87100	\$ 31,355,462

3 The purpose of this supplementary appropriation bill is to
4 supplement, amend, and increase an existing item of
5 appropriation in the aforesaid account for the designated
6 spending unit for expenditure during the fiscal year 2015.



CHAPTER 17

**(H. B. 2764 - By Mr. Speaker (Mr. Armstead)
and Delegate Miley)
[By Request of the Executive]**

[Passed March 6, 2015; in effect from passage]
[Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the State Department of Education

- School Building Authority - Debt Service Fund, fund 3963, fiscal year 2015, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 14, 2015, which included a Statement of the Lottery Fund setting forth therein the unappropriated cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less regular appropriations for fiscal year 2015; and

WHEREAS, It appears from the Governor’s Statement of Lottery Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 3963, fiscal year 2015, organization 0402, be supplemented and amended to read as follows:

TITLE II - APPROPRIATIONS.

Sec. 4. Appropriations from lottery net profits.

*288-State Department of Education -
School Building Authority -
Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2015 Org 0402

	Approp- riation		Lottery Funds
1 1 Debt Service - Total..	31000	\$	7,513,455

2	2	Directed Transfer.....	70000	<u>10,486,545</u>
3	3	Total.....		\$ 18,000,000

4 The School Building Authority shall have the authority to
 5 transfer between the above appropriations in accordance with
 6 W.Va. Code §29-22-18.



CHAPTER 18

**(Com. Sub. for H. B. 2766 - By Mr. Speaker, (Mr. Armstead)
 and Delegate Miley)
 [By Request of the Executive]**

 [Passed March 14, 2015; in effect from passage.]

[Approved by the Governor with deletions and reductions on March 20, 2015.]

AN ACT expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015, in the amount of \$5,650,000 from the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, appropriation 64200, and in the amount of \$1,850,000 from the Joint Expenses, fund 0175, fiscal year 2009, organization 2300, appropriation 64200,*

*

* **NOTE:** The Governor deleted language in the title which read “and in the amount of \$75,365.64 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 11400, and in the amount of \$67,553.27 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 23800, and in the amount of \$122,113 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 23800, and in the amount of \$212,500 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 61400, and in the amount of \$635,179.58 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 23800, and in the amount of \$346,521.90 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 26300, and in the amount of \$1,207,149.67 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 61400, and in the amount of \$34,378.53 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 11400, and in the amount of \$397,276.39 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 23800, and in the amount of \$1,272,323.47 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2006, organization 0100, appropriation 61400, and in the amount of \$2,227,821.66 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, and in the amount of \$901,816.89 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, appropriation 11400, and in the amount of \$7,500,000 from the Treasurer’s Office - Special Income Tax Refund Reserve Fund, fund 1313, fiscal year 2015, organization 1300.”

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 2015, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2014, and further included the estimate of revenues for fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015; and

WHEREAS, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first six months of fiscal year 2015 as prepared by the State Budget Office; and

WHEREAS, This report demonstrates that the State of West Virginia has experienced a revenue shortfall of approximately \$34 million for the first six months of fiscal year 2015, as compared to the monthly revenue estimates for the first six months of the fiscal year 2015; and

WHEREAS, Current economic and fiscal trends will result in projected year-end revenue deficits, including potential significant shortfalls in Severance Tax, and smaller shortfalls in Personal Income Tax and Consumer Sales and Use Tax; and

WHEREAS, Projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and

WHEREAS, The total projected year-end revenue deficit for the General Revenue Fund is estimated at \$80 million; and

WHEREAS, On December 17, 2013, the Governor issued a memorandum to Cabinet Secretaries implementing temporary restrictions on general revenue funded hiring to help reduce expenditures and close the anticipated budget gap in fiscal year 2014; and

WHEREAS, on July 1, 2014, this temporary restriction on general revenue funded hiring was extended to help close the anticipated budget gap in fiscal year 2015; and

WHEREAS, The Constitution of the State of West Virginia requires that there be a balance between the State's revenues and expenditures for each fiscal year; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2015, in the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, appropriation 64200, be decreased by expiring the amount of \$5,650,000, and in the Joint Expenses, fund 0175, fiscal year 2009, organization 2300, appropriation 64200, be decreased by expiring the amount of \$1,850,000, *

* all to the unappropriated balance of the State Fund, General Revenue, to be available during the fiscal year ending June 30, 2015.

* **NOTE:** The Governor deleted language in the title which read “and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 11400, be decreased by expiring the amount of \$75,365.64, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 23800, be decreased by expiring the amount of \$67,553.27, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 23800, be decreased by expiring the amount of \$122,113, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 61400, be decreased by expiring the amount of \$212,500, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 23800, be decreased by expiring the amount of \$635,179.58, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 26300, be decreased by expiring the amount of \$346,521.90, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 61400, be decreased by expiring the amount of \$1,207,149.67, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 11400, be decreased by expiring the amount of \$34,378.53, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 23800, be decreased by expiring the amount of \$397,276.39, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2006, organization 0100, appropriation 61400, be decreased by expiring the amount of \$1,272,323.47, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, be decreased by expiring the amount of \$2,227,821.66, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, appropriation 11400, be decreased by expiring the amount of \$901,816.89, and in the Treasurer’s Office - Special Income Tax Refund Reserve Fund, fund 1313, fiscal year 2015, organization 1300, be decreased by expiring the amount of \$7,500,000.”

The purpose of this supplemental appropriation bill is to expire items from the aforesaid accounts to the General Revenue unappropriated balance for the fiscal year 2015.

CHAPTER 19

**(Com. Sub. for H. B. 2769 - By Mr. Speaker, (Mr. Armstead)
and Delegate Miley)**

[By Request of the Executive]

[Passed March 14, 2015; in effect from passage.]

[Approved by the Governor with deletions and reductions March 20, 2015.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015 in the amount of \$1,500,000 from the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 59200, and in the amount of \$400,103.30 from the Department of Transportation, Division of Public Transit, fund 0510, fiscal year 2013, organization 0805, appropriation 25800, and in the amount of \$3,861,297 from the Department of Administration, Risk and Insurance Management Board - Premium Tax Savings Fund, fund 2367, fiscal year 2015, organization 0218, and in the amount of \$1,329.28 from the Department of Health and Human Resources, Division of Health, Uniform Health Professional Data Collection Systems Fund, fund 5109, fiscal year 2015, organization 0506, and in the amount of \$478.81 from the Department of Health and Human Resources, Division of Health, Commonly Based Fetal and Infant Mortality Review Fund, fund 5131, fiscal year 2015, organization 0506, and in the amount of \$18,609.27 from the Department of Health and Human Resources, Division of Health, Claude Worthington Benedum Foundation

Fund, fund 5132, fiscal year 2015, organization 0506, and in the amount of \$2,500 from the Department of Health and Human Resources, Division of Health, Behavioral Health Clearing Fund, fund 5151, fiscal year 2015, organization 0506, and in the amount of \$13,193.90 from the Department of Health and Human Resources, Division of Health, Special Education Title I Fund, fund 5161, fiscal year 2015, organization 0506, and in the amount of \$45 from the Department of Health and Human Resources, Division of Health, Rural Health Networking Project Fund, fund 5184, fiscal year 2015, organization 0506, and in the amount of \$1,400,000 from the Department of Health and Human Resources, Division of Health, Vital Statistics Improvement Fund, fund 5225, fiscal year 2015, organization 0506, and in the amount of \$6,000,000 from the Department of Health and Human Resources, West Virginia Health Care Authority - Health Care Cost Review Fund, fund 5375, fiscal year 2015, organization 0507, and in the amount of \$4,000,000 from the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Information Network Account, fund 5380, fiscal year 2015, organization 0507, and in the amount of \$2,000,000 from the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Care Authority Revolving Loan Fund, fund 5382, fiscal year 2015, organization 0507, and in the amount of \$4,976.37 from the Department of Health and Human Resources, Division of Human Services, Special County General Relief Fund, fund 5054, fiscal year 2015, organization 0511, and in the amount of \$18,118.01 from the Department of Health and Human Resources, Division of Human Services, Individual and Family Grant Program, fund 5055, fiscal year 2015, organization 0511, and in the amount of \$251,657.05 from the Department of Health and Human Resources, Division of Human Services, TRIP Fund, fund 5070, fiscal year 2015, organization 0511, and in the amount of \$4,000,000 from the Department of Health and Human Resources, Division of Human Services, Medicaid Fraud Control Fund, fund 5141, fiscal year 2015, organization 0511, and in the amount of \$223,310.69 from the

Department of Health and Human Resources, Division of Human Services - Marriage Education Fund, fund 5490, fiscal year 2015, organization 0511, and in the amount of \$16,700,000 from the Department of Revenue, Insurance Commissioner, fund 7152, fiscal year 2015, organization 0704,*

*

WHEREAS, the Governor finds that the account balances in the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 59200, in the Department of Transportation, Division of Public Transit, fund 0510, fiscal year 2013, organization 0805, appropriation 25800, in the Department of Administration, Risk and Insurance Management Board - Premium Tax Savings Fund, fund 2367, fiscal year 2015, organization 0218, in the Department of Health and Human Resources, Division of Health, Uniform Health Professional Data Collection Systems Fund, fund 5109, fiscal year 2015, organization 0506, in the Department of Health and Human Resources, Division of Health, Commonly Based Fetal and Infant Mortality Review Fund, fund 5131, fiscal year 2015, organization 0506, in the Department of Health and Human Resources, Division of Health, Claude Worthington Benedum Foundation Fund, fund 5132, fiscal year 2015, organization 0506, in the Department of Health and Human Resources, Division of Health, Behavioral Health Clearing Fund, fund 5151, fiscal year 2015, organization 0506, in the Department of Health and Human Resources, Division of Health, Special Education Title I Fund, fund 5161, fiscal year 2015, organization 0506, in the Department of Health and Human Resources,

* **NOTE:** The Governor deleted language in the title which read “and all subject to the condition that bonds authorized in section sixteen-b, article fifteen, chapter thirty-one of the Code of West Virginia for improvements to Cacapon State Park and Beech Fork State Park have been sold.”

Division of Health, Rural Health Networking Project Fund, fund 5184, fiscal year 2015, organization 0506, in the Department of Health and Human Resources, Division of Health, Vital Statistics Improvement Fund, fund 5225, fiscal year 2015, organization 0506, in the Department of Health and Human Resources, West Virginia Health Care Authority - Health Care Cost Review Fund, fund 5375, fiscal year 2015, organization 0507, in the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Information Network Account, fund 5380, fiscal year 2015, organization 0507, in the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Care Authority Revolving Loan Fund, fund 5382, fiscal year 2015, organization 0507, in the Department of Health and Human Resources, Division of Human Services, Special County General Relief Fund, fund 5054, fiscal year 2015, organization 0511, in the Department of Health and Human Resources, Division of Human Services, Individual and Family Grant Program, fund 5055, fiscal year 2015, organization 0511, in the Department of Health and Human Resources, Division of Human Services, TRIP Fund, fund 5070, fiscal year 2015, organization 0511, in the Department of Health and Human Resources, Division of Human Services, Medicaid Fraud Control Fund, fund 5141, fiscal year 2015, organization 0511, in the Department of Health and Human Resources, Division of Human Services - Marriage Education Fund, fund 5490, fiscal year 2015, organization 0511, and in the Department of Revenue, Insurance Commissioner, fund 7152, fiscal year 2015, organization 0704, exceed that which is necessary for the purposes for which the accounts were established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 14, 2015, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015 and further included recommended expirations to the surplus balance of the State Fund General Revenue; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2015, in the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 59200 be decreased by expiring the amount of \$1,500,000, and in the Department of Transportation, Division of Public Transit, fund 0510, fiscal year 2013, organization 0805, appropriation 25800, be decreased by expiring the amount of \$400,103.30, and in the Department of Administration, Risk and Insurance Management Board - Premium Tax Savings Fund, fund 2367, fiscal year 2015, organization 0218, be decreased by expiring the amount of \$3,861,297, and in the Department of Health and Human Resources, Division of Health, Uniform Health Professional Data Collection Systems Fund, fund 5109, fiscal year 2015, organization 0506, be decreased by expiring the amount of \$1,329.28, and in the Department of Health and Human Resources, Division of Health, Commonly Based Fetal and Infant Mortality Review Fund, fund 5131, fiscal year 2015, organization 0506, be decreased by expiring the amount of \$478.81, and in the Department of Health and Human Resources, Division of Health, Claude Worthington Benedum Foundation Fund, fund 5132, fiscal year 2015, organization 0506, be decreased by expiring the amount of \$18,609.27, Department of Health and Human Resources, Division of Health, Behavioral Health Clearing Fund, fund 5151, fiscal year 2015, organization 0506, be decreased by expiring the amount of \$2,500, and in the Department of Health and Human Resources, Division of Health, Special Education Title I Fund, fund 5161, fiscal year 2015, organization 0506, be decreased by expiring the amount of \$13,193.90, and in the Department of Health and Human Resources, Division of Health, Rural Health Networking

Project Fund, fund 5184, fiscal year 2015, organization 0506, be decreased by expiring the amount of \$45, and in the Department of Health and Human Resources, Division of Health, Vital Statistics Improvement Fund, fund 5225, fiscal year 2015, organization 0506, be decreased by expiring the amount of \$1,400,000, and in the Department of Health and Human Resources, West Virginia Health Care Authority - Health Care Cost Review Fund, fund 5375, fiscal year 2015, organization 0507, be decreased by expiring the amount of \$6,000,000, and in the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Information Network Account, fund 5380, fiscal year 2015, organization 0507, be decreased by expiring the amount of \$4,000,000, and in the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Care Authority Revolving Loan Fund, fund 5382, fiscal year 2015, organization 0507, be decreased by expiring the amount of \$2,000,000, and in the Department of Health and Human Resources, Division of Human Services, Special County General Relief Fund, fund 5054, fiscal year 2015, organization 0511, be decreased by expiring the amount of \$4,976.37, and in the Department of Health and Human Resources, Division of Human Services, Individual and Family Grant Program, fund 5055, fiscal year 2015, organization 0511, be decreased by expiring the amount of \$18,118.01, and in the Department of Health and Human Resources, Division of Human Services, TRIP Fund, fund 5070, fiscal year 2015, organization 0511, be decreased by expiring the amount of \$251,657.05, and in the Department of Health and Human Resources, Division of Human Services, Medicaid Fraud Control Fund, fund 5141, fiscal year 2015, organization 0511, be decreased by expiring the amount of \$4,000,000, and in the Department of Health and Human Resources, Division of Human Services - Marriage Education Fund, fund 5490, fiscal year 2015, organization 0511, be decreased by expiring the amount of \$223,310.69, and in the Department of Revenue, Insurance Commissioner, fund 7152, fiscal year 2015, organization 0704, be decreased by expiring the amount of \$16,700,000, all to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the

fiscal year ending June 30, 2015:*

*

The purpose of this supplemental appropriation bill is to expire items of appropriation and cash balances in the aforesaid accounts for the designated spending units during the fiscal year 2015.

CHAPTER 20

**(H. B. 2770 - By Mr. Speaker, (Mr. Armstead)
and Delegate Miley)
[By Request of the Executive]**

[Passed March 6, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Division of Human Services, fund 5365, fiscal year 2015, organization 0511, by supplementing and amending the appropriation for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted to the Legislature, a Statement of the State Excess Lottery Revenue Fund, dated January 14, 2015,

* **NOTE:** The Governor deleted language in the title which read “*Provided*, That the expiration of funds provided herein shall not occur until such time as the bonds authorized by the provisions of section sixteen-b, article fifteen, chapter thirty-one of the Code of West Virginia for improvements to Cacapon State Park and Beech Fork State Park have been sold.”

setting forth therein the cash balance as of July 1, 2014, and further included the estimate of revenue for the fiscal year 2015, less regular appropriations for the fiscal year 2015; and

WHEREAS, It appears from the Governor’s Statement of the State Excess Lottery Revenue Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 5365, fiscal year 2015, organization 0511, be supplemented and amended to by increasing an existing item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

*313a-Division of Human Services
(WV Code Chapters 9, 48 and 49)*

Fund 5365 FY 2015 Org 0511

	Approp- riation	Lottery Funds
1 1 Medical Services.	18900	\$ 9,672,664

2 The purpose of this supplementary appropriation bill is to
3 supplement, amend, and increase an existing item of
4 appropriation in the aforesaid account for the designated
5 spending unit for expenditure during the fiscal year 2015.

CHAPTER 21

**(Com. Sub. for H. B. 2772 - By Delegate Miley)
[By Request of the Executive]**

[Passed March 14, 2014; in effect from passage.]
[Approved by the Governor with reductions March 20 ,2015.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015, in the amount of \$339,000 from the Department of Agriculture, fund 0131, fiscal year 2012, organization 1400, appropriation 11900, and in the amount of \$411,000 from the Department of Agriculture, fund 0131, fiscal year 2013, organization 1400, appropriation 11900, and in the amount of \$315,496.80 from the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 72500, and in the amount of \$210,268 from the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 77900, and in the amount of \$774,644.65 from the Attorney General, fund 0150, fiscal year 2014, organization 1500, appropriation 26000, and in the amount of \$1,000,000 from the Auditor's Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2015, organization 1200, and in the amount of \$3,410,629 from the Treasurer's Office - Flood Insurance Tax Fund, fund 1343, fiscal year 2015, organization 1300, and in the amount of \$700,000 from the Attorney General - Antitrust Enforcement Fund, fund 1507, fiscal year 2015, organization 1500, and in the amount of *\$500,000 from the Secretary of State - General Administrative Fees Account, fund 1617, fiscal year 2015, organization 1600.

* NOTE: The Governor reduced the amount by \$250,000, from \$750,000 to \$500,000.

WHEREAS, the Legislature finds that the account balance in the Department of Agriculture, fund 0131, fiscal year 2012, organization 1400, appropriation 11900, in the Department of Agriculture, fund 0131, fiscal year 2013, organization 1400, appropriation 11900, in the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 72500, in the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 77900, in the Attorney General, fund 0150, fiscal year 2014, organization 1500, appropriation 26000, in the Auditor's Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2015, organization 1200, in the Treasurer's Office - Flood Insurance Tax Fund, fund 1343, fiscal year 2015, organization 1300, in the Attorney General - Antitrust Enforcement Fund, fund 1507, fiscal year 2015, organization 1500, and in the Secretary of State - General Administrative Fees Account, fund 1617, fiscal year 2015, organization 1600 exceeds that which is necessary for the purpose for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2015, in the Department of Agriculture, fund 0131 fiscal year 2012, organization 1400, appropriation 11900, be decreased by expiring the amount of \$339,000, and in the Department of Agriculture, fund 0131, fiscal year 2013, organization 1400, appropriation 11900, be decreased by expiring the amount of \$411,000, and in the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 72500, be decreased by expiring the amount of \$315,496.80, and in the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 77900, be decreased by expiring the amount of \$210,268, and in the Attorney General, fund 0150, fiscal year 2014, organization 1500, appropriation 26000, be decreased by expiring the amount of \$774,644.65, and in the Auditor's Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2015, organization 1200, be decreased by expiring the amount of \$1,000,000, and in the Treasurer's Office - Flood Insurance Tax Fund, fund 1343,

fiscal year 2015, organization 1300, be decreased by expiring the amount of \$3,410,629, and in the Attorney General - Antitrust Enforcement Fund, fund 1507, fiscal year 2015, organization 1500, be decreased by expiring the amount of \$700,000, and in the Secretary of State - General Administrative Fees Account, fund 1617, fiscal year 2015, organization 1600, in the amount of *\$500,000, all to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2015.

CHAPTER 22

**(H. B. 2933 - By Delegate(s) E. Nelson,
Anderson, Canterbury, Espinosa, Frich, Hamilton,
Westfall, Moye and Williams)**

[Passed March 6, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2015, organization 0221, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 14, 2015, which included a Statement of the State Fund, General Revenue, setting forth therein

* **NOTE:** The Governor reduced the amount by \$250,000, from \$750,000 to \$500,000.

the cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 0226, fiscal year 2015, organization 0221, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2015 Org 0221

	Approp- riation	General Revenue Fund
1 5 Appointed Counsel Fees -		
2 Surplus.	43500	\$ 12,700,000

3 The purpose of this supplemental appropriation bill is to
4 supplement, amend, and increase an item of appropriation in the
5 aforesaid account for the designated spending unit for
6 expenditure during the fiscal year 2015.

CHAPTER 23

**(H. B. 3020 - By Delegate(s) E. Nelson, Ashley,
Anderson, Williams, A. Evans, Boggs, Hamilton,
L. Phillips, Butler, Espinosa and O'Neal)**

[Passed March 14, 2015; in effect from passage.]

[Approved by the Governor on March 20, 2015.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2015, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 14, 2015, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015 and further included recommended expirations to the surplus balance of the State Fund General Revenue; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and the passage of House Bill No. 2769 and House Bill No. 2772 during the 2015 Regular Session of the Legislature, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 0450, fiscal year 2015, organization 0608, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

*73-Division of Corrections-
Correctional Units*

(WV Code Chapters 25, 28, 49 and 62)

Fund 0450 FY 2015 Org 0608

	Approp- riation	General Revenue Fund
1 21a Security System		
2 21b Improvements - Surplus (R). .	75501	\$ 7,100,000

3 Any unexpended balance remaining in the above
4 appropriation for Security System Improvement - Surplus (fund
5 0450, appropriation 75501) at the close of the fiscal year 2015 is
6 hereby reappropriated for expenditure during the fiscal year
7 2016.

8 The purpose of this supplemental appropriation bill is to
9 supplement, amend, and add an item of appropriation in the
10 aforesaid account for the designated spending unit for
11 expenditure during the fiscal year 2015.

CHAPTER 24

**(H. B. 3021 - By Delegate(s) E. Nelson, Ashley,
Anderson, Williams, Boggs, Espinosa,
O'Neal and Bates)**

[Passed March 14, 2015; in effect from passage.]

[Approved by the Governor on March 20, 2015.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health, Central Office, fund 0407, fiscal year 2015, organization 0506, and to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2015, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 14, 2015, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015 and further included recommended expirations to the surplus balance of the State Fund General Revenue; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and the passage of House Bill No. 2772 and House Bill No. 2769 during the 2015 Regular Session of the Legislature, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 0407, fiscal year 2015, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

*62-Division of Health -
Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2015 Org 0506

	Approp- riation	General Revenue Fund
1 40 State Trauma and Emergency		
2 41 Care System - Surplus	91899	\$ 180,248

3 And, That the total appropriation for the fiscal year ending
4 June 30, 2015, to fund 0403, fiscal year 2015, organization 0511,
5 be supplemented and amended by increasing an existing item of
6 appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

66-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2015 Org 0511

		Approp- riation	General Revenue Fund
1	8	Medical Services - Surplus. . . . 63300	\$ 41,238,413
2		The purpose of this supplemental appropriation bill is to	
3		supplement, amend, and increase items of appropriation in the	
4		aforesaid accounts for the designated spending units for	
5		expenditure during the fiscal year 2015.	



CHAPTER 25

**(H. B. 3022 - By Delegate(s) Ashley, E. Nelson,
Williams, Canterbury, Hamilton, Pethtel, Householder, Butler,
L. Phillips, Espinosa and Westfall)**

[Passed March 14, 2015; in effect from passage.]

[Approved by the Governor with deletions and reductions March 20, 2015.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Treasurer's Office, fund 0126, fiscal year 2015, organization 1300, to the State Board of Education - State FFA-FHA Camp and Conference Center, fund 0306, fiscal year 2015, organization 0402, to the State Board of Education - West Virginia Schools for the Deaf and the Blind, fund 0320, fiscal year 2015, organization 0403, to Mountwest Community and Technical College, fund 0599, fiscal year 2015, organization 0444, to the

West Virginia School of Osteopathic Medicine, fund 0336, fiscal year 2015, organization 0476, and to West Virginia State University, fund 0373, fiscal year 2015, organization 0490, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 14, 2015, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015 and further included recommended expirations to the surplus balance of the State Fund General Revenue; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and the passage of House Bill No. 2772 and House Bill No. 2769 during the 2015 Regular Session of the Legislature, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 0126, fiscal year 2015, organization 1300, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

9-Treasurer's Office -

(WV Code Chapter 12)

Fund 0126 FY 2015 Org 1300

		Approp- riation	General Revenue Fund
1	3	Unclassified - Surplus (R) 09700	\$ 410,629
2		Any unexpended balance remaining in the above	
3		appropriation for Unclassified - Surplus (fund 0126,	
4		appropriation 09700) at the close of the fiscal year 2015 is	
5		hereby reappropriated for expenditure during the fiscal year	
6		2016.	

And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 0306, fiscal year 2015, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

*46-State Board of Education -
State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2015 Org 0402

		Approp- riation	General Revenue Fund
1	3a	Unclassified - Surplus (R) 09700	\$ *0

* **NOTE:** The Governor reduced the amount by \$500,000, from \$500,000 to \$0.

2 Any unexpended balance remaining in the above
 3 appropriation for Unclassified - Surplus (fund 0306,
 4 appropriation 09700) at the close of the fiscal year 2015 is
 5 hereby reappropriated for expenditure during the fiscal year
 6 2016.

7 And, That the total appropriation for the fiscal year ending
 8 June 30, 2015, to fund 0320, fiscal year 2015, organization 0403,
 9 be supplemented and amended by increasing an existing item of
 10 appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

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

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2015 Org 0403

			Approp- riation		General Revenue Fund
1	3	Unclassified - Surplus (R) . . .	09700	\$	*0
2		Any unexpended balance remaining in the above			
3		appropriation for Unclassified - Surplus (fund 0320,			
4		appropriation 09700) at the close of the fiscal year 2015 is			
5		hereby reappropriated for expenditure during the fiscal year			
6		2016.			

* **NOTE:** The Governor reduced the amount by \$1,500,000, from \$1,500,000 to \$0.

7 And, That the total appropriation for the fiscal year ending
 8 June 30, 2015, to fund 0599, fiscal year 2015, organization 0444,
 9 be supplemented and amended by increasing an existing item of
 10 appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

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

92-Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2015 Org 0444

		Approp- riation		General Revenue Fund
1	1			
2	2	Mountwest Community and Technical College - Surplus. . . 48799	\$	123,962

3 And, That the total appropriation for the fiscal year ending
 4 June 30, 2015, to fund 0336, fiscal year 2015, organization 0476,
 5 be supplemented and amended by increasing an existing item of
 6 appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

107-West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2015 Org 0476

		Approp- riation	General Revenue Fund
1	1	West Virginia School of	
2	2	Osteopathic Medicine -	
3	3	Surplus (R).	
		17299	\$ *0

4 Any unexpended balance remaining in the above
5 appropriation for West Virginia School of Osteopathic Medicine
6 - Surplus (fund 0336, appropriation 17299) at the close of the
7 fiscal year 2015 is hereby reappropriated for expenditure during
8 the fiscal year 2016.

9 And, That the total appropriation for the fiscal year ending
10 June 30, 2015, to fund 0373, fiscal year 2015, organization 0490,
11 be supplemented and amended by increasing an existing item of
12 appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

114-West Virginia State University

(WV Code Chapter 18B)

* **NOTE:** The Governor reduced the amount by \$500,000, from \$500,000 to \$0.

Fund 0373 FY 2015 Org 0490

		Appropriation	General Revenue Fund
1	1	West Virginia State	
2	2	University - Surplus (R). 44199	\$ *0
3		Any unexpended balance remaining in the above	
4		appropriation for West Virginia State University - Surplus (fund	
5		0373, appropriation 44199) at the close of the fiscal year 2015 is	
6		hereby reappropriated for expenditure during the fiscal year	
7		2016.	

8 The purpose of this supplemental appropriation bill is to
 9 supplement, amend, and increase and add items of appropriation
 10 in the aforesaid accounts for the designated spending units for
 11 expenditure during the fiscal year 2015.



CHAPTER 26

**(S. B. 463 - By Senators Cole (Mr. President)
and Kessler)**

[By Request of the Executive]

[Passed March 3, 2015; in effect from passage.]
 [Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June

* **NOTE:** The Governor reduced the amount by \$500,000, from \$500,000 to \$0.

30, 2015, to the Department of Health and Human Resources, Division of Human Services - Health Care Provider Tax - Medicaid State Share Fund, fund 5090, fiscal year 2015, organization 0511, by supplementing and amending the appropriation for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Human Services - Health Care Provider Tax - Medicaid State Share Fund, fund 5090, fiscal year 2015, organization 0511, that is available for expenditure during the fiscal year ending June 30, 2015, 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, 2015, to fund 5090, fiscal year 2015, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

*209-Division of Human Services-
Health Care Provider Tax-
Medicaid State Share Fund*

(WV Code Chapter 11)

Fund 5090 FY 2015 Org 0511

	Approp- riation	Other Funds
1 1 Medical Services.	18900	\$ 14,700,000
2 The purpose of this supplemental appropriation bill is to		
3 supplement, amend and increase an existing item of		
4 appropriations in the aforesaid account for the designated		
5 spending unit for expenditure during the fiscal year 2015.		



CHAPTER 27

**(S. B. 466 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed March 3, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

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, 2015, to the Department of Commerce, Workforce West Virginia - Workforce Investment Act, fund 8749, fiscal year 2015, organization 0323, and to the Department of Commerce, Office of the Secretary - Office of Economic Opportunity - Community Services, fund 8781, fiscal year 2015, organization 0327, by supplementing and amending the appropriation for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2015, 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, 2015, to fund 8749, fiscal year 2015, organization 0323, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

*371 - WorkForce West Virginia-
Workforce Investment Act*

Fund 8749 FY 2015 Org 0323

		Approp- riation	Federal Funds
1	4	Current Expenses..... 13000	\$ 11,500,000

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2015, to fund 8781, fiscal year 2015, organization 0327,
4 be supplemented and amended by increasing an existing item of
5 appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

*372 - Department of Commerce
Office of the Secretary-
Office of Economic Opportunity-
Community Services*

Fund 8781 FY 2015 Org 0327

	Approp- riation		Federal Funds
1 4	Current Expenses.....	13000	\$ 4,100,000
2	The purpose of this supplementary appropriation bill is to		
3	supplement, amend and increase existing items of appropriation		
4	in the aforesaid accounts for the designated spending units for		
5	expenditure during the fiscal year 2015.		



CHAPTER 28

**(S. B. 467 - By Senators Cole (Mr. President)
and Kessler)**

[By Request of the Executive]

[Passed March 3, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

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, 2015, to the Department of Agriculture, State Conservation Committee, fund 8783, fiscal year 2015, organization 1400, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2015, 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, 2015, to fund 8783, fiscal year 2015, organization 1400, be

supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

EXECUTIVE

*320-Department of Agriculture-
State Conservation Committee*

Fund 8783 FY 2015 Org 1400

	Approp- riation		Federal Funds
1 3	Current Expenses.....	13000	\$ 12,382,910
2	The purpose of this supplementary appropriation bill is to		
3	supplement, amend and increase an item of appropriation in the		
4	aforesaid account for the designated spending unit for		
5	expenditure during the fiscal year 2015.		



CHAPTER 29

(S. B. 469 - By Senators Cole (Mr. President) and Kessler)

[By Request of the Executive]

[Passed March 3, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

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, 2015, to the Department of Environmental Protection, Division of

Environmental Protection, fund 8708, fiscal year 2015, organization 0313, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2015, 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, 2015, to fund 8708, fiscal year 2015, organization 0313, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

343-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2015 Org 0313

	Approp- riation		Federal Funds
1 5a Buildings.	25800	\$	40,000

2 The purpose of this supplementary appropriation bill is to
3 supplement, amend and add an item of appropriation in the
4 aforesaid account for the designated spending unit for
5 expenditure during the fiscal year 2015.

CHAPTER 30

**(S. B. 471 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed March 3, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

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, 2015, to the Department of Health and Human Resources, Human Rights Commission, fund 8725, fiscal year 2015, organization 0510, to the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2015, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2015, 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, 2015, to fund 8725, fiscal year 2015, organization 0510, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

348-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2015 Org 0510

		Approp- riation		Federal Funds
1	4	Current Expenses.....	13000	\$ 42,845

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2015, to fund 8722, fiscal year 2015, organization 0511,
4 be supplemented and amended by increasing existing items of
5 appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

**DEPARTMENT OF HEALTH
AND HUMAN RESOURCES**

349-Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2015 Org 0511

			Approp- riation		Federal Funds
1	5	Medical Services.....	18900	\$	100,000,000

2 8 Federal Economic Stimulus... . 89100 212,524

3 The purpose of this supplementary appropriation bill is to
 4 supplement, amend and increase existing items of appropriation
 5 in the aforesaid accounts for the designated spending units for
 6 expenditure during the fiscal year 2015.

CHAPTER 31

**(S. B. 472 - By Senators Cole (Mr. President) and Kessler)
 [By Request of the Executive]**

[Passed March 6, 2015; in effect from passage.]
 [Approved by the Governor on March 13, 2015.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2015, to the Department of Transportation, Division of Motor Vehicles - Motor Vehicle Fees Fund, fund 8223, fiscal year 2015, organization 0802, by supplementing and amending the appropriation for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Transportation, Division of Motor Vehicles - Motor Vehicle Fees Fund, fund 8223, fiscal year 2015, organization 0802, that is available for expenditure during the fiscal year ending June 30, 2015, 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, 2015, to fund 8223, fiscal year 2015, organization 0802, be supplemented and amended by increasing existing items of appropriation and adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF TRANSPORTATION

*257-Division of Motor Vehicles-
Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

Fund 8223 FY 2015 Org 0802

	Approp- riation	Other Funds
1 1 Personal Services and		
2 2 Employee Benefits..... 00100	\$	184,000
3 3 Current Expenses..... 13000		2,000,000
4 4a Equipment..... 07000		75,000

5 The purpose of this supplemental appropriation bill is to
6 supplement, amend, increase existing items and add an item of
7 appropriation in the aforesaid account for the designated
8 spending unit for expenditure during the fiscal year.

CHAPTER 32

**(S. B. 473 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed March 2, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

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, 2015, to the Department of Military Affairs and Public Safety, West Virginia State Police, fund 8741, fiscal year 2015, organization 0612, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2015, 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, 2015, to fund 8741, fiscal year 2015, organization 0612, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

355-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2015 Org 0612

		Approp- riation	Federal Funds
1	1	Personal Services and	
2	2	Employee Benefits..... 00100	\$ 501,688
3	3	Current Expenses..... 13000	615,275
4	5	Equipment..... 07000	381,824
5	7	Other Assets..... 69000	13,900

6 The purpose of this supplementary appropriation bill is to
 7 supplement, amend and increase items of appropriation in the
 8 aforesaid account for the designated spending unit for
 9 expenditure during the fiscal year 2015.



CHAPTER 33

(S. B. 475 - By Senators Cole (Mr. President) and Kessler)

[By Request of the Executive]

 [Passed March 6, 2015; in effect from passage.]
 [Approved by the Governor on March 13, 2015.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2015, to the Department of Military Affairs and Public Safety, West Virginia Division of Corrections - Parolee Supervision Fees, fund 6362, fiscal year 2015, organization 0608, and to the

Department of Military Affairs and Public Safety, West Virginia State Police - Motor Vehicle Inspection Fund, fund 6501, fiscal year 2015, organization 0612, by supplementing and amending the appropriation for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Military Affairs and Public Safety, West Virginia Division of Corrections - Parolee Supervision Fees, fund 6362, fiscal year 2015, organization 0608, and in the Department of Military Affairs and Public Safety, West Virginia State Police - Motor Vehicle Inspection Fund, fund 6501, fiscal year 2015, organization 0612, that is available for expenditure during the fiscal year ending June 30, 2015, 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, 2015, to fund 6362, fiscal year 2015, organization 0608, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

*220-West Virginia Division of Corrections-
Parolee Supervision Fees*

(WV Code Chapter 62)

Fund 6362 FY 2015 Org 0608

		Approp- riation		Other Funds
1	1	Personal Services and		
2	2	Employee Benefits..... 00100	\$	140,000
3	4	Current Expenses..... 13000		350,000

4 And, That the total appropriation for the fiscal year ending
5 June 30, 2015, to fund 6501, fiscal year 2015, organization 0612,
6 be supplemented and amended by increasing existing items of
7 appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

*221-West Virginia State Police-
Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2015 Org 0612

		Approp- riation		Other Funds
1	1	Personal Services and		
2	2	Employee Benefits..... 00100	\$	647,363
3	3	Current Expenses..... 13000		27,523

4 The purpose of this supplemental appropriation bill is to
5 supplement, amend and increase items of appropriations in the
6 aforesaid accounts for the designated spending units for
7 expenditure during the fiscal year 2015.

CHAPTER 34

**(S. B. 476 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed March 2, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2015, to the Department of Administration, Division of Purchasing - Purchasing Improvement Fund, fund 2264, fiscal year 2015, organization 0213, by supplementing and amending the appropriation for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Administration, Division of Purchasing - Purchasing Improvement Fund, fund 2264, fiscal year 2015, organization 0213, that is available for expenditure during the fiscal year ending June 30, 2015, 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, 2015, to fund 2264, fiscal year 2015, organization 0213, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION

*146-Division of Purchasing-
Purchasing Improvement Fund*

(WV Code Chapter 5A)

Fund 2264 FY 2015 Org 0213

		Approp- riation		Other Funds
1	5	Repairs and Alterations.	06400	\$ 1,000,000

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2015, to fund 2264, fiscal year 2015, organization 0213,
4 be supplemented and amended by adding a new item of
5 appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION

*146-Division of Purchasing-
Purchasing Improvement Fund*

(WV Code Chapter 5A)

Fund 2264 FY 2015 Org 0213

		Approp- riation		Other Funds
1	6a	Buildings.	25800	\$ 1,000,000

2 The purpose of this supplemental appropriation bill is to
3 supplement, amend, decrease and add items of appropriations in
4 the aforesaid account for the designated spending unit for
5 expenditure during the fiscal year 2015.

CHAPTER 35

**(S. B. 477 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed March 4, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT supplementing, amending, decreasing and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2015, organization 0803, for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 2015, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015; and

WHEREAS, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2015, organization 0803, be supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

116—Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2015 Org 0803

	Approp- riation		State Road Fund
1 2	Maintenance. 23700	\$	5,000,000

2 And, That the items of the total appropriations from the State
3 Road Fund to the Department of Transportation, Division of
4 Highways, fund 9017, fiscal year 2015, organization 0803, be
5 supplemented and amended by increasing existing items of
6 appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

116—Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2015 Org 0803

	Approp- riation		State Road Fund
1 8	General Operations. 27700	\$	5,000,000

2 10 Other Federal Aid Programs. . . 27900 46,000,000

3 The purpose of this supplemental appropriation bill is to
 4 supplement, amend, decrease and increase items of appropriation
 5 in the aforesaid account for the designated spending unit for
 6 expenditure during the fiscal year ending June 30, 2015.

CHAPTER 36

**(Com. Sub. for S. B. 411 - By Senators Takubo,
 Carmichael, Ferns, Gaunch and Mullins)**

[Passed March 11, 2015; in effect ninety days from passage.]
 [Approved by the Governor on March 18, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7F-1, §55-7F-2, §55-7F-3, §55-7F-4, §55-7F-5, §55-7F-6, §55-7F-7, §55-7F-8, §55-7F-9, §55-7F-10 and §55-7F-11; and that said code be amended by adding thereto a new article, designated §55-7G-1, §55-7G-2, §55-7G-3, §55-7G-4, §55-7G-5, §55-7G-6, §55-7G-7, §55-7G-8, §55-7G-9 and §55-7G-10, all relating to procedures for determining liability for exposures to asbestos or silica; setting forth findings and purposes; setting forth definitions; requiring disclosures of existing and potential asbestos bankruptcy trust claims; establishing legal standards and procedures for the handling of certain asbestos and silica claims; providing for sanctions; establishing procedures for set offs and credits; establishing medical criteria procedures for certain asbestos and silica claims; providing for statute of limitations standards and other limitations on liability; and providing for applicability future asbestos and silica claims.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7F-1, §55-7F-2, §55-7F-3, §55-7F-4, §55-7F-5, §55-7F-6, §55-7F-7, §55-7F-8, §55-7F-9, §55-7F-10 and §55-7F-11; and that said code be amended by adding thereto a new article, designated §55-7G-1, §55-7G-2, §55-7G-3, §55-7G-4, §55-7G-5, §55-7G-6, §55-7G-7, §55-7G-8, §55-7G-9 and §55-7G-10, all to read as follows:

ARTICLE 7F. ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY ACT.

§55-7F-1. Short title.

- 1 This article shall be known and may be cited as the Asbestos
- 2 Bankruptcy Trust Claims Transparency Act.

§55-7F-2. Findings and purpose.

- 1 (a) The West Virginia Legislature finds that:
 - 2 (1) The United States Supreme Court in *Amchem Prods., Inc.*
 - 3 *v. Windsor*, 521 U.S. 591, 598 (1997) described the asbestos
 - 4 litigation as a crisis;
 - 5 (2) Approximately one hundred employers have declared
 - 6 bankruptcy at least partially due to asbestos-related liability;
 - 7 (3) These bankruptcies have resulted in a search for more
 - 8 solvent companies, resulting in over eight thousand five hundred
 - 9 companies being named as asbestos defendants, including many
 - 10 small- and medium-sized companies, in industries that cover
 - 11 eighty-five percent of the United States economy;
 - 12 (4) Scores of trusts have been established in asbestos-related
 - 13 bankruptcy proceedings to form a multibillion dollar asbestos

14 bankruptcy trust compensation system outside of the tort system,
15 and new asbestos trusts continue to be formed;

16 (5) Asbestos claimants often seek compensation for alleged
17 asbestos-related conditions from solvent defendants in civil
18 actions and from trusts or claims facilities formed in asbestos
19 bankruptcy proceedings;

20 (6) There is limited coordination and transparency between
21 these two paths to recovery;

22 (7) An absence of transparency between the asbestos
23 bankruptcy trust claim system and the civil court systems has
24 resulted in the suppression of evidence in asbestos actions and
25 potential fraud;

26 (8) West Virginia's Mass Litigation Panel has previously
27 entered cases management orders that apply substantive
28 transparency provisions requiring plaintiffs to disclose, among
29 other things, any claims that may exist against asbestos
30 bankruptcy trusts; and

31 (9) It is in the interest of justice that there be transparency
32 for claims made in the asbestos bankruptcy trust claim system
33 and for claims made in civil asbestos litigation.

34 (b) It is the purpose of this article to:

35 (1) Provide transparency for claims made in the asbestos
36 bankruptcy trust claim system and for claims made in civil
37 asbestos litigation; and

38 (2) Reduce the opportunity for fraud or suppression of
39 evidence in asbestos actions.

§55-7F-3. Definitions.

1 For the purpose of this article:

2 (1) “Asbestos action” means a claim for damages or other
3 civil or equitable relief presented in a civil action arising out of,
4 based on or related to the health effects of exposure to asbestos,
5 including loss of consortium, wrongful death, mental or
6 emotional injury, risk or fear of disease or other injury, costs of
7 medical monitoring or surveillance and any other derivative
8 claim made by or on behalf of a person exposed to asbestos or a
9 representative, spouse, parent, child or other relative of that
10 person. The term does not include a claim for compensatory
11 benefits pursuant to workers’ compensation law or for veterans’
12 benefits as defined by article seven-g of this chapter.

13 (2) “Asbestos trust” means a government-approved or
14 court-approved trust, qualified settlement fund, compensation
15 fund or claims facility created as a result of an administrative or
16 legal action, a court-approved bankruptcy, or pursuant to 11 U.
17 S. C. §524(g) or 11 U. S. C. §1121(a) or other applicable
18 provision of law, that is intended to provide compensation to
19 claimants arising out of, based on or related to the health effects
20 of exposure to asbestos.

21 (3) “Plaintiff” means a person asserting an asbestos action,
22 a decedent if the action is brought through or on behalf of an
23 estate, or a parent or guardian if the action is brought through or
24 on behalf of a minor or incompetent.

25 (4) “Trust claims materials” means a final executed proof of
26 claim and all other documents and information related to a claim
27 against an asbestos trust, including claims forms and
28 supplementary materials, affidavits, depositions and trial
29 testimony, work history, medical and health records, documents
30 reflecting the status of a claim against an asbestos trust, and if
31 the asbestos trust claim has settled, all documents relating to the
32 settlement of the asbestos trust claim.

33 (5) “Trust governance documents” means all documents that
34 relate to eligibility and payment levels, including claims

35 payment matrices, trust distribution procedures or plans for
36 reorganization, for an asbestos trust.

§55-7F-4. Required disclosures by plaintiff.

1 (a) For each asbestos action filed in this state, the plaintiff
2 shall provide all parties with a sworn statement identifying all
3 asbestos trust claims that have been filed by the plaintiff or by
4 anyone on the plaintiff's behalf, including claims with respect to
5 asbestos-related conditions other than those that are the basis for
6 the asbestos action or that potentially could be filed by the
7 plaintiff against an asbestos trust. The sworn statement shall be
8 provided no later than one hundred twenty days prior to the date
9 set for trial for the asbestos action. For each asbestos trust claim
10 or potential asbestos trust claim identified in the sworn
11 statement, the statement shall include the name, address and
12 contact information for the asbestos trust, the amount claimed or
13 to be claimed by the plaintiff, the date the plaintiff filed the
14 claim, the disposition of the claim and whether there has been a
15 request to defer, delay, suspend or toll the claim. The sworn
16 statement shall include an attestation from the plaintiff, under
17 penalties of perjury, that the sworn statement is complete and is
18 based on a good faith investigation of all potential claims against
19 asbestos trusts.

20 (b) The plaintiff shall make available to all parties all trust
21 claims materials for each asbestos trust claim that has been filed
22 by the plaintiff or by anyone on the plaintiff's behalf against an
23 asbestos trust, including any asbestos-related disease.

24 (c) The plaintiff shall supplement the information and
25 materials provided pursuant to this section within ninety days
26 after the plaintiff files an additional asbestos trust claim,
27 supplements an existing asbestos trust claim or receives
28 additional information or materials related to any claim or
29 potential claim against an asbestos trust.

30 (d) Failure by the plaintiff to make available to all parties all
31 trust claims materials as required by this article shall constitute
32 grounds for the court to extend the trial date in an asbestos
33 action.

§55-7F-5. Discovery; use of materials.

1 (a) Trust claims materials and trust governance documents
2 are presumed to be relevant and authentic and are admissible in
3 evidence. No claims of privilege apply to any trust claims
4 materials or trust governance documents.

5 (b) A defendant in an asbestos action may seek discovery
6 from an asbestos trust. The plaintiff may not claim privilege or
7 confidentiality to bar discovery and shall provide consent or
8 other expression of permission that may be required by the
9 asbestos trust to release information and materials sought by a
10 defendant.

§55-7F-6. Scheduling trial; stay of action.

1 (a) A court shall stay an asbestos action if the court finds that
2 the plaintiff has failed to make the disclosures required under
3 section four of this article within one hundred twenty days prior
4 to the trial date.

5 (b) If, in the disclosures required by section four of this
6 article, a plaintiff identifies a potential asbestos trust claim, the
7 judge shall have the discretion to stay the asbestos action until
8 the plaintiff files the asbestos trust claim and provides all parties
9 with all trust claims materials for the claim. The plaintiff shall
10 also state whether there has been a request to defer, delay,
11 suspend or toll the claim against the asbestos trust.

**§55-7F-7. Identification of additional or alternative asbestos trusts
by defendant.**

1 (a) Not less than ninety days before trial, if a defendant
2 identifies an asbestos trust claim not previously identified by the

3 plaintiff that the defendant reasonably believes the plaintiff can
4 file, the defendant shall meet and confer with plaintiff to discuss
5 why defendant believes plaintiff has an additional asbestos trust
6 claim, and thereafter the defendant may move the court for an
7 order to require the plaintiff to file the asbestos trust claim. The
8 defendant shall produce or describe the documentation it
9 possesses or is aware of in support of the motion.

10 (b) Within ten days of receiving the defendant's motion
11 under subsection (a) of this section, the plaintiff shall, for each
12 asbestos trust claim identified by the defendant, make one of the
13 following responses:

14 (1) File the asbestos trust claim;

15 (2) File a written response with the court setting forth the
16 reasons why there is insufficient evidence for the plaintiff to file
17 the asbestos trust claim; or

18 (3) File a written response with the court requesting a
19 determination that the plaintiff's expenses or attorney's fees and
20 expenses to prepare and file the asbestos trust claim identified in
21 the defendant's motion exceed the plaintiff's reasonably
22 anticipated recovery from the trust.

23 (c) (1) If the court determines that there is a sufficient basis
24 for the plaintiff to file the asbestos trust claim identified by a
25 defendant, the court shall order the plaintiff to file the asbestos
26 trust claim and shall stay the asbestos action until the plaintiff
27 files the asbestos trust claim and provides all parties with all
28 trust claims materials no later than thirty days before trial.

29 (2) If the court determines that the plaintiff's expenses or
30 attorney's fees and expenses to prepare and file the asbestos trust
31 claim identified in the defendant's motion exceed the plaintiff's
32 reasonably anticipated recovery from the asbestos trust, the court
33 shall stay the asbestos action until the plaintiff files with the

34 court and provides all parties with a verified statement of the
35 plaintiff's history of exposure, usage or other connection to
36 asbestos covered by the asbestos trust.

37 (d) Not less than thirty days prior to trial in an asbestos
38 action, the court shall enter into the record a trust claims
39 document that identifies each claim the plaintiff has made
40 against an asbestos trust.

§55-7F-8. Valuation of asbestos trust claims; judicial notice.

1 (a) If a plaintiff proceeds to trial in an asbestos action before
2 an asbestos trust claim is resolved, the filing of the asbestos trust
3 claim may be considered as relevant and admissible evidence.

4 (b) Trust claim materials that are sufficient to entitle a claim
5 to consideration for payment under the applicable trust
6 governance documents may be sufficient to support a jury
7 finding that the plaintiff may have been exposed to products for
8 which the asbestos trust was established to provide
9 compensation and that such exposure may be a substantial factor
10 in causing the plaintiff's injury that is at issue in the asbestos
11 action.

§55-7F-9. Setoff; credit.

1 In any asbestos action in which damages are awarded, a
2 defendant is entitled to a setoff or credit in the amount of the
3 valuation established under the applicable trust governance
4 documents, including payment percentages for asbestos trust
5 claims pending at trial and any amount the plaintiff has been
6 awarded from an asbestos trust claim that has been identified at
7 the time of trial. If multiple defendants are found liable for
8 damages, the court shall distribute the amount of setoff or credit
9 proportionally between the defendants, according to the liability
10 of each defendant.

§55-7F-10. Failure to provide information; sanctions.

1 A plaintiff who fails to provide all of the information
2 required under this article is subject to sanctions as provided in
3 the West Virginia Rules of Civil Procedure and any other relief
4 for the defendants that the court considers just and proper.

§55-7F-11. Application.

1 The provisions of this article apply to all asbestos actions
2 filed on or after the effective date of this article.

**ARTICLE 7G. ASBESTOS AND SILICA CLAIMS PRIORITIES
ACT.****§55-7G-1. Short title.**

1 This article shall be known and may be cited as the Asbestos
2 and Silica Claims Priorities Act.

§55-7G-2. Findings and purpose.

1 (a) The West Virginia Legislature finds that:

2 (1) Asbestos is a mineral that was widely used prior to the
3 1980s for insulation, fireproofing and other purposes;

4 (2) Millions of American workers and others were exposed
5 to asbestos, especially during and after World War II and prior
6 to the promulgation of regulations by the Occupational Safety
7 and Health Administration in the early 1970s;

8 (3) Exposure to asbestos has been associated with various
9 types of cancer, including mesothelioma and lung cancer, as well
10 as nonmalignant conditions such as asbestosis and diffuse
11 pleural thickening;

12 (4) Diseases caused by asbestos often have long latency
13 periods;

14 (5) Although the use of asbestos has dramatically declined
15 since the 1970s and workplace exposures have been regulated
16 since 1971 by the Occupational Safety and Health
17 Administration, past exposures will continue to result in
18 significant claims of death and disability as a result of such
19 exposure;

20 (6) Over the years, West Virginia courts have been deluged
21 with asbestos lawsuits;

22 (7) The United States Supreme Court in *Amchem Prods., Inc.*
23 *v. Windsor*, 521 U.S. 591, 598 (1997), described the asbestos
24 litigation as a crisis;

25 (8) Lawyer-sponsored x-ray screenings have been used to
26 amass large numbers of claims by unimpaired plaintiffs;

27 (9) One of the country's most prolific B-readers was a doctor
28 from West Virginia;

29 (10) Approximately one hundred employers have declared
30 bankruptcy at least partially due to asbestos-related liability;

31 (11) These bankruptcies have resulted in a search for more
32 solvent companies, resulting in over eight thousand five hundred
33 companies being named as asbestos defendants nationally and
34 many in West Virginia, including many small- and
35 medium-sized companies, in industries that cover eighty-five
36 percent of the United States economy;

37 (12) Silica is a naturally occurring mineral as the earth's
38 crust is over ninety percent silica, and crystalline silica dust is
39 the basic component of sand, quartz and granite;

40 (13) Silica-related illness, including silicosis, can develop
41 from the prolonged inhalation of respirable silica particles;

42 (14) Silica claims, like asbestos claims, have involved
43 individuals with no demonstrable physical impairment, and
44 plaintiffs have been identified through the use of for-profit,
45 screening companies;

46 (15) Silica screening processes have been found subject to
47 substantial abuse and potential fraud;

48 (16) The cost of compensating plaintiffs who have no
49 present asbestos-related or silica-related physical impairment,
50 and the cost of litigating their claims, jeopardizes the ability of
51 defendants to compensate people with cancer and other serious
52 asbestos-related diseases and adversely affects defendant
53 companies;

54 (17) Concerns about statutes of limitations and available
55 funds can prompt unimpaired asbestos and silica claimants to
56 bring lawsuits in order to protect against losing their rights to
57 future compensation should they become impaired;

58 (18) Trial consolidations, joinders and similar trial
59 procedures used by some courts to handle asbestos and silica
60 cases can undermine the appropriate functioning of the courts,
61 deny due process to plaintiffs and defendants and encourage the
62 filing of cases by unimpaired asbestos and silica plaintiffs; and

63 (19) The public interest requires giving priority to the claims
64 of exposed individuals who are sick in order to help preserve,
65 now and for the future, defendants' ability to compensate people
66 who develop cancer and other serious asbestos-related diseases,
67 as well as silica-related injuries, and to safeguard the jobs,
68 benefits and savings of workers in West Virginia and the
69 well-being of the West Virginia economy.

70 (b) It is the purpose of this article to:

71 (1) Give priority to asbestos and silica claimants who can
72 demonstrate actual physical impairment caused by exposure to
73 asbestos or silica;

74 (2) Toll the running of the statutes of limitations for persons
75 who have been exposed to asbestos or to silica but who have no
76 present physical impairment caused by such exposure;

77 (3) Enhance the ability of the courts to supervise and manage
78 asbestos and silica cases;

79 (4) Reduce the opportunity for fraud in asbestos and silica
80 litigation; and

81 (5) Conserve the defendants' resources to allow
82 compensation to present and future claimants with physical
83 impairment caused by exposure to asbestos or silica.

§55-7G-3. Definitions.

1 For the purpose of this article:

2 (1) "AMA Guides to the Evaluation of Permanent
3 Impairment" means the American Medical Association's Guides
4 to the Evaluation of Permanent Impairment in effect at the time
5 of the performance of any examination or test on the exposed
6 person required under this article.

7 (2) "Asbestos" means chrysotile, amosite, crocidolite,
8 tremolite asbestos, anthophyllite asbestos, actinolite asbestos,
9 asbestiform winchite, asbestiform richterite, asbestiform
10 amphibole minerals and any of these minerals that have been
11 chemically treated or altered, including all minerals defined as
12 asbestos in 29 C. F. R. §1910 at the time an asbestos action is
13 filed.

14 (3) “Asbestos action” means a claim for damages or other
15 civil or equitable relief presented in a civil action arising out of,
16 based on or related to the health effects of exposure to asbestos,
17 including loss of consortium, wrongful death, mental or
18 emotional injury, risk or fear of disease or other injury, costs of
19 medical monitoring or surveillance and any other derivative
20 claim made by or on behalf of a person exposed to asbestos or a
21 representative, spouse, parent, child or other relative of that
22 person. The term does not include a claim for compensatory
23 benefits pursuant to workers’ compensation law or for veterans’
24 benefits.

25 (4) “Asbestosis” means bilateral diffuse interstitial fibrosis
26 of the lungs caused by inhalation of asbestos fibers.

27 (5) “Board-certified in internal medicine” means a physician
28 who is certified by the American Board of Internal Medicine or
29 the American Osteopathic Board of Internal Medicine and whose
30 certification was current at the time of the performance of any
31 examination and rendition of any report required by this article.

32 (6) “Board-certified in occupational medicine” means a
33 physician who is certified in the subspecialty of occupational
34 medicine by the American Board of Preventive Medicine or the
35 American Osteopathic Board of Preventive Medicine and whose
36 certification was current at the time of the performance of any
37 examination and rendition of any report required by this article.

38 (7) “Board-certified in pathology” means a physician who
39 holds primary certification in anatomic pathology or clinical
40 pathology from the American Board of Pathology or the
41 American Osteopathic Board of Pathology, whose certification
42 was current at the time of the performance of any examination
43 and rendition of any report required by this act, and whose
44 professional practice is principally in the field of pathology and
45 involves regular evaluation of pathology materials obtained from
46 surgical or postmortem specimens.

47 (8) “Board-certified in pulmonary medicine” means a
48 physician who is certified in the subspecialty of pulmonary
49 medicine by the American Board of Internal Medicine or the
50 American Osteopathic Board of Internal Medicine and whose
51 certification was current at the time of the performance of any
52 examination and rendition of any report required by this article.

53 (9) “Certified B-reader” means an individual who has
54 qualified as a National Institute for Occupational Safety and
55 Health (NIOSH) “final” or “B-reader” of x-rays under 42 C. F.
56 R. §37.51(b), whose certification was current at the time of any
57 readings required under this article, and whose B-reads comply
58 with the NIOSH B-Reader’s Code of Ethics, Issues in
59 Classification of Chest Radiographs and Classification of Chest
60 Radiographs in Contested Proceedings.

61 (10) “Chest x-ray” means chest films taken in accordance
62 with all applicable state and federal regulatory standards and
63 taken in the posterior-anterior view.

64 (11) “DLCO” means diffusing capacity of the lung for
65 carbon monoxide, which is the measurement of carbon
66 monoxide transfer from inspired gas to pulmonary capillary
67 blood.

68 (12) “Exposed person” means a person whose exposure to
69 asbestos or silica or to asbestos-containing or silica-containing
70 products is the basis for an asbestos or silica action.

71 (13) “FEV1” means forced expiratory volume in the first
72 second, which is the maximal volume of air expelled in one
73 second during performance of simple spirometric tests.

74 (14) “FEV1/FVC” means the ratio between the actual values
75 for FEV1 over FVC.

76 (15) “FVC” means forced vital capacity, which is the
77 maximal volume of air expired with maximum effort from a
78 position of full inspiration.

79 (16) “ILO” system and “ILO scale” mean the radiological
80 ratings and system for the classification of chest x-rays of the
81 International Labor Office provided in Guidelines for the Use of
82 ILO International Classification of Radiographs of
83 Pneumoconioses in effect on the day any x-rays of the exposed
84 person were reviewed by a certified B-reader.

85 (17) “Nonmalignant condition” means any condition that can
86 be caused by asbestos or silica other than a diagnosed cancer.

87 (18) “Official statements of the American Thoracic Society”
88 means lung function testing standards set forth in statements
89 from the American Thoracic Society including standardizations
90 of spirometry, standardizations of lung volume testing,
91 standardizations of diffusion capacity testing or single-breath
92 determination of carbon monoxide uptake in the lung and
93 interpretive strategies for lung function tests, which are in effect
94 on the day of the pulmonary function testing of the exposed
95 person.

96 (19) “Pathological evidence of asbestosis” means a
97 statement by a board-certified pathologist that more than one
98 representative section of lung tissue uninvolved with any other
99 disease process demonstrates a pattern of peribronchiolar or
100 parenchymal scarring in the presence of characteristic asbestos
101 bodies graded 1(B) or higher under the criteria published in
102 Asbestos-Associated Diseases, 106 Archive of Pathology and
103 Laboratory Medicine 11, Appendix 3 (October 8, 1982), or grade
104 one or higher in Pathology of Asbestosis, 134 Archive of
105 Pathology and Laboratory Medicine 462-80 (March 2010)
106 (Tables 2 and 3), or as amended at the time of the exam, and
107 there is no other more likely explanation for the presence of the
108 fibrosis.

109 (20) “Pathological evidence of silicosis” means a statement
110 by a board-certified pathologist that more than one
111 representative section of lung tissue uninvolved with any other
112 disease process demonstrates complicated silicosis with
113 characteristic confluent silicotic nodules or lesions equal to or
114 greater than one centimeter and birefringent crystals or other
115 demonstration of crystal structures consistent with silica
116 (well-organized concentric whorls of collagen surrounded by
117 inflammatory cells) in the lung parenchyma and no other more
118 likely explanation for the presence of the fibrosis exists, or acute
119 silicosis with characteristic pulmonary edema, interstitial
120 inflammation, and the accumulation within the alveoli of
121 proteinaceous fluid rich in surfactant.

122 (21) “Plaintiff” means a person asserting an asbestos or
123 silica action, a decedent if the action is brought through or on
124 behalf of an estate, and a parent or guardian if the action is
125 brought through or on behalf of a minor or incompetent.

126 (22) “Plethysmography or body (BOX) plethysmography”
127 means the test for determining lung volume in which the
128 exposed person is enclosed in a chamber equipped to measure
129 pressure, flow or volume change.

130 (23) “Predicted lower limit of normal” means any test value
131 is the calculated standard convention lying at the fifth percentile,
132 below the upper ninety-five percent of the reference population,
133 based on age, height and gender, according to the
134 recommendations by the American Thoracic Society and as
135 referenced in the applicable AMA Guides to the Evaluation of
136 Permanent Impairment, primarily National Health and Nutrition
137 Examination Survey (NHANES) predicted values, or as
138 amended.

139 (24) “Pulmonary function test” means spirometry, lung
140 volume testing and diffusion capacity testing, including

141 appropriate measurements, quality control data and graphs,
142 performed in accordance with the methods of calibration and
143 techniques provided in the applicable AMA Guides to the
144 Evaluation of Permanent Impairment and all standards provided
145 in the Official Statements of the American Thoracic Society in
146 effect on the day pulmonary function testing of the exposed
147 person was conducted.

148 (25) “Qualified physician” means a board-certified internist,
149 pathologist, pulmonary specialist or specialist in occupational
150 and environmental medicine, as may be appropriate to the actual
151 diagnostic specialty in question, that meets all of the following
152 requirements:

153 (A) The physician has conducted a physical examination of
154 the exposed person and has taken or has directed to be taken
155 under his or her supervision, direction and control, a detailed
156 occupational, exposure, medical, smoking and social history
157 from the exposed person, or the physician has reviewed the
158 pathology material and has taken or has directed to be taken
159 under his or her supervision, direction and control, a detailed
160 history from the person most knowledgeable about the
161 information forming the basis of the asbestos or silica action;

162 (B) The physician has treated or is treating the exposed
163 person, and has or had a doctor-patient relationship with the
164 exposed person at the time of the physical examination or, in the
165 case of a board-certified pathologist, examined tissue samples or
166 pathological slides of the exposed person;

167 (C) The physician prepared or directly supervised the
168 preparation and final review of any medical report under this
169 article; and

170 (D) The physician has not relied on any examinations, tests,
171 radiographs, reports or opinions of any doctor, clinic, laboratory

172 or testing company that performed an examination, test,
173 radiograph or screening of the exposed person in violation of any
174 law, regulation, licensing requirement or medical code of
175 practice of the state in which the examination, test or screening.

176 (26) “Radiological evidence of asbestosis” means a quality
177 1 or 2 chest x-ray under the ILO system, showing bilateral small,
178 irregular opacities (s, t or u) occurring primarily in the lower
179 lung zones graded by a certified B-reader as at least 1/0 on the
180 ILO scale.

181 (27) “Radiological evidence of diffuse bilateral pleural
182 thickening” means a quality 1 or 2 chest x-ray under the ILO
183 system, showing diffuse bilateral pleural thickening of at least b2
184 on the ILO scale and blunting of at least one costophrenic angle
185 as classified by a certified B-reader.

186 (28) “Radiological evidence of silicosis” means a quality 1
187 or 2 chest x-ray under the ILO system, showing bilateral
188 predominantly nodular or rounded opacities (p, q or r) occurring
189 in the lung fields graded by a certified B-reader as at least 1/0 on
190 the ILO scale or A, B or C sized opacities representing
191 complicated silicosis or acute silicosis with characteristic
192 pulmonary edema, interstitial inflammation, and the
193 accumulation within the alveoli of proteinaceous fluid rich in
194 surfactant.

195 (29) “Silica” means a respirable crystalline form of silicon
196 dioxide, including quartz, cristobalite and tridymite.

197 (30) “Silica action” means a claim for damages or other civil
198 or equitable relief presented in a civil action arising out of, based
199 on or related to the health effects of exposure to silica, including
200 loss of consortium, wrongful death, mental or emotional injury,
201 risk or fear of disease or other injury, costs of medical
202 monitoring or surveillance and any other derivative claim made

203 by or on behalf of a person exposed to silica or a representative,
204 spouse, parent, child or other relative of that person. The term
205 does not include a claim for compensatory benefits pursuant to
206 workers' compensation law, veterans' benefits or claims brought
207 by a person as a subrogee by virtue of the payment of benefits
208 under a workers' compensation law. The term does not include
209 any administrative claim or civil action related to coal workers'
210 pnuemoconiosis.

211 (31) "Silicosis" means simple silicosis, acute silicosis,
212 accelerated silicosis or chronic silicosis caused by the inhalation
213 of respirable silica. "Silicosis" does not mean coal workers'
214 pnuemoconiosis.

215 (32) "Spirometry" means a test of air capacity of the lung
216 through a spirometer to measure the volume of air inspired and
217 expired.

218 (33) "Supporting test results" means copies of the following
219 documents and images:

220 (A) Pulmonary function tests, including printouts of the flow
221 volume loops, volume time curves, DLCO graphs, lung volume
222 tests and graphs, quality control data and other pertinent data for
223 all trials and all other elements required to demonstrate
224 compliance with the equipment, quality, interpretation and
225 reporting standards set forth herein;

226 (B) B-reading and B-reader reports;

227 (C) Reports of x-ray examinations;

228 (D) Diagnostic imaging of the chest;

229 (E) Pathology reports; and

230 (F) All other tests reviewed by the diagnosing physician or
231 a qualified physician in reaching the physician's conclusions.

232 (34) “Timed gas dilution” means a method for measuring
233 total lung capacity in which the subject breathes into a
234 spirometer containing a known concentration of an inert and
235 insoluble gas for a specific time, and the concentration of that
236 inert and insoluble gas in the lung is compared to the
237 concentration of that type of gas in the spirometer.

238 (35) “Total lung capacity” means the volume of gas
239 contained in the lungs at the end of a maximal inspiration.

240 (36) “Veterans’ benefits” means a program for benefits in
241 connection with military service administered by the Veterans’
242 Administration under Title 38 of the United States Code.

243 (37) “Workers’ compensation law” means a law relating to
244 a program administered by the United States or a state to provide
245 benefits, funded by a responsible employer or its insurance
246 carrier, for occupational diseases or injuries or for disability or
247 death caused by occupational diseases or injuries. The term
248 includes the Longshore and Harbor Workers’ Compensation Act,
249 33 U. S. C. §§901 *et seq.*, and the Federal Employees’
250 Compensation Act, Chapter 81 of Title 5 of the United States
251 Code, but does not include the Federal Employers’ Liability Act
252 of April 22, 1908, 45 U. S. C. §§51 *et seq.*

**§55-7F-4. Filing claims; establishment of a prima facie case;
additional required information for new
nonmalignant claims; individual actions to be filed.**

1 (a) A plaintiff in an asbestos or silica action alleging a
2 nonmalignant condition shall file within ninety days of filing the
3 complaint or other initial pleading a detailed narrative medical
4 report and diagnosis, signed by a qualified physician and
5 accompanied by supporting test results, constituting prima facie
6 evidence that the exposed person meets the requirements of this

7 article. The report shall not be prepared by a lawyer or person
8 working for or on behalf of a lawyer or law firm.

9 (b) A defendant in an asbestos or silica action shall be
10 afforded a reasonable opportunity before trial to challenge the
11 adequacy of the prima facie evidence that the exposed person
12 meets the requirements of this article. An asbestos or silica
13 action shall be dismissed without prejudice upon a finding that
14 the exposed person has failed to make the prima facie showing
15 required by this article.

16 (c) A plaintiff in an asbestos or silica action filed on or after
17 the effective date of this article shall also include an information
18 form with the complaint for nonmalignant conditions containing
19 all of the following:

20 (1) The name, address, date of birth, social security number,
21 marital status, occupation and employer of the exposed person
22 and any person through which the exposed person alleges
23 exposure;

24 (2) The plaintiff's relationship to the exposed person or the
25 person through which the exposure is alleged;

26 (3) To the best of the plaintiff's ability, the location and
27 manner of each alleged exposure, including the specific location
28 and manner of exposure for any person through which the
29 exposed person alleges exposure, the beginning and ending dates
30 of each alleged exposure and the identity of the manufacturer of
31 the specific asbestos or silica product for each exposure when
32 this information is reasonably available;

33 (4) The identity of the defendant or defendants against whom
34 the plaintiff asserts a claim;

35 (5) The specific asbestos-related or silica-related disease
36 claimed to exist; and

37 (6) Any supporting documentation relating to subdivisions
38 (3), (4) and (5) of this subsection.

39 (d) Asbestos and silica actions must be individually filed. No
40 asbestos or silica action filed on or after the effective date of this
41 article shall be permitted on behalf of a group or class of
42 plaintiffs.

§55-7F-5. Elements of proof for asbestos actions alleging a nonmalignant asbestos-related condition.

1 (a) No asbestos action related to an alleged nonmalignant
2 asbestos-related condition may be brought or maintained in the
3 absence of prima facie evidence that the exposed person has a
4 physical impairment for which asbestos exposure was a
5 substantial contributing factor. The plaintiff shall make a prima
6 facie showing of claim for each defendant and include a detailed
7 narrative medical report and diagnosis signed under oath by a
8 qualified physician that includes all of the following:

9 (1) Radiological or pathological evidence of asbestosis or
10 radiological evidence of diffuse bilateral pleural thickening or a
11 high-resolution computed tomography scan showing evidence of
12 asbestosis or diffuse pleural thickening;

13 (2) A detailed occupational and exposure history from the
14 exposed person or, if that person is deceased, from the person
15 most knowledgeable about the exposures that form the basis of
16 the action, including identification of all of the exposed person's
17 principal places of employment and exposures to airborne
18 contaminants and whether each place of employment involved
19 exposures to airborne contaminants, including asbestos fibers or
20 other disease causing dusts or fumes, that may cause pulmonary
21 impairment and the nature, duration, and level of any exposure;

22 (3) A detailed medical, social and smoking history from the
23 exposed person or, if that person is deceased, from the person

24 most knowledgeable, including a thorough review of the past and
25 present medical problems of the exposed person and their most
26 probable cause;

27 (4) Evidence verifying that at least fifteen years have elapsed
28 between the exposed person's date of first exposure to asbestos
29 and the date of diagnosis;

30 (5) Evidence from a personal medical examination and
31 pulmonary function testing of the exposed person or, if the
32 exposed person is deceased, from the person's medical records,
33 that the exposed person has or the deceased person had a
34 permanent respiratory impairment rating of at least Class 2 as
35 defined by and evaluated pursuant to the AMA's Guides to the
36 Evaluation of Permanent Impairment or reported significant
37 changes year to year in lung function for FVC, FEV1 or DLCO
38 as defined by the American Thoracic Society's Interpretative
39 Strategies for Lung Function Tests, 26 European Respiratory
40 Journal 948-68, 961-62, Table 12 (2005) and as updated;

41 (6) Evidence that asbestosis or diffuse bilateral pleural
42 thickening, rather than chronic obstructive pulmonary disease,
43 is a substantial factor to the exposed person's physical
44 impairment, based on a determination the exposed person has:

45 (A) Forced vital capacity below the predicted lower limit of
46 normal and FEV1/FVC ratio (using actual values) at or above the
47 predicted lower limit of normal;

48 (B) Total lung capacity, by plethysmography or timed gas
49 dilution, below the predicted lower limit of normal; or

50 (C) A chest x-ray showing bilateral small, irregular opacities
51 (s, t or u) graded by a certified B-reader as at least 2/1 on the
52 ILO scale; and

53 (7) The specific conclusion of the qualified physician
54 signing the report that exposure to asbestos was a substantial

55 contributing factor to the exposed person's physical impairment
56 and not more probably the result of other causes. An opinion that
57 the medical findings and impairment are consistent with or
58 compatible with exposure to asbestos, or words to that effect, do
59 not satisfy the requirements of this subdivision.

60 (b) If the alleged nonmalignant asbestos-related condition is
61 a result of an exposed person living with or having extended
62 contact with another exposed person who, if the asbestos action
63 had been filed by the other exposed person would have met the
64 requirements of subdivision (2), subsection (a) of this section,
65 and the exposed person alleges extended contact with the other
66 exposed person during the relevant time period, the detailed
67 narrative medical report and diagnosis shall include all of the
68 information required by subsection (a) of this section, except that
69 the exposure history required under subdivision (2), subsection
70 (a) of this section shall describe the exposed person's history of
71 exposure to the other exposed person.

§55-7G-6. Elements of proof for silica actions alleging silicosis.

1 No silica action related to alleged silicosis may be brought
2 or maintained in the absence of prima facie evidence that the
3 exposed person has a physical impairment as a result of silicosis.
4 The plaintiff shall make a prima facie showing of claim for each
5 defendant and include a detailed narrative medical report and
6 diagnosis signed under oath by a qualified physician that
7 includes all of the following:

8 (1) Radiological or pathological evidence of silicosis or a
9 high-resolution computed tomography scan showing evidence of
10 silicosis;

11 (2) A detailed occupational and exposure history from the
12 exposed person or, if that person is deceased, from the person
13 most knowledgeable about the exposures that form the basis of

14 the action, including identification of all principal places of
15 employment and exposures to airborne contaminants and
16 whether each place of employment involved exposures to
17 airborne contaminants, including silica or other disease causing
18 dusts or fumes, that may cause pulmonary impairment and the
19 nature, duration and level of any exposure;

20 (3) A detailed medical, social and smoking history from the
21 exposed person or, if that person is deceased, from the person
22 most knowledgeable, including a thorough review of the past and
23 present medical problems and their most probable cause;

24 (4) Evidence that a sufficient latency period has elapsed
25 between the exposed person's date of first exposure to silica and
26 the day of diagnosis;

27 (5) Evidence based upon a personal medical examination
28 and pulmonary function testing of the exposed person or, if the
29 exposed person is deceased, based upon the person's medical
30 records, demonstrating that the exposed person has or the
31 deceased person had a permanent respiratory impairment rating
32 of at least Class 2 as defined by and evaluated pursuant to the
33 AMA's Guides to the Evaluation of Permanent Impairment or
34 reported significant changes year to year in lung function for
35 FVC, FEV1 or DLCO as defined by the American Thoracic
36 Society's Interpretative Strategies for Lung Function Tests, 26
37 European Respiratory Journal 948-68, 961-62, Table 12 (2005)
38 and as updated; and

39 (6) The specific conclusion of the qualified physician
40 signing the report that exposure to silica was a substantial
41 contributing factor to the exposed person's physical impairment
42 and not more probably the result of other causes. An opinion
43 stating that the medical findings and impairment are consistent
44 with or compatible with exposure to silica, or words to that
45 effect, do not satisfy the requirements of this subdivision.

§55-7G-7. Evidence of physical impairment.

1 Evidence relating to physical impairment, including
2 pulmonary function testing and diffusing studies, offered in any
3 action governed by this article or article seven-f of this chapter,
4 shall:

5 (1) Comply with the quality controls, equipment
6 requirements, methods of calibration and techniques set forth in
7 the AMA's Guides to the Evaluation of Permanent Impairment
8 and all standards set forth in the Official Statements of the
9 American Thoracic Society which are in effect on the date of any
10 examination or pulmonary function testing of the exposed person
11 required by this article;

12 (2) Not be obtained and may not be based on testing or
13 examinations that violate any law, regulation, licensing
14 requirement, or medical code of practice of the state in which the
15 examination, test, or screening was conducted, or of this state;
16 and

17 (3) Not be obtained under the condition that the plaintiff or
18 exposed person retains the legal services of the attorney or law
19 firm sponsoring the examination, test or screening.

§55-7G-8. Procedures.

1 (a) Evidence relating to the prima facie showings required
2 under this article shall not create any presumption that the
3 exposed person has an asbestos-related or silica-related injury or
4 impairment and shall not be conclusive as to the liability of any
5 defendant.

6 (b) No evidence shall be offered at trial, and the jury shall
7 not be informed of:

8 (1) The grant or denial of a motion to dismiss an asbestos or
9 silica action under the provisions of this article; or

10 (2) The provisions of this article with respect to what
11 constitutes a prima facie showing of asbestos or silica-related
12 impairment.

13 (c) Until a court enters an order determining that the exposed
14 person has established prima facie evidence of impairment, no
15 asbestos or silica action shall be subject to discovery, except
16 discovery related to establishing or challenging the prima facie
17 evidence or by order of the trial court upon motion of one of the
18 parties and for good cause shown.

19 (d) *Consolidation of cases.* —

20 (1) A court may consolidate for trial any number and type of
21 nonmalignant asbestos or silica actions with the consent of all
22 the parties. In the absence of such consent, the court may
23 consolidate for trial only asbestos or silica actions relating to the
24 exposed person and members of that person's household.

25 (2) No class action or any other form of mass aggregation
26 relating to more than one exposed person and members of that
27 person's household shall be permitted.

28 (3) The provisions of this subsection do not preclude
29 consolidation of cases by court order for pretrial or discovery
30 purposes.

§55-7G-9. Statute of limitations; two-disease rule.

1 (a) With respect to an asbestos or silica action not barred by
2 limitations as of this article's effective date, an exposed person's

3 cause of action shall not accrue, nor shall the running of
4 limitations commence, prior to the earlier of the date:

5 (1) The exposed person received a medical diagnosis of an
6 asbestos-related impairment or silica-related impairment;

7 (2) The exposed person discovered facts that would have led
8 a reasonable person to obtain a medical diagnosis with respect to
9 the existence of an asbestos-related impairment or silica-related
10 impairment; or

11 (3) The date of death of the exposed person having an
12 asbestos-related or silica-related impairment.

13 (b) Nothing in this section shall be construed to revive or
14 extend limitations with respect to any claim for asbestos-related
15 impairment or silica-related impairment that was otherwise
16 time-barred on the effective date of this article.

17 (c) Nothing in this section shall be construed so as to
18 adversely affect, impair, limit, modify, or nullify any settlement
19 or other agreements with respect to an asbestos or silica action
20 entered into prior to the effective date of this article.

21 (d) An asbestos or silica action arising out of a nonmalignant
22 condition shall be a distinct cause of action from an action for an
23 asbestos-related or silica-related cancer. Where otherwise
24 permitted under state law, no damages shall be awarded for fear
25 or increased risk of future disease in an asbestos or silica action.

§55-7G-10. Application.

1 This article shall apply to all asbestos actions and silica
2 actions filed on or after the effective date of this article.

CHAPTER 37

**(H. B. 2138 - By Delegate(s) Folk, Gearheart, Householder,
Howell, J. Nelson, Ireland, Faircloth, Williams,
Lynch, Shott and McGeehan)**

[Passed February 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on February 18, 2015.]

AN ACT to amend and reenact §19-25-5 of the Code of West Virginia, 1931, as amended, relating to adding aircraft operations on private airstrips and farms to the definition of “recreational purpose” for the purpose of limiting the liability of landowners.

Be it enacted by the Legislature of West Virginia:

That §19-25-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-5. Definitions.

1 Unless the context used clearly requires a different meaning,
2 as used in this article:

3 “Charge” means:

4 (A) For purposes of limiting liability for recreational or
5 wildlife propagation purposes set forth in section two of this
6 article, the amount of money asked in return for an invitation to
7 enter or go upon the land, including a one-time fee for a
8 particular event, amusement, occurrence, adventure, incident,
9 experience or occasion which may not exceed \$50 a year per
10 recreational participant: *Provided*, That the monetary cap on
11 charges imposed pursuant to this article does not apply to the

12 provisions of article fourteen, chapter twenty of this code
13 pertaining to the Hatfield-McCoy regional recreational authority
14 or activities sponsored on the Hatfield-McCoy recreation area;

15 (B) For purposes of limiting liability for military,
16 law-enforcement or homeland-defense training set forth in
17 section six of this article, the amount of money asked in return
18 for an invitation to enter or go upon the land;

19 “Land” includes, but is not limited to, roads, water,
20 watercourses, private ways and buildings, structures and
21 machinery or equipment when attached to the realty;

22 “Noncommercial recreational activity” does not include any
23 activity for which there is any charge which exceeds \$50 per
24 year per participant;

25 “Owner” includes, but is not limited to, tenant, lessee,
26 occupant or person in control of the premises;

27 “Recreational purposes” includes, but is not limited to, any
28 one or any combination of the following noncommercial
29 recreational activities: hunting, fishing, swimming, boating,
30 camping, picnicking, hiking, pleasure driving, motorcycle or
31 all-terrain vehicle riding, bicycling, horseback riding,
32 spelunking, nature study, water skiing, winter sports and visiting,
33 viewing or enjoying historical, archaeological, scenic or
34 scientific sites, aircraft or ultralight operations on private
35 airstrips or farms or otherwise using land for purposes of the
36 user;

37 “Wildlife propagation purposes” applies to and includes all
38 ponds, sediment control structures, permanent water
39 impoundments or any other similar structure created in
40 connection with surface mining activities as governed by article
41 three, chapter twenty-two of this code or from the use of surface
42 in the conduct of underground coal mining as governed by that
43 article and any rules promulgated because of the article, which
44 ponds, structures or impoundments are designated and certified

45 in writing by the Director of the Division of Environmental
46 Protection and the owner to be necessary and vital to the growth
47 and propagation of wildlife, animals, birds and fish or other
48 forms of aquatic life and finds and determines that the premises
49 have the potential of being actually used by the wildlife for those
50 purposes and that the premises are no longer used or necessary
51 for mining reclamation purposes. The certification shall be in
52 form satisfactory to the director and shall provide that the
53 designated ponds, structures or impoundments may not be
54 removed without the joint consent of the director and the owner;
55 and

56 “Military, law-enforcement or homeland-defense training”
57 includes, but is not limited to, training, encampments,
58 instruction, overflight by military aircraft, parachute drops of
59 personnel or equipment or other use of land by a member of the
60 Army National Guard or Air National Guard, a member of a
61 reserve unit of the armed forces of the United States, a person on
62 active duty in the armed forces of the United States, a state or
63 federal law-enforcement officer, a federal agency or service
64 employee, a West Virginia military authority employee or a
65 civilian contractor supporting the military and/or government
66 employees acting in that capacity.

CHAPTER 38

**(S. B. 545 - By Senators Nohe, Walters,
Palumbo and Gaunch)**

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §31A-4-26 of the Code of West Virginia, 1931, as amended, relating to removing requirement of

prior approval of overdrafts made by a director or executive officer of a banking institution under certain conditions.

Be it enacted by the Legislature of West Virginia:

That §31A-4-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.

1 (a) (1) The total loans and extensions of credit made by a
2 state-chartered banking institution to any one person or common
3 enterprise and not fully secured, as determined in a manner
4 consistent with subdivision (2) of this subsection, may not
5 exceed fifteen percent of the unimpaired capital and unimpaired
6 surplus of that state-chartered banking institution initially
7 determined for the period such loan or extension of credit is
8 made.

9 (2) Where the total loans and extensions of credit by a
10 state-chartered banking institution to any one person or common
11 enterprise are fully secured by readily marketable collateral
12 having a market value, as determined by reliable and
13 continuously available price quotations, at least equal to the
14 outstanding amount of such loans and extensions, then the bank
15 may provide such loans or extensions of up to ten percent of the
16 unimpaired capital and unimpaired surplus of that state-chartered
17 banking institution initially determined for the period such loan
18 or extension is made. This limitation shall be separate from and
19 in addition to the limitation contained in subdivision (1) of this
20 subsection.

21 (3) For the purposes of this subsection:

22 (A) The term “loans and extensions of credit” includes all
23 direct or indirect advances of funds to a person made on the
24 basis of any obligation of that person to repay the funds or
25 repayable from specific property pledged by or on behalf of the
26 person and to the extent specified by the Commissioner of
27 Banking; the terms also include any liability of a state-chartered
28 banking institution to advance funds to or on behalf of a person
29 pursuant to a contractual commitment;

30 (B) The term “person” includes an individual, partnership,
31 sole proprietorship, society, association, firm, institution,
32 company, public or private corporation, not-for-profit
33 corporation, state, governmental agency, bureau, department,
34 division or instrumentality, political subdivision, county
35 commission, municipality, trust, syndicate, estate or any other
36 legal entity whatsoever, formed, created or existing under the
37 laws of this state or any other jurisdiction;

38 (C) The term “unimpaired capital and unimpaired surplus”
39 means the amount of total equity capital outstanding as indicated
40 in the bank’s most recent quarterly report of condition and
41 income as filed with the Commissioner of Banking pursuant to
42 section nineteen of this article, plus the amount of the allowance
43 for loan losses, minus the amount of goodwill or other
44 nonmarketable intangible assets included in the quarterly report
45 pursuant to generally accepted accounting principles. Unrealized
46 gains and losses on the bank’s securities and loan portfolios shall
47 be included in the calculation of total equity capital to the extent
48 required by generally accepted accounting principles and
49 applicable federal or state law, rule or regulation; and

50 (D) The term “common enterprise” includes, but is not
51 limited to, persons and entities who are so related by business or
52 otherwise that the expected source of repayment on the loan or

53 extension of credit is substantially the same for each person or
54 entity.

55 (4) The limitations contained in this subsection are subject
56 to the following exceptions:

57 (A) Loans or extensions of credit arising from the discount
58 of commercial or business paper evidencing an obligation to the
59 person negotiating it with recourse are not subject to any
60 limitation based on capital and surplus;

61 (B) The purchase of bankers' acceptances of the kind
62 described in section thirteen of the Federal Reserve Act and
63 issued by other banks are not subject to any limitation based on
64 capital and surplus;

65 (C) Loans and extensions of credit having a term of ten
66 months or less and secured by bills of lading, warehouse receipts
67 or similar documents transferring or securing title to readily
68 marketable staples are subject to a limitation of twenty percent
69 of unimpaired capital and unimpaired surplus in addition to the
70 general limitations set forth in subdivision (1) of this subsection,
71 provided the market value of the staples securing each additional
72 loan or extension of credit at all times equals or exceeds one
73 hundred fifteen percent of the outstanding amount of such loan
74 or extension of credit. The staples shall be fully covered by
75 insurance whenever it is customary to insure the staples. If
76 collateral values of the staples fall below the levels required
77 herein, to the extent that the loan is no longer in conformance
78 with its collateral requirements and exceeds the general fifteen
79 percent limitation, the loan must be brought into conformance
80 within five business days, except where judicial proceedings,
81 regulatory actions or other extraordinary occurrences prevent the
82 bank from taking action;

83 (D) Loans or extensions of credit secured by bonds, notes,
84 certificates of indebtedness or treasury bills of the United States

85 or by other such obligations fully guaranteed as to principal and
86 interest by the United States or by bonds, notes, certificates of
87 indebtedness which are general obligations of the state of West
88 Virginia or by other such obligations fully guaranteed as to
89 principal and interest by the state of West Virginia are not
90 subject to any limitation based on capital and surplus;

91 (E) Loans or extensions of credit to or secured by
92 unconditional takeout commitments or guarantees of any
93 department, agency, bureau, board, commission or establishment
94 of the United States or of the State of West Virginia or any
95 corporation wholly owned directly or indirectly by the United
96 States are not subject to any limitation based on capital and
97 surplus;

98 (F) Loans or extensions of credit secured by a segregated
99 deposit account in the lending bank are not subject to any
100 limitation based on capital and surplus;

101 (G) Loans or extensions of credit to any banking institution
102 or to any receiver, conservator or other agent in charge of the
103 business and property of such banking institution or other
104 federally insured depository institution, when the loans or
105 extensions of credit are approved by the Commissioner of
106 Banking, are not subject to any limitation based on capital and
107 surplus;

108 (H) (i) Loans and extensions of credit arising from the
109 discount of negotiable or nonnegotiable installment consumer
110 paper which carries a full recourse endorsement or unconditional
111 guarantee by the person or common enterprise transferring the
112 paper are subject under this section to a maximum limitation
113 equal to twenty-five percent of such unimpaired capital and
114 unimpaired surplus, notwithstanding the collateral requirements
115 set forth in subdivision (2) of this subsection;

116 (ii) If the bank's files or the knowledge of its officers of the
117 financial condition of each maker of consumer paper is
118 reasonably adequate and an officer of the bank designated for
119 that purpose by the board of directors of the bank certifies in
120 writing that the bank is relying primarily upon the responsibility
121 of each maker for payment of such loans or extensions of credit
122 and not upon any full or partial recourse endorsement or
123 guarantee by the transferor, the limitations of this section as to
124 the loans or extensions of credit of each such maker are the sole
125 applicable loan limitations;

126 (I) (i) Loans and extensions of credit secured by shipping
127 documents or instruments transferring or securing title covering
128 livestock or giving a lien on livestock when the market value of
129 the livestock securing the obligation is not at any time less than
130 one hundred fifteen percent of the face amount of the note
131 covered shall be subject under this section to a maximum
132 limitation equal to twenty-five percent of the unimpaired capital
133 and unimpaired surplus, notwithstanding the collateral
134 requirements set forth in subdivision (2) of this subsection;

135 (ii) Loans and extensions of credit which arise from the
136 discount by dealers in livestock of paper given in payment for
137 livestock, which paper carries a full recourse endorsement or
138 unconditional guarantee of the seller and which are secured by
139 the livestock being sold, are subject under this section to a
140 limitation of twenty-five percent of the unimpaired capital and
141 unimpaired surplus, notwithstanding the collateral requirements
142 set forth in subdivision (2) of this subsection;

143 (iii) If collateral values of the livestock documents,
144 instruments or discount paper fall below the levels required
145 herein, to the extent that the loan is no longer in conformance
146 with its collateral requirements and exceeds the general fifteen
147 percent limitation, the loan must be brought into conformance
148 within thirty business days, except where judicial proceedings,

149 regulatory actions or other extraordinary occurrences prevent the
150 bank from taking action;

151 (J) Loans or extensions of credit to the Student Loan
152 Marketing Association are not subject to any limitation based on
153 capital and surplus; and

154 (K) Loans or extensions of credit to a corporation owning
155 the property in which that state-chartered banking institution is
156 located, when that state-chartered banking institution has an
157 unimpaired capital and surplus of not less than \$1 million or
158 when approved in writing by the Commissioner of Banking, are
159 not subject to any limitation based on capital and surplus.

160 (5) (A) The Commissioner of Banking may prescribe rules
161 to administer and carry out the purposes of this subsection
162 including rules to define or further define terms used in this
163 subsection and to establish limits or requirements other than
164 those specified in this subsection for particular classes or
165 categories of loans or extensions of credit;

166 (B) The Commissioner of Banking may also prescribe rules
167 to deal with loans or extensions of credit, which were not in
168 violation of this section prior to the effective date of this article,
169 but which will be in violation of this section upon the effective
170 date of this article; and

171 (C) The Commissioner of Banking may also determine when
172 a loan putatively made to a person is, for purposes of this
173 subsection, attributed to another person.

174 (b) (1) Except as hereinafter provided or otherwise permitted
175 by law, nothing herein contained authorizes the purchase by a
176 state-chartered banking institution for its own account of any
177 shares of stock of any corporation: *Provided*, That a
178 state-chartered banking institution may purchase and sell

179 securities and stock without recourse, solely upon the order and
180 for the account of customers.

181 (2) The total amount of investment securities of any one
182 obligor or maker held by a state-chartered banking institution for
183 its own account may not exceed that percentage of the
184 unimpaired capital and unimpaired surplus of that state-chartered
185 banking institution as is permitted for investment by national
186 banks or for any federally insured depository institution.

187 (3) For purposes of this subsection:

188 (A) The term “investment securities” means a marketable
189 obligation in the form of a stock, bond, note or debenture
190 commonly regarded as an investment security and that is salable
191 under ordinary circumstances with reasonable promptness at a
192 fair value. “Derivative security” means a type of investment
193 security involving a financial contract whose value depends on
194 the values of one or more underlying assets or indexes of asset
195 values. The term “derivative” refers inter alia to financial
196 contracts such as collateralized mortgage obligations, forwards,
197 futures, forward rate agreements, swaps, options and
198 caps/floors/collars whose primary purpose is to transfer price
199 risks associated with fluctuations in asset values;

200 (B) The term “person” includes any individual, partnership,
201 sole proprietorship, society, association, firm, institution,
202 company, public or private corporation, not-for-profit
203 corporation, state, governmental agency, bureau, department,
204 division or instrumentality, political subdivision, county
205 commission, municipality, trust, syndicate, estate or any other
206 legal entity whatsoever, formed, created or existing under the
207 laws of this state or any other jurisdiction; and

208 (C) The term “unimpaired capital and unimpaired surplus”
209 has the same meaning as set forth in subsection (a) of this
210 section.

211 (4) Notwithstanding any other provision of this subsection,
212 a state-chartered banking institution may invest its funds in any
213 investment authorized for national banking associations or for
214 any other federally insured depository institution. The
215 investments by state-chartered banking institutions shall be on
216 the same terms and conditions applicable to national banking
217 associations or any other federally insured depository institution:
218 *Provided, That:* (i) The purchase of investment securities under
219 this subdivision may be made only when in the bank's prudent
220 judgment, which judgment may be based in part on estimates
221 which it believes to be reliable, there is adequate evidence that
222 the obligor will be able to perform all it undertakes to perform
223 in connection with the securities, including all debt service
224 requirements, and that the securities may be sold with reasonable
225 promptness at a price that corresponds to their fair value; and (ii)
226 the purchase conforms to the requirement of subdivision (5) of
227 this subsection. The Commissioner of Banking may, from time
228 to time, provide notice to state-chartered banking institutions of
229 authorized investments under this paragraph.

230 (5) The purchase of investment securities, including
231 derivative securities, in which the investment characteristics are
232 considered distinctly or predominantly speculative, or the
233 purchase of such securities that are in default, whether as to
234 principal or interest, is prohibited. The proper management of
235 interest rate risk through the use of derivative or other
236 investment securities may not be held a speculative purpose.

237 (6) The Commissioner of Banking may prescribe rules to
238 administer and carry out the purposes of this subsection,
239 including rules to define or further define terms used in this
240 subsection and to establish limits or requirements other than
241 those specified in this subsection for particular classes or
242 categories of investment securities.

243 (c) If there is a material decline of unimpaired capital and
244 unimpaired surplus of a state-chartered bank during any

245 quarterly reporting period of more than twenty percent from that
246 amount reported in the bank's most recent report of income and
247 condition, or where there is a decrease of more than thirty
248 percent in any twelve-month period, the bank shall review its
249 outstanding loans, extensions of credit and investments and
250 report to the Commissioner of Banking those loans, extensions
251 and investments that exceed the limitations of this section using
252 the bank's current reevaluated unimpaired capital and
253 unimpaired surplus. The report shall detail the bank's position in
254 each such loan, extension of credit and investment. The
255 commissioner may, within his or her discretion, require that such
256 loans, extensions of credit and investments be brought into
257 conformity with the bank's current reevaluated legal lending and
258 investment limitation.

259 (d) Notwithstanding any other provision of this section, in
260 order to ensure a bank's safety and soundness, the Commissioner
261 of Banking retains the authority to direct any state-chartered
262 bank to recalculate its lending and investment limits at more
263 frequent intervals than otherwise provided herein and to require
264 all outstanding loans, extensions of credit and investments be
265 brought into conformance with the reevaluated limitations. In
266 such cases, the commissioner will provide the bank a written
267 notice explaining briefly the specific reasons why the
268 determination was made to require the more frequent
269 calculations.

270 (e) Loans to directors or executive officers are subject to the
271 following limitations:

272 (1) A director or executive officer of any banking institution
273 may not borrow, directly or indirectly, from a banking institution
274 with which he or she is connected any sum of money without the
275 prior approval of a majority of the board of directors or discount
276 committee of the banking institution, or of any duly constituted
277 committee whose duties include those usually performed by a

278 discount committee. The approval shall be by resolution adopted
279 by a majority vote of the board or committee, exclusive of the
280 director or executive officer to whom the loan is made.

281 (2) If any director or executive officer of any bank owns or
282 controls a majority of the stock of any corporation, or is a partner
283 in any partnership, a loan to the corporation or partnership
284 constitutes a loan to the director or officer.

285 (3) For purposes of this subsection, an “executive officer”
286 means:

287 (A) A person who participates or has authority to participate,
288 other than in the capacity of a director, in major policy-making
289 functions of the company or bank, regardless of any official title,
290 salary or other compensation. The chairman of the board, the
291 president, every vice president, the cashier, the secretary and the
292 treasurer of a company or bank are considered executive officers
293 unless the officer is excluded, by resolution of the board of
294 directors or by the bylaws of the bank or company from
295 participation, other than in the capacity of director, in major
296 policy-making functions of the bank or company and the officer
297 does not actually participate therein.

298 (B) An executive officer of a company of which the bank is
299 a subsidiary, and any other subsidiary of that company, unless
300 the executive officer of the subsidiary is excluded, by name or
301 by title, from participation in major policy-making functions of
302 the bank by resolutions of the boards of directors of both the
303 subsidiary and the bank and does not actually participate in such
304 major policy-making functions.

305 (4) Prior approval under subdivision (1) of this subsection is
306 not required for:

307 (A) Payments of overdrafts pursuant to: (i) A written,
308 preauthorized, interest-bearing extension of credit plan that has

309 been approved by the board of directors or an appropriate
310 committee and that specifies a method of repayment; or (ii) a
311 written, preauthorized transfer of funds from another account of
312 the account holder at the bank; or

313 (B) Payments of inadvertent overdrafts on an account in an
314 aggregate amount of \$1,000 or less: *Provided, That:* (i) The
315 account is not overdrawn for more than five consecutive
316 business days; and (ii) the bank charges the director or executive
317 officer the same fee charged to any other customer of the bank
318 in similar circumstances.

319 (f) An employee of the Division of Banking whose
320 regulatory activities involve participation in an examination,
321 audit, visitation, review, investigation or any other particular
322 matter involving depository institutions chartered by the division
323 may not borrow, directly or indirectly, any sum of money from
324 a state-chartered bank or state-chartered credit union. An
325 employee of the Division of Banking whose regulatory activities
326 involve participation in an examination, audit, visitation, review,
327 investigation or any other particular matter involving
328 nondepository institutions licensed by the division may not
329 borrow, directly or indirectly, any sum of money from a
330 nondepository entity that is licensed by the division. The
331 commissioner, deputy commissioner and in-house legal counsel
332 of the Division of Banking may not borrow, directly or
333 indirectly, any sum of money from any entity that is under the
334 jurisdiction of the division.

335 (g) Securities purchased by a state-chartered banking
336 institution shall be entered upon the books of the bank at actual
337 cost. For the purpose of calculating the undivided profits
338 applicable to the payment of dividends, securities may not be
339 valued at a valuation exceeding their present cost as determined
340 by amortization of premiums and accretion of discounts pursuant
341 to generally accepted accounting principles, that is, by charging

342 to profit and loss a sum sufficient to bring them to par at
343 maturity: *Provided*, That securities held for trade or permissible
344 marketable equity securities and any other types of debt
345 securities which pursuant to generally accepted accounting
346 principles are to be carried on the bank's books at fair market
347 value shall have the unrealized market appreciation and
348 depreciation included in the income and capital as permitted by
349 generally accepted accounting principles.

350 (h) The market value of securities purchased and loans
351 extended by a state-chartered banking institution shall be
352 reported in all public reports and quarterly reports to the
353 commissioner pursuant to section nineteen of this article in
354 accordance with generally accepted accounting principles and
355 any applicable state or federal law, rule or regulation.

CHAPTER 39

(S. B. 283 - By Senators Nohe, Gaunch and Plymale)

[Passed March 11, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §31A-4-40 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31A-8-12d of said code, all relating to state banking institutions; removing restrictions on closure of banks on weekdays; removing requirement of board resolution and legal advertisement for any change in days or hours a bank office is open for business; establishing certain requirements to be met prior to changing days or hours a bank office is open for business; and reducing time for consideration of expedited branch applications from thirty-five days to twenty-one days.

Be it enacted by the Legislature of West Virginia:

That §31A-4-40 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §31A-8-12d of said code be amended and reenacted, all to read as follows:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.**

**§31A-4-40. Permissive closing on fixed weekday or portions of
weekdays; notice of closings; emergency closings;
procedures.**

1 (a) Any banking institution may elect to operate branches
2 that are open for business on the days and for the hours as
3 determined appropriate by that banking institution. Prior to
4 changing the days or hours a branch or main office will be open
5 for business, the banking institution shall provide notice of the
6 change to its customers in the form of conspicuous signage in the
7 lobby and any drive-through lanes at that branch posted at least
8 forty-five days prior to the change. The banking institution shall
9 also provide the Commissioner of Financial Institutions with
10 forty-five days' advance written notice of the change.

11 (b) Any banking institution may close, without notice,
12 during any period of actual or threatened enemy attack affecting
13 the community in which the banking institution is located or
14 during any period of other emergency including, but not limited
15 to, fire, flood, hurricane, riot, snow or civil commotion:
16 *Provided*, That the commissioner shall be notified of any closing
17 made pursuant to this subsection as soon as practical thereafter.

18 (c) Any fixed weekday and/or portion of one or more
19 weekdays on which any banking institution elects to close and
20 any period during which the commissioner may permit it to close
21 pursuant to the authority of this section is a legal holiday with
22 respect to the banking institution and not a business day or

23 banking day for the purposes of the law relating to negotiable
24 instruments and any act or contract authorized, required or
25 permitted to be carried out or performed at, by or with respect to
26 the banking institution may be performed on the next business or
27 banking day and no liability or loss of rights on the part of any
28 person or banking institution shall result therefrom.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES;
JUDICIAL REVIEW; UNLAWFUL ACTS;
PENALTIES.**

**§31A-8-12d. Expedited procedure for authorization of de novo
branch banks.**

1 (a) As an alternative to using the procedures established in
2 subdivisions (g) through (j), inclusive, section twelve of this
3 article, a banking institution desiring to establish a branch bank
4 by de novo construction or lease may file a notice, containing
5 information as prescribed by the commissioner, of its intent
6 which must be received by the commissioner at least twenty-one
7 days prior to the date on which the proposed branch will be
8 established accompanied by a fee of \$250. The commissioner
9 shall provide written notice of his or her acceptance or rejection
10 of the branch notice prior to the expiration of the 21-day period.
11 However, if the commissioner requests additional information
12 from the branching institution, the period for the commissioner's
13 consideration of the notice is extended an additional fifteen days
14 from the time the information requested is received by the
15 commissioner.

16 (b) A state banking institution may not establish a branch
17 bank under this section until the commissioner provides written
18 approval of the notice for that branch bank. The commissioner's
19 approval or rejection of the notice must be accompanied by
20 findings of fact on whether the applicant bank:

21 (1) Satisfies such reasonable and appropriate requirements
22 as to sound financial condition. For purposes of this subdivision,

23 “sound financial condition” means that a state banking
24 institution meets the required minimum level to be well
25 capitalized for each capital measure as determined by its primary
26 federal regulator and is not subject to supervisory action by
27 either a state or federal financial regulatory agency;

28 (2) Meets a satisfactory standard of compliance with federal
29 and state community reinvestment act requirements as evidenced
30 by its most recent state or federal examination;

31 (3) Meets a satisfactory standard of compliance with federal
32 and state consumer compliance law and regulations as evidenced
33 by its most recent state or federal regulatory examination;

34 (4) Meets the acceptable standards for investment in
35 premises and fixed assets as permitted by section thirteen, article
36 four of this chapter; and

37 (5) Does not present a significant supervisory concern or
38 raise a significant legal or policy issue by filing the application.

39 (c) Any party who is adversely affected by an action of the
40 commissioner taken pursuant to the criteria established by
41 subsection (b) of this section may appeal within ten business
42 days of the commissioner’s decision to the Board of Banking and
43 Financial Institutions which must, after holding a hearing
44 pursuant to the provisions of subdivision (12), subsection (b),
45 section two, article three of this chapter, affirm, reverse or
46 modify the order of the commissioner. Any party who is
47 adversely affected by an order of the Board of Banking and
48 Financial Institutions issued pursuant to the provisions of this
49 subsection is entitled to judicial review in the same manner as
50 provided by the provisions of subsection (k), section twelve of
51 this article.

CHAPTER 40

**(S. B. 294 - By Senators Cole (Mr. President)
and Kessler)
[By Request of the Executive]**

[Passed March 3, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT to repeal §5B-2-3a and §5B-2-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-2-2, §5B-2-3, §5B-2-4, §5B-2-5 and §5B-2-6 of said code; to amend and reenact §15-5-28 of said code; to amend and reenact §18A-3-2c of said code; and to amend and reenact §33-16D-16 of said code, all relating to eliminating unnecessary, inactive or redundant councils, committees and boards; terminating the Council for Community and Economic Development and transferring powers and duties to the Executive Director of the West Virginia Development Office; terminating the Statewide Intrastate Mutual Aid Committee and making technical corrections to the code to reference a state of preparedness; terminating the Principals Standards Advisory Council; and terminating the West Virginia Health Insurance Plan Board.

Be it enacted by the Legislature of West Virginia:

That §5B-2-3a and §5B-2-7 of the Code of West Virginia, 1931, as amended, be repealed; that §5B-2-2, §5B-2-3, §5B-2-4, §5B-2-5 and §5B-2-6 of said code be amended and reenacted; that §15-5-28 of said code be amended and reenacted; that §18A-3-2c of said code be amended and reenacted; and that §33-16D-16 of said code be amended and reenacted, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.****§5B-2-2. Appointment and compensation of the Executive Director of the West Virginia Development Office.**

1 (a) The Governor shall appoint the Executive Director of the
2 West Virginia Development Office who is qualified for the
3 position by reason of his or her extensive education and
4 experience in the field of professional economic development.
5 The executive director serves at the will and pleasure of the
6 Governor. The executive director shall have overall management
7 responsibility and administrative control and supervision within
8 the West Virginia Development Office. It is the intention of the
9 Legislature that the executive director provide professional and
10 technical expertise in the field of professional economic and
11 tourism development.. Subject to the provisions of the contract
12 provided in section four of this article, the executive director
13 may hire and fire economic development representatives
14 employed pursuant to the provisions of section five of this
15 article.

16 (b) The Executive Director of the West Virginia
17 Development Office may promulgate rules to carry out the
18 purposes and programs of the West Virginia Development Office
19 to include generally the programs available and the procedure
20 and eligibility of applications relating to assistance under the
21 programs. These rules are not subject to the provisions of chapter
22 twenty-nine-a of this code, but shall be filed with the Secretary
23 of State. The executive director may adopt any of the rules
24 previously promulgated by the council for community and
25 economic development.

§5B-2-3. Powers and duties of the executive director.

1 The executive director shall enhance economic growth and
2 development through the development of a comprehensive

3 economic development strategy for West Virginia.
4 “Comprehensive economic development strategy” means a plan
5 that outlines strategies and activities designed to continue,
6 diversify or expand the economic base of the state as a whole;
7 create jobs; develop a highly skilled workforce; facilitate
8 business access to capital, including venture capital; advertise
9 and market the resources offered by the state with respect to the
10 needs of business and industry; facilitate cooperation among
11 local, regional and private economic development enterprises;
12 improve infrastructure on a state, regional and community level;
13 improve the business climate generally; and leverage funding
14 from sources other than the state, including federal and private
15 sources.

§5B-2-4. Public-private partnerships.

1 The West Virginia Development Office is authorized to
2 enter into contractual or joint venture agreements with a
3 nonprofit corporation organized pursuant to the corporate laws
4 of the state, organized to permit qualification pursuant to section
5 501(c) of the Internal Revenue Code and for purposes of the
6 economic development of West Virginia, and funded from
7 sources other than the state. The contract shall include provisions
8 relating to the employment of economic development
9 representatives assigned to the West Virginia Development
10 Office to be paid a base salary by the state and
11 performance-based economic incentives from private funds of
12 the nonprofit corporation. Provisions relating to hiring practices
13 with respect to economic development representatives, job
14 descriptions, accountability, public-private liaison and
15 performance standards may be the subject of contract
16 negotiations. The contract shall include provision for continuing
17 education and certification in the field of economic or industrial
18 development for persons employed as economic development
19 representatives. Agreements providing for the payment of

20 performance-based incentives to the Executive Director of the
21 West Virginia Development Office are authorized. Agreements
22 providing for the payment of travel and expenses to the
23 Executive Director of the West Virginia Development Office or
24 to economic development representatives from private funds by
25 the nonprofit corporation are authorized. The prohibitions of
26 subdivisions (b) and (d), section five, article two, chapter six-b
27 of this code are not applicable to the receipt by economic
28 development representatives or by the executive director of
29 performance-based incentives and other payments made by the
30 nonprofit corporation and specifically authorized pursuant to this
31 section.

32 From time to time the executive director may enter into joint
33 ventures wherein the West Virginia Development Office and the
34 nonprofit corporation share in the development and funding of
35 economic development programs.

36 All contracts and joint venture agreements must be approved
37 by the executive director. Contracts entered into pursuant to this
38 section for longer than one fiscal year shall contain, in substance,
39 a provision that the contract shall be considered cancelled
40 without further obligation on the part of the state if the State
41 Legislature or, where appropriate, the federal government, shall
42 fail to appropriate sufficient funds therefor or shall act to impair
43 the contract or cause it to be cancelled.

§5B-2-5. Economic development representatives.

1 (a) The executive director may employ economic
2 development representatives to be paid a base salary within
3 legislative appropriations to the West Virginia Development
4 Office, subject to applicable contract provisions pursuant to
5 section four of this article. Economic development
6 representatives may receive performance-based incentives and

7 expenses paid from private funds from a nonprofit corporation
8 contracting with the West Virginia Development Office pursuant
9 to the provisions of section four of this article. The executive
10 director shall establish job descriptions and responsibilities of
11 economic development representatives, subject to the provisions
12 of any contract with a nonprofit corporation entered into
13 pursuant to section four of this article.

14 (b) Notwithstanding any provision of this code to the
15 contrary, economic development representatives employed
16 within the West Virginia Development Office are not subject to
17 the procedures and protections provided by articles six and six-a,
18 chapter twenty-nine of this code. Any employee of the West
19 Virginia Development Office on the effective date of this article
20 who applies for employment as an economic development
21 representative is not entitled to the protections of article six,
22 chapter twenty-nine with respect to hiring procedures and
23 qualifications; and upon accepting employment as an economic
24 development representative, the employee relinquishes the
25 protections provided for in article two, chapter six-c and article
26 six, chapter twenty-nine of this code.

§5B-2-6. Transition; savings provision.

1 All programs, orders, determinations, rules, permits, grants,
2 contracts, certificates, bonds, authorizations and privileges which
3 have been issued, made, granted or allowed to become effective
4 pursuant to any prior enactments of this article or by the
5 Governor, the Governor's Office of Community and Industrial
6 Development or its director, or by a court of competent
7 jurisdiction, and which are in effect on February 1, 1992, shall
8 continue in effect according to their terms until modified,
9 terminated, superseded, set aside or revoked by the Governor or
10 the Executive Director of the West Virginia Development Office
11 pursuant to this article, by a court of competent jurisdiction or by
12 operation of law.

CHAPTER 15. PUBLIC SAFETY.**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND
EMERGENCY MANAGEMENT.****§15-5-28. Statewide mutual aid system.**

1 (a) The Legislature hereby finds that emergencies transcend
2 political jurisdictional boundaries and that intergovernmental
3 coordination is essential for the protection of lives and property
4 and for the best use of available assets, both public and private.
5 The purpose of this section is to create a system of intrastate
6 mutual aid between participating political subdivisions in the
7 state. The system shall provide for mutual assistance among the
8 participating political subdivisions in the prevention of, response
9 to and recovery from any disaster that results in a formal state of
10 emergency or state of preparedness in a participating political
11 subdivision, subject to that participating political subdivision's
12 criteria for declaration. The system shall provide for mutual
13 cooperation among the participating subdivisions in conducting
14 disaster-related exercises, testing or other training activities
15 outside actual declared emergency periods. This section provides
16 no immunity, rights or privileges for any individual responding
17 to a state of emergency or state of preparedness that is not
18 requested or authorized to respond by a participating political
19 subdivision. Participating political subdivisions will be ensured,
20 to the fullest extent possible, eligibility for state and federal
21 disaster funding.

22 (b) Upon the enactment of this legislation, all political
23 subdivisions within the state are members of the statewide
24 mutual aid system: *Provided*, That a political subdivision within
25 the state may elect not to participate or to withdraw from the
26 system upon the enactment of an appropriate resolution by its
27 governing body declaring that it elects not to participate in the
28 statewide mutual aid system. A copy of any such resolution shall

29 be provided to the Division of Homeland Security and
30 Emergency Management.

31 (c) This section does not preclude participating political
32 subdivisions from entering into supplementary agreements with
33 another political subdivision and does not affect any other
34 agreement to which a political subdivision may currently be a
35 party to, or decide to be a party to.

36 (d) “Emergency responder”, as used in this article, shall
37 mean anyone with special skills, qualifications, training,
38 knowledge and experience in the public or private sectors that
39 would be beneficial to a participating political subdivision in
40 response to a locally declared emergency as defined in any
41 applicable law or ordinance or authorized drill or exercises; and
42 who is requested and authorized to respond. Under this
43 definition, an emergency responder may be required to possess
44 a license, certificate, permit or other official recognition for his
45 or her expertise in a particular field or area of knowledge. An
46 emergency responder could include, but is in no way limited to,
47 the following: Law-enforcement officers, firefighters, emergency
48 medical services personnel, physicians, nurses, other public
49 health personnel, emergency management personnel, public
50 works personnel, local emergency debris removal teams, those
51 persons with specialized equipment operations skills or training
52 or any other skills needed to provide aid in a declared
53 emergency.

54 (e) It shall be the responsibility of each participating political
55 subdivision with jurisdiction over and responsibility for
56 emergency management within that certain subdivision to do all
57 of the following:

58 (1) Identify potential hazards that could affect the participant
59 using an identification system common to all participating
60 jurisdictions.

61 (2) Conduct joint planning, intelligence sharing and threat
62 assessment development with contiguous participating political
63 subdivisions and conduct joint training at least biennially.

64 (3) Identify and inventory the current services, equipment,
65 supplies, personnel and other resources related to planning,
66 prevention, mitigation, response and recovery activities of the
67 participating political subdivision.

68 (4) Adopt and implement the National Incident Management
69 System approved by the State of West Virginia.

70 (f) A participating political subdivision may request
71 assistance of other participating political subdivisions in
72 preventing, mitigating, responding to and recovering from
73 disasters that result in locally declared emergencies or in concert
74 with authorized drills or exercises as allowed under this section.
75 Requests for assistance shall be made to the Division of
76 Homeland Security and Emergency Management through the
77 designated county emergency management director by the chief
78 executive officer of a participating political subdivision, or his
79 or her designee, for response. Requests may be verbal or in
80 writing. Verbal requests will be followed up with a written
81 request as soon as is practical or such number of days as the
82 state, in its discretion, may dictate.

83 (g) The obligation of a participating political subdivision to
84 provide assistance in the prevention of, response to and recovery
85 from a locally declared emergency or in authorized drills or
86 exercises is subject to the following conditions:

87 (1) A participating political subdivision requesting assistance
88 must have either declared a state of emergency in the manner
89 outlined in this section or authorized drills and exercises;

90 (2) A responding participating political subdivision may
91 withhold resources to the extent necessary to provide reasonable
92 protection and services for its own jurisdiction;

93 (3) Emergency response personnel of a responding
94 participating political subdivision shall continue under the
95 command and control of their responding jurisdiction to include
96 medical protocols, standard operating procedures and other
97 protocols, but shall be under the operational control of the
98 appropriate officials within the National Incident Management
99 System of the participating political subdivision receiving the
100 assistance; and

101 (4) Assets and equipment of a responding participating
102 political subdivision shall continue under the control of the
103 responding jurisdiction, but shall be under the operational
104 control of the appropriate officials within the National Incident
105 Management System of the participating political subdivision
106 receiving the assistance.

107 (h) If a person or entity holds a license, certificate or other
108 permit issued by a participating political subdivision or the state
109 evidencing qualification in a professional, mechanical or other
110 skill and the assistance of that person or entity is requested by a
111 participating political subdivision, the person or entity shall be
112 deemed to be licensed, certified or permitted in the political
113 subdivision requesting assistance for the duration of the declared
114 emergency or authorized drills or exercises and subject to any
115 limitations and conditions the chief executive of the participating
116 political subdivision receiving the assistance may prescribe by
117 executive order or otherwise.

118 (i) (1) Any requesting political subdivision shall reimburse
119 the participating political subdivision rendering aid under this
120 system provided the request for aid is authorized by the Division
121 of Homeland Security and Emergency Management. A

122 participating political subdivision providing assistance may
123 determine to donate assets of any kind to a receiving
124 participating political subdivision.

125 (2) Should a dispute arise between parties to the system
126 regarding reimbursement, involved parties will make every
127 effort to resolve the dispute within thirty days of written notice
128 of the dispute by the party asserting noncompliance. In the event
129 that the dispute is not resolved within ninety days of the notice
130 of the claim, either party may request the dispute be solved
131 through arbitration. Any arbitration under this provision shall be
132 conducted under the commercial arbitration rules of the
133 American Arbitration Association.

134 (j) Personnel of a participating political subdivision
135 responding to or rendering assistance for a request who sustain
136 injury or death in the course of, and arising out of, their
137 employment are entitled to all applicable benefits normally
138 available to personnel while performing their duties for their
139 employer. Responders shall receive any additional state and
140 federal benefits that may be available to them for line-of-duty
141 deaths.

142 (k) All activities performed under this section are deemed
143 hereby to be governmental functions. For the purposes of
144 liability, all persons responding under the operational control of
145 the requesting political subdivision are deemed to be employees
146 of the requesting participating political subdivision.

147 (l) Whenever the law-enforcement officials of any political
148 subdivision are rendering outside aid pursuant their lawful
149 authority, and with the approval of the Director of the West
150 Virginia Division of Homeland Security and Emergency
151 Management, and under the authority of a state of emergency or
152 state of preparedness as officially proclaimed by the Governor,
153 such law-enforcement officials shall have the same authority,

154 powers, duties, rights, privileges and immunities as if they were
155 performing their law-enforcement duties in the political
156 subdivisions in which they are normally employed. The authority
157 vested in the law-enforcement official, in accordance with this
158 section, shall vest upon reporting in person to the Emergency
159 Management Agency official in charge and on duty at the county
160 or city of destination assignment. The law-enforcement official
161 shall act under the authority, supervision and control of the
162 highest ranking law-enforcement official within the assigned
163 outside jurisdiction. Law enforcement and powers of arrest
164 authority will not attach to the law-enforcement official while in
165 transit from his or her jurisdiction of origin en route to his or her
166 assigned jurisdiction under intrastate mutual aid assistance.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-2c. Training through the principals academy.

1 (a) *Principal training and professional development*
2 *required.* — After the effective date of this section and subject
3 to the provisions of subsection (c) of this section, every principal
4 shall complete training and professional development through
5 the principals academy as provided in subsection (b) of this
6 section.

7 (b) *Principal training and professional development through*
8 *the academy.* — The academy and the persons required to
9 complete training and professional development through the
10 academy shall adhere to the following guidelines:

11 (1) All persons assigned as a principal for the first time in a
12 West Virginia school after July 1, 2002, shall complete
13 specialized training and professional development for newly

14 appointed principals through the academy within the first twelve
15 months following assignment;

16 (2) All principals of schools which have been designated as
17 seriously impaired, in accordance with section five, article two-e,
18 chapter eighteen of this code, shall complete specialized training
19 and professional development through the academy specifically
20 designed to assist the principal to improve school performance
21 commencing as soon as practicable following receipt of the
22 designation;

23 (3) All principals who are subject to an improvement plan,
24 in accordance with section twelve, article two of this chapter,
25 shall complete specialized training and professional development
26 through the academy specifically designed for principals subject
27 to an improvement plan. The specialized training and
28 professional development shall be completed within twelve
29 months from the date that the principal is first subject to the
30 improvement plan;

31 (4) All principals who transfer to a school with a
32 significantly different grade configuration shall complete
33 specialized training and professional development for principals
34 in schools with the grade configuration to which they transferred
35 through the academy within the first twelve months following
36 transfer; and

37 (5) All persons serving as school principals shall complete
38 training and professional development through the academy
39 designed to build the qualities, proficiencies and skills required
40 of all principals as determined by the state board.

41 (c) *Academy and requirements to complete training and*
42 *professional development subject to funding.* — The requirement
43 that principals complete training and professional development
44 through the academy shall be subject to the availability of funds

45 for the principals academy from legislative appropriation and
46 from other sources. If these funds are insufficient to provide for
47 the total cost of the training and professional development
48 required by subsection (b) of this section, then the academy shall
49 provide training and professional development for the persons
50 described in subdivisions (1) through (5), inclusive, subsection
51 (b) of this section according to the priority in which the
52 subdivisions appear in said subsection. If such funds are
53 insufficient to provide for the training and professional
54 development of all the persons described in one or more of
55 subdivisions (1) through (5), inclusive, subsection (b) of this
56 section, the academy is authorized to determine which persons
57 described within the subdivision or subdivisions shall be
58 admitted and which shall not be admitted: *Provided*, That the
59 principals academy shall make every effort to ensure that all
60 principals receive training and professional development through
61 the academy at least once every six years effective July 1, 2002,
62 and thereafter: *Provided, however*, That nothing in this section
63 shall be construed to require any specific level of funding by the
64 Legislature.

65 (d) *Establishment of standards.* — On or before October 1,
66 1996, the state board shall approve and promulgate rules
67 regarding the minimum qualities, proficiencies and skills that
68 will be required of principals after January 1, 1997. The state
69 board shall promulgate and may, from time to time, amend such
70 rules. The rules promulgated by the state board shall address at
71 least the following:

72 (1) Staff relations, including, but not limited to, the
73 development and use of skills necessary to make a positive use
74 of faculty senates, manage faculty and staff with courtesy and
75 mutual respect, coach and motivate employees, and build
76 consensus as a means of management;

77 (2) School community leadership qualities, including, but
78 not limited to, the ability to organize and leverage community

79 initiative, communicate effectively, work effectively with local
80 school improvement councils, manage change, resolve conflict
81 and reflect the highest personal values;

82 (3) Educational proficiencies, including, but not limited to,
83 knowledge of curriculum, instructional techniques, student
84 learning styles, student assessment criteria, school personnel
85 performance, evaluation skills and family issues; and

86 (4) Administrative skills, including, but not limited to,
87 organizational, fiscal, public policy and total quality
88 management skills and techniques.

89 (e) *Waivers*. — Any person desiring to be relieved of the
90 requirements of all or any part of this section may apply in
91 writing to the state board for a waiver. Upon a showing of
92 reasonable cause why relief should be granted, the state board
93 may grant a waiver, upon such terms and conditions as the state
94 board shall determine proper, as to all or any part of this section.

95 (f) *Failure to comply*. — Any person who fails or refuses to
96 complete training and professional development through the
97 academy, as required by the provisions of this section, and who
98 fails to obtain a waiver, as described in subsection(e) of this
99 section, shall be ineligible to be employed as, or serve in the
100 capacity of, a principal.

101 (g) *Tracking of requirement*. — On or before January 1,
102 1997, the state board shall establish a system to track the
103 progress of each person required to complete training through
104 the academy and shall regularly advise such persons of their
105 progress.

106 (h) *Payment of reasonable and necessary expenses and*
107 *stipends*. — The center for professional development shall
108 reimburse persons attending the academy for reasonable and
109 necessary expenses. A person may not be required to complete

110 training and professional development through the principals
111 academy before September 15, and after June 1, of the school
112 year. The center for professional development shall utilize
113 alternative methods of instructional delivery and scheduling,
114 including electronic delivery, as considered appropriate to
115 minimize the amount of time principals completing training and
116 professional development through the academy are required to
117 be away from their school duties. Nothing in this section shall be
118 construed to require any specific level of funding by the
119 Legislature.

CHAPTER 33. INSURANCE.

ARTICLE 16D. MARKETING AND RATE PRACTICES.

§33-16D-16. Authorization of uninsured small group health benefit plans.

1 (a) Upon filing with and approval by the commissioner, any
2 carrier licensed pursuant to this chapter which accesses a health
3 care provider network to deliver services may offer a health
4 benefit plan and rates associated with the plan to a small
5 employer subject to the conditions of this section and subject to
6 the provisions of this article. The health benefit plan is subject
7 to the following conditions:

8 (1) The health benefit plan may be offered by the carrier
9 only to small employers which have not had a health benefit plan
10 covering their employees for at least six consecutive months
11 before the effective date of this section. After the passage of six
12 months from the effective date of this section, the health benefit
13 plan under this section may be offered by carriers only to small
14 employers which have not had a health benefit plan covering
15 their employees for twelve consecutive months;

16 (2) If a small employer covered by a health benefit plan
17 offered pursuant to this section no longer meets the definition of
18 a small employer as a result of an increase in eligible employees,

19 that employer shall remain covered by the health benefit plan
20 until the next annual renewal date;

21 (3) The small employer shall pay at least fifty percent of its
22 employees' premium amount for individual employee coverage;

23 (4) The commissioner shall promulgate emergency rules
24 under the provisions of article three, chapter twenty-nine-a of
25 this code on or before September 1, 2004, to place additional
26 restrictions upon the eligibility requirements for health benefit
27 plans authorized by this section in order to prevent manipulation
28 of eligibility criteria by small employers and otherwise
29 implement the provisions of this section;

30 (5) Carriers must offer the health benefit plans issued
31 pursuant to this section through one of their existing networks of
32 health care providers;

33 (A) The West Virginia Health Care Authority shall, on or
34 before May 1, 2004, and each year thereafter, by regular mail,
35 provide a written notice to all known in-state health care
36 providers that:

37 (i) Informs the health care provider regarding the provisions
38 of this section; and

39 (ii) Notifies the health care provider that if the health care
40 provider does not give written refusal to the West Virginia
41 Health Care Authority within thirty days from receipt of the
42 notice or the health care provider has not previously filed a
43 written notice of refusal to participate, the health care provider
44 must participate with and accept the products and provider
45 reimbursements authorized pursuant to this section;

46 (B) The carrier's network of health care providers, as well as
47 any health care provider which provides health care goods or
48 services to beneficiaries of any departments or divisions of the

49 state, as identified in article twenty-nine-d, chapter sixteen of
50 this code, shall accept the health care provider reimbursement
51 rates set pursuant to this section unless the health care provider
52 gives written refusal to the West Virginia Health Care Authority
53 between May 1 and June 1 that the provider will not participate
54 in this program for the next calendar year. Notwithstanding any
55 provision of this code to the contrary, health care providers may
56 not be mandated to participate in this program except under the
57 opt-out provisions of subdivision (5), subsection (a) of this
58 section and therefore the health care provider shall annually have
59 the ability to file with the West Virginia Health Care Authority
60 written notice that the health care provider will not participate
61 with products issued pursuant to this section. Once a health care
62 provider has filed a notice of refusal with the West Virginia
63 Health Care Authority, the notice shall remain effective until
64 rescinded by the provider and the provider shall not be required
65 to renew the notice each year;

66 (C) The West Virginia Health Care Authority is responsible
67 for receiving the responses, if any, from the health care providers
68 that have elected not to participate and for providing a list to the
69 commissioner of those health care providers that have elected
70 not to participate;

71 (D) Those health care providers that do not file a notice of
72 refusal shall be considered to have accepted participation in this
73 program and to accept Public Employees Insurance Agency
74 health care provider reimbursement rates for their services as set
75 by this section;

76 (E) Health care provider reimbursement rates used by the
77 carrier for a health benefit plan offered pursuant to this section
78 shall have no effect on provider rates for other products offered
79 by the carrier and most-favored-nation clauses do not apply to
80 the rates;

81 (6) With respect to the health benefit plans authorized by this
82 section, the carrier shall reimburse network health care providers
83 at the same health care provider reimbursement rates in effect for
84 the managed care and health maintenance organization plans
85 offered by the West Virginia Public Employees Insurance
86 Agency. Beginning in the year 2004, and in each year thereafter,
87 the health care provider reimbursement rates set under this
88 section may not be lowered from the level of the rates in effect
89 on July 1 of that year for the managed care and health
90 maintenance plans offered by the Public Employees Insurance
91 Agency. While it is the intent of this paragraph to govern rates
92 for plans offered pursuant to this section for annual periods, this
93 subdivision in no way prevents the Public Employees Insurance
94 Agency from making provider reimbursement rate adjustments
95 to Public Employees Insurance Agency plans during the course
96 of each year. If there is a dispute regarding the determination of
97 appropriate rates pursuant to this section, the Director of the
98 Public Employees Insurance Agency shall, in his or her sole
99 discretion, specify the appropriate rate to be applied;

100 (A) The health care provider reimbursement rates as
101 authorized by this section shall be accepted by the health care
102 provider as payment in full for services or products provided to
103 a person covered by a product authorized by this section;

104 (B) Except for the health care provider rates authorized
105 under this section, a carrier's payment methodology, including
106 copayments and deductibles and other conditions of coverage,
107 remains unaffected by this section;

108 (C) The provisions of this section do not require the Public
109 Employees Insurance Agency to give carriers access to the
110 purchasing networks of the Public Employees Insurance Agency.
111 The Public Employees Insurance Agency may enter into
112 agreements with carriers offering health benefit plans under this
113 section to permit the carrier, at its election, to participate in drug

114 purchasing arrangements pursuant to article sixteen-c, chapter
115 five of this code, including the multistate drug purchasing
116 program. This paragraph provides authorization of the
117 agreements pursuant to section four of said article;

118 (7) Carriers may not underwrite products authorized by this
119 section more strictly than other small group policies governed by
120 this article;

121 (8) With respect to health benefit plans authorized by this
122 section, a carrier shall have a minimum anticipated loss ratio of
123 seventy-seven percent to be eligible to make a rate increase
124 request after the first year of providing a health benefit plan
125 under this section;

126 (9) Products authorized under this section are exempt from
127 the premium taxes assessed under sections fourteen and
128 fourteen-a, article three of this chapter;

129 (10) A carrier may elect to nonrenew any health benefit plan
130 to an eligible employer if, at any time, the carrier determines, by
131 applying the same network criteria which it applies to other
132 small employer health benefit plans, that it no longer has an
133 adequate network of health care providers accessible for that
134 eligible small employer. If the carrier makes a determination that
135 an adequate network does not exist, the carrier has no obligation
136 to obtain additional health care providers to establish an
137 adequate network;

138 (11) Upon thirty days' advance notice to the commissioner,
139 a carrier may, at any time, elect to nonrenew all health benefit
140 plans issued pursuant to this section. If a carrier nonrenews all its
141 business issued pursuant to this section for any reason other than
142 the adequacy of the provider network, the carrier may not offer
143 this health benefit plan to any eligible small employer for a
144 period of at least two years after the last eligible small employer
145 is nonrenewed; and

146 (12) The Insurance Commissioner may not approve any
147 health benefit plan issued pursuant to this section until it has
148 obtained any necessary federal governmental authorizations or
149 waivers. The Insurance Commissioner shall apply for and obtain
150 all necessary federal authorizations or waivers.

151 (b) Health benefit plans authorized by this section are not
152 intended to violate the prohibition set out in subsection (a),
153 section four of this article.

154 (c) Carriers offering health benefit plans pursuant to this
155 section shall annually or before December 1 of each year report
156 in a form acceptable to the commissioner the number of health
157 benefit plans written by the carrier and the number of individuals
158 covered under the health benefit plans.

159 (d) To the extent that provisions of this section differ from
160 those contained elsewhere in this chapter, the provisions of this
161 section control.

CHAPTER 41

**(Com. Sub. for S. B. 488 - By Senators Williams,
Prezioso and Stollings)**

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2015.]

AN ACT to repeal §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code, all relating to creation of Broadband Enhancement Council; modifying definitions; establishing membership; outlining powers and duties; establishing Broadband

Enhancement Fund; requiring Secretary of the Department of Commerce to administer and control the Broadband Enhancement Fund; transferring funds from Broadband Deployment Fund to Department of Commerce; modifying requirements for retention of outside expert consultant; and granting legislative rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended, be repealed; and that §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 15C. BROADBAND ENHANCEMENT.

§31-15C-2. Definitions.

1 For the purposes of this article:

2 (1) “Broadband” or “broadband service” means any service
3 providing advanced telecommunications capability with the
4 same downstream data rate and upstream data rate as is specified
5 by the Federal Communications Commission and that does not
6 require the end-user to dial up a connection that has the capacity
7 to always be on, and for which the transmission speeds are based
8 on regular available bandwidth rates, not sporadic or burstable
9 rates, with latency suitable for real-time applications and
10 services such as voice-over Internet protocol and video
11 conferencing, and with monthly usage capacity reasonably
12 comparable to that of residential terrestrial fixed broadband
13 offerings in urban areas: *Provided*, That as the Federal
14 Communications Commission updates the downstream data rate
15 and the upstream data rate the council will publish the revised
16 data rates in the State Register within sixty days of the federal
17 update.

18 (2) “Broadband demand promotion project” means a
19 statewide or regional project to undertake activities to promote
20 demand for broadband services and broadband applications.

21 (3) “Broadband deployment project” means a project to
22 provide broadband services in areas as defined in section six of
23 this article.

24 (4) “Council” means the Broadband Enhancement Council.

25 (5) “Downstream data rate” means the transmission speed
26 from the service provider source to the end-user.

27 (6) “Upstream data rate” means the transmission speed from
28 the end-user to the service provider source.

29 (7) “Unserved area” means a community that has no access
30 to broadband service.

**§31-15C-3. Broadband Enhancement Council; members of
council; administrative support.**

1 (a) The Broadband Enhancement Council is hereby
2 established. The council is a governmental instrumentality of the
3 state. The exercise by the council of the powers conferred by this
4 article and the carrying out of its purpose and duties are
5 considered and held to be, and are hereby determined to be,
6 essential governmental functions and for a public purpose. The
7 council is created under the Department of Commerce for
8 administrative, personnel and technical support services only.

9 (b) The council shall consist of thirteen voting members,
10 designated as follows:

11 (1) The Secretary of Commerce or his or her designee;

12 (2) The Department of Administration Chief Technology
13 Officer or his or her designee; and

14 (3) The Vice Chancellor for Administration of the Higher
15 Education Policy Commission or his or her designee;

16 (4) The State Superintendent of Schools or his or her
17 designee; and

18 (5) Nine public members that serve at the will and pleasure
19 of the Governor and are appointed by the Governor with the
20 advice and consent of the Senate, as follows:

21 (i) One member representing users of large amounts of
22 broadband services in this state;

23 (ii) One member from each congressional district
24 representing rural business users in this state;

25 (iii) One member from each congressional district
26 representing rural residential users in this state;

27 (iv) One member representing urban business users in this
28 state; and

29 (v) One member representing urban residential users in this
30 state.

31 (6) In addition to the thirteen voting members of the council,
32 the President of the Senate shall name two senators from the
33 West Virginia Senate, one from each party, and the Speaker of
34 the House shall name two delegates from the West Virginia
35 House of Delegates, one from each party, each to serve in the
36 capacity of an ex officio, nonvoting advisory member of the
37 council.

38 (c) The Secretary of Commerce shall chair the first meeting
39 at which time a chair and vice chair shall be elected from the
40 members of the council. In the absence of the chair, the vice
41 chair shall serve as chair. The council shall appoint a

42 secretary-treasurer who need not be a member of the council and
43 who, among other tasks or functions designated by the council,
44 shall keep records of its proceedings.

45 (d) The council may appoint committees or subcommittees
46 to investigate and make recommendations to the full council.
47 Members of these committees or subcommittees need not be
48 members of the council.

49 (e) Seven voting members of the council constitute a quorum
50 and the affirmative vote of a simple majority of those members
51 present is necessary for any action taken by vote of the council.

52 (f) The council is part time. Public members appointed by
53 the Governor may pursue and engage in another business or
54 occupation or gainful employment. Any person employed by,
55 owning an interest in or otherwise associated with a broadband
56 deployment project, project sponsor or project participant may
57 serve as a council member and is not disqualified from serving
58 as a council member because of a conflict of interest prohibited
59 under section five, article two, chapter six-b of this code and is
60 not subject to prosecution for violation of said section when the
61 violation is created solely as a result of his or her relationship
62 with the broadband deployment project, project sponsor or
63 project participant so long as the member recuses himself or
64 herself from board participation regarding the conflicting issue
65 in the manner set forth in legislative rules promulgated by the
66 West Virginia Ethics Commission.

67 (g) No member of the council who serves by virtue of his or
68 her office receives any compensation or reimbursement of
69 expenses for serving as a member. The public members and
70 members of any committees or subcommittees are entitled to be
71 reimbursed for actual and necessary expenses incurred for each
72 day or portion thereof engaged in the discharge of his or her
73 official duties in a manner consistent with the guidelines of the
74 Travel Management Office of the Department of Administration.

§31-15C-4. Powers and duties of the council generally.

1 (a) The council shall:

2 (1) Explore any and all ways to expand access to broadband
3 services, including, but not limited to, middle mile, last mile and
4 wireless applications;

5 (2) Gather data regarding the various speeds provided to
6 consumers in comparison to what is advertised. The council may
7 request the assistance of the Legislative Auditor in gathering this
8 data;

9 (3) Explore the potential for increased use of broadband
10 service for the purposes of education, career readiness,
11 workforce preparation and alternative career training;

12 (4) Explore ways for encouraging state and municipal
13 agencies to expand the development and use of broadband
14 services for the purpose of better serving the public, including
15 audio and video streaming, voice-over Internet protocol,
16 teleconferencing and wireless networking; and

17 (5) Cooperate and assist in the expansion of electronic
18 instruction and distance education services.

19 (b) In addition to the powers set forth elsewhere in this
20 article, the council is hereby granted, has and may exercise all
21 powers necessary or appropriate to carry out and effectuate the
22 purpose and intent of this article. The council shall have the
23 power and capacity to:

24 (1) Provide consultation services to project sponsors in
25 connection with the planning, acquisition, improvement,
26 construction or development of any broadband deployment
27 project;

28 (2) Promote awareness of public facilities that have
29 community broadband access that can be used for distance
30 education and workforce development;

31 (3) Advise on deployment of e-government portals such that
32 all public bodies and political subdivisions have homepages,
33 encourage one-stop government access and that all public
34 entities stream audio and video of all public meetings;

35 (4) To make and execute contracts, commitments and other
36 agreements necessary or convenient for the exercise of its
37 powers, including, but not limited to, the hiring of consultants to
38 assist in the mapping of the state and categorization of areas
39 within the state;

40 (5) Acquire by gift or purchase, hold or dispose of real
41 property and personal property in the exercise of its powers and
42 performance of its duties as set forth in this article;

43 (6) Receive and dispense funds appropriated for its use by
44 the Legislature or other funding sources or solicit, apply for and
45 receive any funds, property or services from any person,
46 governmental agency or organization to carry out its statutory
47 duties; and

48 (7) Perform any and all other activities in furtherance of its
49 purpose.

50 (c) The council shall exercise its powers and authority to
51 advise the Legislature on bringing broadband service to unserved
52 and underserved areas.

53 (d) The council shall report to the Joint Committee on
54 Government and Finance on or before January 1 of each year.
55 The report shall include the action that was taken by the council
56 during the previous year in carrying out the provisions of this
57 article. To the extent the report addresses data gathered in

58 connection with subdivision (2), subsection a, section four of this
59 article, a copy of the report shall be provided to the Attorney
60 General. The council shall also make any other reports as may be
61 required by the Legislature or the Governor.

§31-15C-5. Creation of the Broadband Enhancement Fund.

1 All moneys collected by the council, which may, in addition
2 to appropriations, include gifts, bequests or donations, shall be
3 deposited in a special revenue account in the State Treasury
4 known as the Broadband Enhancement Fund. The fund shall be
5 administered by and under the control of the Secretary of the
6 Department of Commerce. Expenditures from the fund shall be
7 for the purposes set forth in this article and are not authorized
8 from collections but are to be made only in accordance with
9 appropriation by the Legislature and in accordance with the
10 provisions of article two, chapter eleven-b of this code:
11 *Provided*, That any funds remaining in the fund of the former
12 Broadband Development Council shall be transferred to the
13 Department of Commerce by June 30, 2015.

§31-15C-7. Retention of outside expert consultant.

1 In order to assist the council with the highly technical task
2 of categorizing the areas of the state and evaluating and
3 prioritizing projects, the council may retain an outside expert
4 consultant or consultants qualified to map the state on the basis
5 of broadband availability, to evaluate, categorize and prioritize
6 projects, to assist in public outreach and education in order to
7 stimulate demand and to provide other support and assistance as
8 necessary to accomplish the purposes of this article.

§31-15C-9. Development of guidelines and application for funding assistance; legislative rule-making authority.

1 In order to implement and carry out the intent of this article,
2 the Secretary of the Department of Commerce, with the advice

- 3 and recommendation of the council, shall propose rules for
- 4 legislative approval, pursuant to the provisions of article three,
- 5 chapter twenty-nine-a of this code.

CHAPTER 42

**(Com. Sub. for H. B. 2878 - By Delegate(s) Miller,
Manchin, Espinosa, Skinner, Hornbuckle, Lane, Hill,
Stansbury, Rowe, Williams and Upson)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31D-1-131, relating to creating a web-based electronic business portal in West Virginia; requiring the Secretary of State to create a web-based business portal to facilitate interaction between government and businesses in West Virginia; requiring Secretary of State to establish a call center to assist businesses obtain information regarding compliance with state law; requiring the Secretary of State to develop requirements for the web-based business portal; and requiring the Secretary of State to propose rules for legislative approval to implement the provisions of the bill.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §31D-1-131, to read as follows:

ARTICLE 1. GENERAL PROVISIONS.**§31D-1-131. One-stop electronic state business portal.**

1 (a) The Secretary of State shall establish a web-based
2 business portal to facilitate interaction among businesses and
3 governmental agencies in West Virginia. The web-based
4 business portal shall provide a single point-of-entry to state
5 government for businesses based in the state and for businesses
6 looking to establish a presence in the state. The web-based
7 business portal shall:

8 (1) Provide guidance to users who want to start, operate or
9 expand a business in the state;

10 (2) Permit e-payments and provide businesses information
11 about transaction statuses in a paperless environment;

12 (3) Provide business owners with the option to
13 electronically:

14 (A) Make application, including the payment of fees, for
15 permits and licenses;

16 (B) Make application, including the payment of fees, for the
17 renewal of permits and licenses;

18 (C) File annual reports;

19 (D) Pay unemployment taxes;

20 (E) Pay sales and use taxes through a link to the web-based
21 portal maintained by the Tax Division of the Department of
22 Revenue for electronic payment; and

23 (F) Pay any other fees or remittances that the business
24 owners are subject to under state law;

25 (4) Provide businesses with downloadable access to all
26 editable forms that are necessary for compliance with all
27 reporting and filing requirements with the following agencies:

28 (A) West Virginia State Tax Department;

29 (B) Workforce West Virginia;

30 (C) West Virginia Division of Labor; and

31 (D) West Virginia Secretary of State;

32 (5) Provide for the electronic filing of documents by city,
33 county and local governments: *Provided*, That nothing in this
34 section shall be construed to permit the Secretary of State to
35 receive tax returns, or any other documents required to be filed
36 with the State Tax Commissioner, or to require any taxpayer to
37 file tax returns, or any other documents required to be filed with
38 the State Tax Commissioner, with the Secretary of State. Nor
39 shall the Secretary of State be permitted to receive payments for
40 taxes, including interest, penalties or additions to tax, that are
41 required to be collected by the Tax Commissioner.
42 Notwithstanding the foregoing, the Secretary of State and the
43 Tax Commissioner may develop policies and procedures
44 allowing the Secretary of State to accept applications and
45 renewals, and to collect the appropriate fee, for Business
46 Registration Certificates. *Provided*, further, That nothing in this
47 section shall be construed as requiring the State Tax
48 Commissioner or the Tax Division of the Department of
49 Revenue to disclose confidential taxpayer information to the
50 Secretary of State.

51 (b) The Secretary of State shall establish a consolidated call
52 center to be staffed by trained and knowledgeable persons who
53 are able to assist businesses obtain information and services
54 relating to compliance with state law.

55 (c) The Secretary of State shall:

56 (1) Develop the requirements of the web-based business
57 portal by August 31, 2015, including but not limited to:

58 (A) Establishing, through cooperative efforts, the standards
59 and requirements necessary to design, build, implement and
60 maintain the business portal; and

61 (B) Establishing the standards and requirements necessary
62 for a state or local agency to participate in the business portal;

63 (2) Coordinate and cooperate with the appropriate entities to
64 facilitate the payment by businesses of any payments or
65 remittances made pursuant to this section, via the web-based
66 business portal; and

67 (3) Propose rules for legislative approval, in accordance with
68 the provisions of article three, chapter twenty-nine-a of this code,
69 to implement the provisions of this article.



CHAPTER 43

**(Com. Sub. for S. B. 237 - By Senators D. Hall, Romano,
Snyder, Facemire and Williams)**

[Passed February 13, 2015; in effect from passage.]

[Approved by the Governor on February 25, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-2H-1, §19-2H-2, §19-2H-3, §19-2H-4, §19-2H-5, §19-2H-6, §19-2H-7, §19-2H-8, §19-2H-9, §19-2H-10, §19-2H-11 and §19-2H-12; to amend and reenact §19-29-2 of said code; to amend and reenact §20-1-2 of said code; and to amend and reenact §20-2-11 and §20-2-12 of said

code, all relating to the Captive Cervid Farming Act; regulating captive cervid farming as an agricultural business; stating legislative findings and definitions; permitting sale of venison; stating powers and duties of the Department of Agriculture and commissioner; creating application process and classes of licenses; issuing, renewing, modifying and transferring licenses; inspecting facilities; transitioning current facilities to new licensure procedures; creating penalties for noncompliance with article; amending other statutes to comport with the Captive Cervid Farming Act; permitting rulemaking; prohibiting certain conduct; and providing for certain criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-2H-1, §19-2H-2, §19-2H-3, §19-2H-4, §19-2H-5, §19-2H-6, §19-2H-7, §19-2H-8, §19-2H-9, §19-2H-10, §19-2H-11 and §19-2H-12; that §19-29-2 of said code be amended and reenacted; that §20-1-2 of said code be amended and reenacted; and that §20-2-11 and §20-2-12 of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 2H. CAPTIVE CERVID FARMING ACT.

§19-2H-1. Short title; legislative findings.

1 (a) This article shall be called the Captive Cervid Farming
2 Act.

3 (b) The Legislature finds that captive cervid farming is
4 primarily an agricultural business and that captive cervids should
5 be regulated like other livestock.

6 (c) The Legislature further finds that the Department of
7 Agriculture possesses the knowledge, training and expertise to

8 regulate captive cervid farming as an agricultural business and
9 to adequately protect the health and safety of animals and the
10 general public. Matters related to licensure, the sale of venison,
11 animal health and testing, fencing, interstate and intrastate
12 movement, animal identification system, recordkeeping, animal
13 husbandry, equipment and other related matters shall be
14 regulated by the department.

§19-2H-2. Definitions.

1 As used in this article:

2 (a) “Biosecurity” means measures, actions or precautions
3 taken to prevent the transmission of disease in, among or
4 between free-ranging and captive cervids.

5 (b) “Captive cervid” or the plural means a member of the
6 Cervidae family of animals including, but not limited to, fallow
7 deer, red deer, white-tailed deer, axis deer, elk, moose, reindeer
8 and caribou which are domesticated animals under the control of
9 the owner of the animal.

10 (c) “Captive cervid farming facility”, “facility” or the plural
11 means the captive cervids, property, fenced area, operations and
12 equipment regulated and licensed by the department pursuant to
13 this article.

14 (d) “Commissioner” means the Commissioner of the West
15 Virginia Department of Agriculture.

16 (e) “Department” means the West Virginia Department of
17 Agriculture.

18 (f) “Identification system” means a process or procedure that
19 allows an individual cervid to be continuously recognized as a
20 unique animal throughout its lifetime.

21 (g) "License" means the authorization issued by the
22 department for the operation of a captive cervid farming facility
23 pursuant to this article.

24 (h) "Owner" means the person who owns or operates a
25 captive cervid farming facility.

26 (i) "Person" means an individual, corporation, limited
27 liability company, partnership, association, joint venture or other
28 legal entity.

29 (j) "Release" means to allow a cervid from a licensed captive
30 cervid farming facility to be outside the perimeter fence of that
31 licensed captive cervid farming facility without being under the
32 direct control of the owner or his or her agent.

**§19-2H-3. Authority of the department; duties and obligations of
the commissioner.**

1 (a) The department is hereby granted authority to regulate
2 captive cervid farming facilities in this state in accordance with
3 this article. Subject to the transition provisions contained in this
4 article, no person may operate a captive cervid farming facility
5 in this state unless that person holds a license issued by the
6 commissioner pursuant to this article.

7 (b) The commissioner or his or her designees may:

8 (1) Establish a section and designate staff responsible for the
9 enforcement of this article;

10 (2) Contract with veterinarians, biologists or other
11 professionals to implement this article;

12 (3) Enter into contracts or compacts with state agencies or
13 other states to enhance the biosecurity of captive cervid farming
14 facilities in this and other states;

15 (4) Lease, rent, purchase, construct, maintain, operate, sell,
16 encumber or assign rights of real or personal property to meet
17 the objectives of this article;

18 (5) Hold hearings, subpoena witnesses, administer oaths,
19 take testimony, require the production of evidence and designate
20 hearing examiners and employees;

21 (6) Take any other action necessary or incidental to the
22 performance of his or her duties pursuant to this article;

23 (7) Regulate the movement of captive cervids and require the
24 documentation of the origin and destination of all shipments of
25 captive cervids; and

26 (8) Prohibit captive cervid facilities in this state from
27 receiving live captive cervids or any byproduct thereof, or
28 captive cervid genetic materials from a captive cervid facility
29 that has had a confirmed chronic wasting disease or tuberculosis
30 positive cervid in the last sixty months.

§19-2H-4. Application for license.

1 (a) A person desiring to operate a captive cervid farming
2 facility in this state must submit an application for a license to
3 the department. The department shall provide the forms and
4 instructions for the filing of applications.

5 (b) The application form shall require submission of the
6 following information:

7 (1) The mailing address of the proposed captive cervid
8 farming facility and the size, location and an adequate legal
9 description of the facility;

10 (2) The number of each species of cervid to be included in
11 the proposed facility;

- 12 (3) The biosecurity measures to be utilized;
- 13 (4) The proposed method of flushing wild cervids from the
14 enclosure, if applicable;
- 15 (5) The proposed record-keeping system;
- 16 (6) The method of verification that all wild cervids have
17 been removed;
- 18 (7) The current zoning of the property proposed for the
19 facility; and
- 20 (8) Any other information requested by the department.
- 21 (c) The application shall be accompanied by the annual
22 license fee as follows:
- 23 (1) *Class one license.* — For a facility to breed and
24 propagate captive cervids, and create cervid byproducts, for sale
25 to others, \$375; or
- 26 (2) *Class two license.* — For a facility to breed, propagate,
27 harvest or slaughter captive cervids, create cervid byproducts,
28 permit hunting of captive cervids or sell venison to others, \$750.

§19-2H-5. Action on applications.

- 1 (a) The department shall act on a complete application for a
2 license within sixty days of receipt. The department may issue
3 a provisional license for a proposed facility that has not yet been
4 constructed, but operations shall not begin under a provisional
5 license until the fully constructed facility has been inspected and
6 approved by the department.
- 7 (b) The department may not issue a license until the
8 commissioner has determined that the facility meets all of the
9 following criteria:

10 (1) The facility has been inspected by the department and it
11 meets the requirements of this article and the rules promulgated
12 thereunder;

13 (2) The applicant has all necessary federal, state and local
14 governmental permits; and

15 (3) The owner has paid all applicable license fees and all
16 departmental charges for services provided to the facility.

17 (c) If the department finds a deficiency in the license
18 application, then the owner shall be given at least thirty days to
19 remedy the deficiency before the license application is denied.

20 (d) If the department finds that the proposed captive cervid
21 farming facility does not comply with the requirements of this
22 article, then the owner shall be given at least thirty days to
23 remedy the deficiency at the facility before the license
24 application is denied.

25 (e) The applicant may request a hearing, pursuant to article
26 five, chapter twenty-nine-a of this code, to contest the denial of
27 a license or any limitations placed upon the issuance of a license.

28 (f) The department shall retain the license fee for its services
29 in the event a license is denied.

§19-2H-6. License certificate; renewal; sale or transfer of license.

1 (a) Once approved, the department shall issue a license
2 certificate to the owner of a captive cervid farming facility
3 containing the following information:

4 (1) The class of license, the license number and expiration
5 date;

6 (2) The captive cervid species and number of captive cervids
7 approved for the licensed facility; and

8 (3) The name, business address and telephone number of the
9 owner and of the captive cervid farming facility.

10 (b) An application for renewal of a license shall be submitted
11 on forms provided by the department sixty days prior to the
12 expiration of the current license. Each license issued shall be for
13 a period of one year from the date of issuance.

14 (c) The sale or transfer of ownership of a captive cervid
15 farming facility will not operate to transfer the license. The
16 department may issue a new license to the transferee if all
17 license requirements and fees are satisfied.

§19-2H-7. License modification.

1 An owner shall apply to the department for a license
2 modification if there is any proposed change in the class of
3 license, cervid species, number of captive cervids or other
4 requirement necessitating an application for modification.

§19-2H-8. Inspection of facility by the department.

1 The department shall have access at all reasonable hours to
2 any captive cervid farming facility to conduct inspections, secure
3 samples or specimens or determine whether the owner is in
4 compliance with the requirements of this article. Inspections and
5 sampling shall be conducted in a manner which will not
6 unnecessarily jeopardize the health of the captive cervids.

§19-2H-9. Transition to captive cervid farming licenses; statutory conflicts.

1 (a) A captive cervid farming facility in existence on the
2 effective date of this article may continue operation under its
3 existing authorization until the department acts on its application
4 so long as the facility applies for a license under this article
5 within sixty days after application forms are made available.

6 (b) Notwithstanding any other provision of the law to the
7 contrary, an owner or an owner's customer harvesting captive
8 cervids from a captive cervid farming facility is not subject to
9 laws regarding possession limits and closed seasons. Further, a
10 facility is not subject to sections thirteen, fourteen and
11 forty-seven, article two, chapter twenty of this code or the rules
12 promulgated thereunder.

§19-2H-10. Administrative penalties; hearing.

1 (a) Upon finding that a person has violated any requirement
2 or rule promulgated under this article, the commissioner may:

3 (1) Issue a warning;

4 (2) Impose a civil penalty of not more than \$1,000 plus the
5 costs of investigation for each violation;

6 (3) Suspend, revoke or modify a license;

7 (4) Obtain a declaratory judgment that a particular action is
8 a violation of this article; or

9 (5) Obtain an injunction.

10 (b) A person aggrieved by an administrative action under
11 this section may request an informal hearing or a hearing
12 pursuant to article five, chapter twenty-nine-a of this code.

§19-2H-11. Prohibited conduct; criminal penalties.

1 (a) A person may not release or permit the release of any
2 captive cervids from a captive cervid farming facility.

3 (b) A person may not cause the entry or introduction of wild
4 cervids into a captive cervid farming facility.

5 (c) An owner may not cease operation of or abandon a
6 captive cervid farming facility without complying with the
7 requirements and rules promulgated under this article.

8 (d) Any person who violates subsection (a) or (b) of this
9 section is guilty of a misdemeanor and, upon conviction thereof,
10 shall be confined in jail for not more than ninety days, or fined
11 not more than \$300, or both fined and confined for a first
12 offense. Any person who violates subsection (a) or (b) of this
13 section for a second or subsequent offense is guilty of a
14 misdemeanor and, upon conviction thereof, shall be confined in
15 jail for not more than one year, or fined not more than \$1,000, or
16 both fined and confined.

17 (e) Any person who intentionally or knowingly violates
18 subsection (a), (b) or (c) of this section is guilty of a felony and,
19 upon conviction thereof, shall be imprisoned in a state
20 correctional facility not less than one nor more than three years,
21 or fined not more than \$1,000, or both fined and imprisoned.

§19-2H-12. Rulemaking.

1 (a) The commissioner shall propose legislative rules in
2 accordance with article three, chapter twenty-nine-a of this code
3 to implement and enforce this article. The rules shall be
4 consistent with the rules of the United States Department of
5 Agriculture in so far as practicable. Any rules promulgated by
6 the commissioner before September 1, 2015, may be emergency
7 rules.

8 (b) The rules shall include, but not be limited to:

9 (1) Preventing the spread of diseases between captive and
10 wild cervids;

11 (2) Implementing an identification system that allows
12 individual captive cervids to be recognized and identified
13 throughout the animal's life;

14 (3) Establishing specifications for fencing necessary to
15 prevent the escape of captive cervids and the infiltration of wild
16 cervids into a captive cervid farming facility;

17 (4) Specifying record-keeping standards required of captive
18 cervid farming facilities, including standards for documenting
19 purchases, propagation, sales, harvesting, sales of venison and
20 other documentation required to maintain accurate and complete
21 business records;

22 (5) Establishing animal health testing criteria, inoculation
23 requirements and statistical information to track, discover and
24 prevent the spread of animal diseases, including chronic wasting
25 disease;

26 (6) Regulating the intrastate and interstate movement of
27 captive cervids and maintaining documentation of the origin and
28 destination of all cervid shipments, disease and identification
29 records and any other requisite documentation;

30 (7) Creating regulations for the sale and slaughtering of
31 captive cervids for venison;

32 (8) Establishing a schedule of fees and charges for services
33 provided by the department to captive cervid farming facilities;
34 and

35 (9) Procedures for captive cervid farming facilities to close
36 and wind down operations.

ARTICLE 29. PRODUCTION OF NONTRADITIONAL AGRICULTURE PRODUCTS.

§19-29-2. Definitions.

1 (a) “Aquaculture” means the commercial production of fish
2 and/or other aquatic life.

3 (b) “Commissioner” means the Commissioner of Agriculture
4 or his or her designee.

5 (c) “Domestic purposes” means for the purposes of food
6 production, for resale as breeding stock or for the sale of
7 immature stock for the purposes of further feeding.

8 (d) “Nontraditional agriculture” means the production of
9 animals domesticated from wild stock, either native or
10 nonnative, and are being confined, bred or fed for domestic
11 purposes; captive cervids pursuant to article two-h of this
12 chapter; aquaculture; or other agricultural products as defined in
13 this article.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

1 As used in this chapter, unless the context clearly requires a
2 different meaning:

3 “Agency” means any branch, department or unit of the state
4 government, however designated or constituted.

5 “Alien” means any person not a citizen of the United States.

6 “Bag limit” or “creel limit” means the maximum number of
7 wildlife which may be taken, caught, killed or possessed by any
8 person.

9 “Big game” means elk, deer, black bears, wild boars and
10 wild turkeys.

11 “Bona fide resident, tenant or lessee” means a person who
12 permanently resides on the land.

13 “Citizen” means any native-born citizen of the United States
14 and foreign-born persons who have procured their final
15 naturalization papers.

16 “Closed season” means the time or period during which it
17 shall be unlawful to take any wildlife as specified and limited by
18 this chapter.

19 “Commission” means the Natural Resources Commission.

20 “Commissioner” means a member of the advisory
21 commission of the Natural Resources Commission.

22 “Director” means the Director of the Division of Natural
23 Resources.

24 “Fishing” or “to fish” means the taking, by any means, of
25 fish, minnows, frogs or other amphibians, aquatic turtles and
26 other forms of aquatic life used as fish bait.

27 “Fur-bearing animals” includes: (a) The mink; (b) the
28 weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f) the
29 skunk and civet cat, commonly called polecat; (g) the otter; (h)
30 the red fox; (i) the gray fox; (j) the wildcat, bobcat or bay lynx;
31 (k) the raccoon; and (l) the fisher.

32 “Game” means game animals, game birds and game fish as
33 herein defined.

34 “Game animals” includes: (a) The elk; (b) the deer; (c) the
35 cottontail rabbits and hares; (d) the fox squirrels, commonly
36 called red squirrels, and gray squirrels and all their color phases
37 - red, gray, black or albino; (e) the raccoon; (f) the black bear;
38 and (g) the wild boar. The term “game animals” does not include
39 captive cervids regulated pursuant to article two-h, chapter
40 nineteen of this code.

41 “Game birds” includes: (a) The anatidae, commonly known
42 as swan, geese, brants and river and sea ducks; (b) the rallidae,
43 commonly known as rails, sora, coots, mudhens and gallinule;
44 (c) the limicolae, commonly known as shorebirds, plover, snipe,
45 woodcock, sandpipers, yellow legs and curlews; (d) the
46 galliformes, commonly known as wild turkey, grouse, pheasants,
47 quails and partridges (both native and foreign species); (e) the
48 columbidae, commonly known as doves; (f) the icteridae,
49 commonly known as blackbirds, redwings and grackle; and (g)
50 the corvidae, commonly known as crows.

51 “Game fish” includes: (a) Brook trout; (b) brown trout; (c)
52 rainbow trout; (d) golden rainbow trout; (e) largemouth bass; (f)
53 smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain
54 pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m)
55 rock bass; (n) white bass; (o) white crappie; (p) black crappie;
56 (q) all sunfish species; (r) channel catfish; (s) flathead catfish; (t)
57 blue catfish; (u) sauger; and (v) all game fish hybrids.

58 “Hunt” means to pursue, chase, catch or take any wild birds
59 or wild animals. However, the definition of “hunt” does not
60 include an officially sanctioned and properly licensed field trial,
61 water race or wild hunt as long as that field trial is not a
62 shoot-to-retrieve field trial.

63 “Lands” means land, waters and all other appurtenances
64 connected therewith.

65 “Migratory birds” means any migratory game or nongame
66 birds included in the terms of conventions between the United
67 States and Great Britain and between the United States and
68 United Mexican States, known as the Migratory Bird Treaty Act,
69 for the protection of migratory birds and game mammals
70 concluded, respectively, August 16, 1916, and February 7, 1936.

71 “Nonresident” means any person who is a citizen of the
72 United States and who has not been a domiciled resident of the

73 State of West Virginia for a period of thirty consecutive days
74 immediately prior to the date of his or her application for a
75 license or permit except any full-time student of any college or
76 university of this state, even though he or she is paying a
77 nonresident tuition.

78 “Open season” means the time during which the various
79 species of wildlife may be legally caught, taken, killed or chased
80 in a specified manner and shall include both the first and the last
81 day of the season or period designated by the director.

82 “Person”, except as otherwise defined elsewhere in this
83 chapter, means the plural “persons” and shall include
84 individuals, partnerships, corporations or other legal entities.

85 “Preserve” means all duly licensed private game farmlands,
86 or private plants, ponds or areas, where hunting or fishing is
87 permitted under special licenses or seasons other than the regular
88 public hunting or fishing seasons. The term “preserve” does not
89 include captive cervid farming facilities regulated pursuant to
90 article two-h, chapter nineteen of this code.

91 “Protected birds” means all wild birds not included within
92 the definitions of “game birds” and “unprotected birds”.

93 “Resident” means any person who is a citizen of the United
94 States and who has been a domiciled resident of the State of
95 West Virginia for a period of thirty consecutive days or more
96 immediately prior to the date of his or her application for license
97 or permit. However, a member of the armed forces of the United
98 States who is stationed beyond the territorial limits of this state,
99 but who was a resident of this state at the time of his or her entry
100 into such service and any full-time student of any college or
101 university of this state, even though he or she is paying a
102 nonresident tuition, shall be considered a resident under this
103 chapter.

104 “Roadside menagerie” means any place of business, other
105 than a commercial game farm, commercial fish preserve, place
106 or pond, where any wild bird, game bird, unprotected bird, game
107 animal or fur-bearing animal is kept in confinement for the
108 attraction and amusement of the people for commercial
109 purposes.

110 “Small game” includes all game animals, fur-bearing
111 animals and game birds except elk, deer, black bears, wild boars
112 and wild turkeys.

113 “Take” means to hunt, shoot, pursue, lure, kill, destroy,
114 catch, capture, keep in captivity, gig, spear, trap, ensnare, wound
115 or injure any wildlife, or attempt to do so. However, the
116 definition of “take” does not include an officially sanctioned and
117 properly licensed field trial, water race or wild hunt as long as
118 that field trial is not a shoot-to-retrieve field trial.

119 “Unprotected birds” shall include: (a) The English sparrow;
120 (b) the European starling; and (c) the cowbird.

121 “Wild animals” means all mammals native to the State of
122 West Virginia occurring either in a natural state or in captivity,
123 except house mice or rats. The term “wild animals” does not
124 include captive cervids regulated pursuant to article two-h,
125 chapter nineteen of this code.

126 “Wild birds” shall include all birds other than: (a) Domestic
127 poultry—chickens, ducks, geese, guinea fowl, peafowls and
128 turkeys; (b) psittacidae, commonly called parrots and parakeets;
129 and (c) other foreign cage birds such as the common canary,
130 exotic finches and ring dove. All wild birds, either: (i) Those
131 occurring in a natural state in West Virginia; or (ii) those
132 imported foreign game birds, such as waterfowl, pheasants,
133 partridges, quail and grouse, regardless of how long raised or
134 held in captivity, shall remain wild birds under the meaning of
135 this chapter.

136 “Wildlife” means wild birds, wild animals, game and
137 fur-bearing animals, fish (including minnows), reptiles,
138 amphibians, mollusks, crustaceans and all forms of aquatic life
139 used as fish bait, whether dead or alive. The term “wildlife” does
140 not include captive cervids regulated pursuant to article two-h,
141 chapter nineteen of this code.

142 “Wildlife refuge” means any land set aside by action of the
143 director as an inviolate refuge or sanctuary for the protection of
144 designated forms of wildlife.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-11. Sale of wildlife; transportation of same.

1 (a) A person, except those legally licensed to operate private
2 game preserves for the purpose of propagating game for
3 commercial purposes and those legally licensed to propagate or
4 sell fish, amphibians and other forms of aquatic life, may not
5 purchase or offer to purchase, sell or offer to sell, expose for sale
6 or have in his or her possession for the purpose of sale any
7 wildlife, or part thereof, which has been designated as game
8 animals, fur-bearing animals, game birds, game fish or
9 amphibians, or any of the song or insectivorous birds of the state,
10 or any other species of wildlife which the director may
11 designate, except for captive cervids regulated pursuant to the
12 provisions of article two-h, chapter nineteen of this code.
13 However, pelts of game or fur-bearing animals taken during the
14 legal season may be sold and live red and gray foxes and raccoon
15 taken by legal methods during legal and established trapping
16 seasons may be sold within the state. In addition, the hide, head,
17 antlers and feet of a legally killed deer and the hide, head and
18 skull of a legally killed black bear may be sold.

19 (b) A person, including a common carrier, may not transport,
20 carry or convey, or receive for such purposes, any wildlife, the

21 sale of which is prohibited, if such person knows or has reason
22 to believe that such wildlife has been or is to be sold in violation
23 of this section.

24 (c) Each separate act of selling or exposing for sale, having
25 in possession for sale, transporting or carrying in violation of
26 this section constitutes a separate misdemeanor offense.
27 Notwithstanding this or any other section of this chapter, any
28 game birds or game bird meats sold by licensed retailers may be
29 served at any hotel, restaurant or other licensed eating place in
30 this state.

31 (d) The director may propose rules for promulgation in
32 accordance with article three, chapter twenty-nine-a of this code,
33 dealing with the sale of wildlife and the skins thereof.

§20-2-12. Transportation of wildlife out of state; penalties.

1 (a) A person may not transport or have in his or her
2 possession with the intention of transporting beyond the limits
3 of the state any species of wildlife or any part thereof killed,
4 taken, captured or caught within this state, except as provided in
5 this section.

6 (1) A person legally entitled to hunt and fish in this state
7 may take with him or her personally, when leaving the state, any
8 wildlife that he or she has lawfully taken or killed, not
9 exceeding, during the open season, the number that any person
10 may lawfully possess.

11 (2) Licensed resident hunters and trappers and resident and
12 nonresident fur dealers may transport beyond the limits of the
13 state pelts of game and fur-bearing animals taken during the
14 legal season.

15 (3) A person may transport the hide, head, antlers and feet of
16 a legally killed deer and the hide, head, skull, organs and feet of
17 a legally killed black bear beyond the limits of the state.

18 (4) A person legally entitled to possess an animal according
19 to section four of this article may transport that animal beyond
20 the limits of the state.

21 (b) The director may promulgate rules in accordance with
22 chapter twenty-nine-a of this code dealing with the
23 transportation and tagging of wildlife and the skins.

24 (c) A person who violates this section by transporting or
25 possessing with the intention of transporting beyond the limits
26 of this state deer or wild boar shall be considered to have
27 committed a separate offense for each animal so transported or
28 possessed. This section does not apply to captive cervids
29 regulated pursuant to article two-h, chapter nineteen of this code.

30 (d) A person violating this section shall be guilty of a
31 misdemeanor and, upon conviction thereof, shall be fined not
32 less than \$20 nor more than \$300 and be confined in jail not less
33 than ten nor more than sixty days.

34 (e) This section does not apply to persons legally entitled to
35 propagate and sell wild animals, wild birds, fish, amphibians and
36 other forms of aquatic life beyond the limits of the state.

CHAPTER 44

(Com. Sub. for S. B. 351 - By Senator Ferns)

[Passed March 6, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 11, 2015.]

AN ACT to amend and reenact §29-19-5 of the Code of West Virginia, 1931, as amended, relating to contribution levels by charitable organizations necessary for submission of an audit report of the

organization by an independent certified public accountant; and requiring additional information on registration statement.

Be it enacted by the Legislature of West Virginia:

That §29-19-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-5. Registration of charitable organizations; fee.

1 (a) Every charitable organization, except as provided in
2 section six of this article, which intends to solicit contributions,
3 donations or grants within this state or to have funds solicited or
4 received on its behalf shall, prior to any solicitation, file a
5 registration statement with the Secretary of State upon forms
6 prescribed by him or her which shall be good for one full year
7 and which shall be refiled in the next and each following year in
8 which the charitable organization is engaged in solicitation
9 activities. If an organization discontinues solicitation at any time
10 after its last registration filing, then it shall file a registration
11 statement reflecting its activities during its last fiscal year in
12 which solicitation in West Virginia took place. The president,
13 chairman or principal officer of the charitable organization shall
14 file the statements required under this article. The statements
15 shall be sworn to and shall contain the following information:

16 (1) The name of the organization and the purpose for which
17 it was organized;

18 (2) The principal address of the organization and the address
19 of any offices in this state. If the organization does not maintain
20 an office, the name and address of the person having custody of
21 its financial records;

22 (3) The names and addresses of any chapters, branches or
23 affiliates in this state;

24 (4) The place where and the date when the organization was
25 legally established and the form of its organization;

26 (5) The names and addresses of the officers, directors,
27 trustees and the principal salaried executive staff officer;

28 (6) A copy of a balance sheet and a statement or report of
29 income and expenses for the organization's immediately
30 preceding fiscal year or a financial statement reporting
31 information showing the kind and amount of funds raised during
32 the preceding fiscal year, the costs and expenses incidental to the
33 fundraising and showing how the funds were disbursed or
34 allocated for the same fiscal year: *Provided*, That in addition to
35 the financial documents required by this subdivision:

36 (A) Charitable organizations raising more than \$500,000 per
37 year in contributions, excluding grants from governmental
38 agencies or private foundations, shall submit a report of an audit
39 by an independent certified public accountant; and

40 (B) Charitable organizations raising more than \$200,000 per
41 year, but less than \$500,000 per year in contributions, excluding
42 grants from governmental agencies or private foundations, shall
43 submit a statement of financial review by an independent
44 certified public accountant;

45 (7) A copy of any determination of the organization's tax
46 exempt status under the provisions of 26 U. S. C. §501(c)(3) and
47 a copy of the last filed Internal Revenue Service Form 990 and
48 Schedule A for every charitable organization and any parent
49 organization;

50 (8) Whether the organization intends to solicit contributions,
51 donations or grants from the public directly or have other
52 solicitation done on its behalf by others;

53 (9) Whether the organization is authorized by any other
54 governmental authority to solicit contributions, donations or

55 grants and whether it is or has ever been enjoined by any court
56 from soliciting contributions;

57 (10) The general purpose or purposes for which the
58 contributions to be solicited shall be used;

59 (11) The name or names under which it intends to solicit
60 contributions;

61 (12) The names of the individuals or officers of the
62 organization who will have final responsibility for the custody
63 of the contributions;

64 (13) The names of the individuals or officers of the
65 organization responsible for the final distribution of the
66 contributions;

67 (14) Copies of all contract documentation from professional
68 fund-raising counsels and professional solicitors as provided in
69 subsection (d), section seven of this article; and

70 (15) The amount of money received in the state and the
71 amount spent in the state for charitable purposes.

72 (b) Each chapter, branch or affiliate, except an independent
73 member agency of a federated fund-raising organization, may
74 separately report the information required by this section or
75 report the information to its parent organization which shall then
76 furnish the information regarding its West Virginia affiliates,
77 chapters and branches in a consolidated form to the Secretary of
78 State. An independent member agency of a federated
79 fund-raising organization, as defined in section two of this
80 article, shall comply with the provisions of this article
81 independently. Each organization shall file a separate
82 registration form for each name under which funds will be
83 solicited.

84 (c) The registration forms and any other documents
85 prescribed by the Secretary of State shall be signed by an
86 authorized officer or by an independent public accountant and by
87 the chief fiscal officer of the charitable organization and shall be
88 verified under oath.

89 (d) Every charitable organization receiving less than \$1
90 million during any year which submits an independent
91 registration to the Secretary of State shall pay an annual
92 registration fee of \$15; every charitable organization collecting
93 more than \$1 million during one year which submits an
94 independent registration to the Secretary of State shall pay an
95 annual registration fee of \$50; and a parent organization filing on
96 behalf of one or more chapters, branches or affiliates or a single
97 organization filing under different names shall pay a single
98 annual registration fee of \$50 for itself and the chapters,
99 branches or affiliates included in the registration statement. All
100 fees and moneys collected by the Secretary of State pursuant to
101 the provisions of this article shall be deposited by the Secretary
102 of State as follows: One-half shall be deposited in the State
103 General Revenue Fund and one-half shall be deposited in the
104 services fees and collections account established by section two,
105 article one, chapter fifty-nine of this code for the operation of the
106 office of the Secretary of State. The Secretary of State shall
107 dedicate sufficient resources from that fund or other funds to
108 provide the services required in this article.

109 (e) For good cause shown, the Secretary of State may extend
110 the due date for the annual filing of a registration statement or
111 report by a charitable organization or a professional fundraiser
112 for a period not to exceed ninety days. During that period, the
113 previously filed registration statement or report of the charitable
114 organization which has been granted the extension remains in
115 effect.

116 (f) In addition to the registration fee required by this section,
117 a charitable organization or professional fundraiser, or both,

118 which fails to file a registration statement or report by the
119 original or extended due date for filing as required by this
120 section shall, for each month or part of the month thereafter in
121 which the registration statement or report is not filed, pay an
122 additional fee of \$25: *Provided*, That the total amount of the
123 additional fees for a registration statement or report required to
124 be filed in any one year may not exceed \$500. All fees and
125 moneys collected by the Secretary of State pursuant to the
126 provisions of this article shall be deposited by the Secretary of
127 State as follows: One-half shall be deposited in the State General
128 Revenue Fund and one-half shall be deposited in the service fees
129 and collections account established by section two, article one,
130 chapter fifty-nine of this code for the operation of the office of
131 the Secretary of State. The Secretary of State shall dedicate
132 sufficient resources from that fund or other funds to provide the
133 services required in this article.

CHAPTER 45

**(Com. Sub. for H. B. 2527 - By Delegate(s) Pasdon,
Marcum, Kessinger, R. Phillips and Upson)**

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §49-2-126 and §49-2-814, all relating to the welfare of children; establishing the Task Force on Prevention of Sexual Abuse of Children; authorizing section to be called “Erin Merryn’s Law”; specifying membership; specifying responsibilities, including report of recommendations to Legislature and Governor; precluding member compensation or expense reimbursement; relating to legislative

findings and declaration of intent for goals for foster children; requiring the Department of Health and Human Resources to propose legislative rules; providing that no new cause of action against the state is created; providing that no expenditure of funds is required; and providing for notifying former foster parents of child's availability for placement.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §49-2-126 and §49-2-814, all to read as follows:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-814. Task Force on Prevention of Sexual Abuse of Children.

- 1 (a) This section may be referred to as "Erin Merryn's Law".
- 2 (b) The Task Force on Prevention of Sexual Abuse of
3 Children is established. The task force consists of the following
4 members:
 - 5 (1) The Chair of the West Virginia Senate Committee on
6 Health and Human Resources, or his or her designee;
 - 7 (2) The Chair of the House of Delegates Committee on
8 Health and Human Resources, or his or her designee;
 - 9 (3) The Chair of the West Virginia Senate Committee on
10 Education, or his or her designee;
 - 11 (4) The Chair of the House of Delegates Committee on
12 Education, or his or her designee;
 - 13 (5) One citizen member appointed by the President of the
14 Senate;
 - 15 (6) One citizen member appointed by the Speaker of the
16 House of Delegates;

17 (7) One citizen member, who is a survivor of child sexual
18 abuse, appointed by the Governor;

19 (8) The President of the State Board of Education, or his or
20 her designee;

21 (9) The State Superintendent of Schools, or his or her
22 designee;

23 (10) The Secretary of the Department of Health and Human
24 Resources, or his or her designee;

25 (11) The Director of the Prosecuting Attorney's Institute, or
26 his or her designee;

27 (12) One representative of each statewide professional
28 teachers' organization, each selected by the leader of his or her
29 respective organization;

30 (13) One representative of the statewide school service
31 personnel organization, selected by the leader of the
32 organization;

33 (14) One representative of the statewide school principals'
34 organization, appointed by the leader of the organization;

35 (15) One representative of the statewide professional social
36 workers' organization, appointed by the leader of the
37 organization;

38 (16) One representative of a teacher preparation program of
39 a regionally accredited institution of higher education in the
40 state, appointed by the Chancellor of the Higher Education
41 Policy Commission;

42 (17) The Chief Executive Officer of the Center for
43 Professional Development, or his or her designee;

44 (18) The Director of Prevent Child Abuse West Virginia, or
45 his or her designee;

46 (19) The Director of the West Virginia Child Advocacy
47 Network, or his or her designee;

48 (20) The Director of the West Virginia Coalition Against
49 Domestic Violence, or his or her designee;

50 (21) The Director of the West Virginia Foundation for Rape
51 Information and Services, or his or her designee;

52 (22) The Administrative Director of the West Virginia
53 Supreme Court of Appeals, or his or her designee;

54 (23) The Executive Director of the West Virginia Sheriffs'
55 Association, or his or her designee;

56 (24) One representative of an organization representing law
57 enforcement, appointed by the Superintendent of the West
58 Virginia State Police; and

59 (25) One practicing school counselor appointed by the leader
60 of the West Virginia School Counselors Association.

61 (c) To the extent practicable, members of the task force shall
62 be individuals actively involved in the fields of child abuse and
63 neglect prevention and child welfare.

64 (d) At the joint call of the House of Delegates and Senate
65 Education Committee Chairs, the task force shall convene its
66 first meeting and by majority vote of members present elect
67 presiding officers. Subsequent meetings shall be at the call of the
68 presiding officer.

69 (e) The task force shall make recommendations for
70 decreasing incidence of sexual abuse of children in West
71 Virginia. In making those recommendations, the task force shall:

72 (1) Gather information regarding sexual abuse of children
73 throughout the state;

74 (2) Receive related reports and testimony from individuals,
75 state and local agencies, community-based organizations, and
76 other public and private organizations;

77 (3) Create goals for state education policy that would prevent
78 sexual abuse of children;

79 (4) Create goals for other areas of state policy that would
80 prevent sexual abuse of children; and

81 (5) Submit a report with its recommendations to the
82 Governor and the Legislature.

83 (f) The recommendations may include proposals for specific
84 statutory changes and methods to foster cooperation among state
85 agencies and between the state and local governments. The task
86 force shall consult with employees of the Bureau for Children
87 and Family Services, the Division of Justice and Community
88 Services, the West Virginia State Police, the State Board of
89 Education, and any other state agency or department as
90 necessary to accomplish its responsibilities under this section.

91 (g) Task force members serve without compensation and do
92 not receive expense reimbursement.

**§49-2-126. Legislative findings and declaration of intent for goals
for foster children.**

1 (a) The Legislature finds and declares that the design and
2 delivery of child welfare services should be directed by the
3 principle that the health and safety of children should be of
4 paramount concern and, therefore, establishes the goals for
5 children in foster care. A child in foster care should have:

6 (1) Protection by a family of his or her own, and be provided
7 readily available services and support through care of an
8 adoptive family or by plan, a continuing foster family;

9 (2) Nurturing by foster parents who have been selected to
10 meet his or her individual needs, and who are provided services
11 and support, including specialized education, so that the child
12 can grow to reach his or her potential;

13 (3) A safe foster home free of violence, abuse, neglect and
14 danger;

15 (4) The ability to communicate with the assigned social
16 worker or case worker overseeing the child's case and have calls
17 made to the social worker or case worker returned within a
18 reasonable period of time;

19 (5) Permission to remain enrolled in the school the child
20 attended before being placed in foster care, if at all possible;

21 (6) Participation in school extracurricular activities,
22 community events, and religious practices;

23 (7) Communication with the biological parents. Communi-
24 cation is necessary if the child placed in foster care receives any
25 immunizations and if any additional immunizations are needed,
26 if the child will be transitioning back into a home with his or her
27 biological parents;

28 (8) A bank or savings account established in accordance with
29 state laws and federal regulations;

30 (9) Identification and other permanent documents, including
31 a birth certificate, social security card and health records by the
32 age of sixteen, to the extent allowed by federal and state law;

33 (10) The use of appropriate communication measures to
34 maintain contact with siblings if the child placed in foster care
35 is separated from his or her siblings; and

36 (11) Meaningful participation in a transition plan for those
37 phasing out of foster care.

38 (b) A person shall not have a cause of action against the state
39 or any of its subdivisions, agencies, contractors, subcontractors,
40 or agents, based upon the adoption of or failure to provide
41 adequate funding for the achievement of these goals by the
42 Legislature. Nothing in this section requires the expenditure of
43 funds to meet the goals established in this section, except funds
44 specifically appropriated for that purpose.

45 (c) The West Virginia Department of Health and Human
46 Resources shall propose rules for promulgation in accordance
47 with the provisions of article three, chapter twenty-nine-a of this
48 code to ensure that a child has an effective means of being heard
49 if he or she believes the goals of this section are not being met.

50 (d) When a child who was previously placed into foster care,
51 but left the custody or guardianship of the department, is again
52 placed into foster care, the department shall notify the foster
53 parents who most recently cared for the child of the child's
54 availability for foster care placement to determine if the foster
55 parents are desirous of seeking a foster care arrangement for the
56 child. The arrangement may only be made if the foster parents
57 are otherwise qualified or can become qualified to enter into the
58 foster care arrangement with the department and if the
59 arrangement is in the best interests of the child: *Provided*, That
60 the department may petition the court to waive notification to the
61 foster parents. This waiver may be granted, *ex parte*, upon a
62 showing of compelling circumstances.

CHAPTER 46

(H.B. 2200 - By Delegate(s) Shott, Lane, McCuskey, Manchin and Fleischauer)

[Passed February 16, 2015; in effect from passage.]

[Approved by the Governor on February 19, 2015.]

AN ACT to amend and reenact chapter forty-nine of the Code of West Virginia, 1931, as amended, all relating to child welfare generally; revising, rearranging, consolidating and recodifying the laws of the State of West Virginia relating to child welfare; and removing outdated language and modifying the code to comply with court decisions concerning child welfare.

Be it enacted by the Legislature of West Virginia:

That chapter forty-nine of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

PART I. GENERAL PROVISIONS AND PURPOSE.

§49-1-101. Short title; intent of recodification.

1 (a) This chapter shall be known and may be cited as the
2 “West Virginia Child Welfare Act.”

3 (b) The recodification of this chapter during the regular
4 session of the Legislature in the year 2015 is intended to
5 embrace in a revised, consolidated, and codified form and
6 arrangement the laws of the State of West Virginia relating to
7 child welfare at the time of that enactment.

§49-1-102. Legislative Intent; continuation of existing statutory provisions; no increase in funding obligations.

1 In recodifying the child welfare law of this state during the
2 regular session of the Legislature in the year 2015, it is intended
3 by the Legislature that each specific reenactment of a
4 substantively similar prior statutory provision will be construed
5 as continuing the intended meaning of the corresponding prior
6 statutory provision and any existing judicial interpretation of the
7 prior statutory provision. It is not the intent of the Legislature, by
8 recodifying the child welfare law of this state during the regular
9 session of the Legislature in the year 2015 to alter the
10 substantive law of this state as it relates to child welfare or to
11 increase or enlarge any funding obligation of any spending unit
12 of the state.

§49-1-103. Operative date of enactment; effect on existing law.

1 The amendment and reenactment of chapter forty-nine of
2 this code, as enacted by the Legislature during the regular
3 session, 2015, are operative ninety days from passage. The prior
4 enactments of chapter forty-nine of this code, whether amended
5 and reenacted or repealed by the action of the Legislature during
6 the 2015 regular session, have full force and effect until that
7 time.

§49-1-104. West Virginia Code replacement; no increase of funding obligations to be construed.

1 (a) The Department of Health and Human Resources and the
2 Department of Military Affairs and Public Safety are not
3 required to change any form or letter that contains a citation to
4 this code that is changed or otherwise affected by the
5 recodification of this chapter during the 2015 regular session of
6 the Legislature unless specifically required by a provision of this
7 code.

8 (b) No provision of the recodification of this chapter during
9 the 2015 regular session of the Legislature may be construed to
10 increase or enlarge any funding obligation of any spending unit
11 of the state.

§49-1-105. Purpose.

1 (a) It is the purpose of this chapter to provide a system of
2 coordinated child welfare and juvenile justice services for the
3 children of this state. The state has a duty to assure that proper
4 and appropriate care is given and maintained.

5 (b) The child welfare and juvenile justice system shall:

6 (1) Assure each child care, safety and guidance;

7 (2) Serve the mental and physical welfare of the child;

8 (3) Preserve and strengthen the child family ties;

9 (4) Recognize the fundamental rights of children and
10 parents;

11 (5) Develop and establish procedures and programs which
12 are family-focused rather than focused on specific family
13 members, except where the best interests of the child or the
14 safety of the community are at risk;

15 (6) Involve the child, the child's family or the child's
16 caregiver in the planning and delivery of programs and services;

17 (7) Provide community-based services in the least restrictive
18 settings that are consistent with the needs and potentials of the
19 child and his or her family;

20 (8) Provide for early identification of the problems of
21 children and their families, and respond appropriately to prevent
22 abuse and neglect or delinquency;

23 (9) Provide for the rehabilitation of status offenders and
24 juvenile delinquents;

25 (10) As necessary, provide for the secure detention of
26 juveniles alleged or adjudicated delinquent;

27 (11) Provide for secure incarceration of children or juveniles
28 adjudicated delinquent and committed to the custody of the
29 director of the Division of Juvenile Services; and

30 (12) Protect the welfare of the general public.

31 (c) It is also the policy of this state to ensure that those
32 persons and entities offering quality child care are not
33 over-encumbered by licensure and registration requirements and
34 that the extent of regulation of child care facilities and child
35 placing agencies be moderately proportionate to the size of the
36 facility.

37 (d) Through licensure, approval, and registration of child
38 care, the state exercises its benevolent police power to protect
39 the user of a service from risks against which he or she would
40 have little or no competence for self protection. Licensure,
41 approval, and registration processes shall, therefore, continually
42 balance the child's rights and need for protection with the
43 interests, rights and responsibility of the service providers.

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

1 (a) The child welfare service of the state shall be located
2 within and administered by the Department of Health and
3 Human Resources. The Division of Juvenile Services of the
4 Department of Military Affairs and Public Safety shall
5 administer the secure predispositional juvenile detention and
6 juvenile correctional facilities of the state. Notwithstanding any
7 other provision of this code to the contrary, the administrative

8 authority of the Division of Juvenile Services over any child or
9 juvenile in this state extends only to those detained or committed
10 to a secure detention facility or secure correctional facility
11 operated and maintained by the division by an order of a court of
12 competent jurisdiction during the period of actual detention or
13 confinement in the facility.

14 (b) The Department of Health and Human Resources is
15 designated as the state entity to cooperate with the United States
16 Department of Health and Human Services and United States
17 Department of Justice in extending and improving child welfare
18 services, to comply with federal regulations, and to receive and
19 expend federal funds for these services. The Division of Juvenile
20 Services of the Department of Military Affairs and Public Safety
21 is designated as the state entity to cooperate with the United
22 States Department of Health and Human Services and United
23 States Department of Justice in operating, maintaining and
24 improving juvenile correction facilities and centers for the
25 predispositional detention of children, to comply with federal
26 regulations, and to receive and expend federal funds for these
27 services.

28 (c) The Division of Juvenile Services of the Department of
29 Military Affairs and Public Safety is authorized to operate and
30 maintain centers for juveniles needing detention pending
31 disposition by a court having juvenile jurisdiction or temporary
32 care following that court action.

PART II. DEFINITIONS.

***§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited

* **NOTE:** This section was also amended by Com. Sub. For H. B. 2939
(Chapter 47) which passed subsequent to this Act.

3 to, child abuse and neglect, except in those instances where a
4 different meaning is provided or the context in which the word
5 is used clearly indicates that a different meaning is intended.

6 “Abandonment” means any conduct that demonstrates the
7 settled purpose to forego the duties and parental responsibilities
8 to the child;

9 “Abused child” means a child whose health or welfare is
10 being harmed or threatened by:

11 (A) A parent, guardian or custodian who knowingly or
12 intentionally inflicts, attempts to inflict or knowingly allows
13 another person to inflict, physical injury or mental or emotional
14 injury, upon the child or another child in the home. Physical
15 injury may include an injury to the child as a result of excessive
16 corporal punishment;

17 (B) Sexual abuse or sexual exploitation;

18 (C) The sale or attempted sale of a child by a parent,
19 guardian or custodian in violation of section fourteen-h, article
20 two, chapter sixty-one of this code; or

21 (D) Domestic violence as defined in section two hundred
22 two, article twenty-seven, chapter forty-eight of this code.

23 “Abusing parent” means a parent, guardian or other
24 custodian, regardless of his or her age, whose conduct has been
25 adjudicated by the court to constitute child abuse or neglect as
26 alleged in the petition charging child abuse or neglect.

27 “Battered parent,” for the purposes of part seven, article two
28 of this chapter, means a respondent parent, guardian, or other
29 custodian who has been adjudicated by the court to have not
30 condoned the abuse or neglect and has not been able to stop the
31 abuse or neglect of the child or children due to being the victim

32 of domestic violence as defined by section two hundred two,
33 article twenty-seven, chapter forty-eight of this code which was
34 perpetrated by the same person or persons determined to have
35 abused or neglected the child or children.

36 “Child abuse and neglect services” means social services
37 which are directed toward:

38 (A) Protecting and promoting the welfare of children who
39 are abused or neglected;

40 (B) Identifying, preventing and remedying conditions which
41 cause child abuse and neglect;

42 (C) Preventing the unnecessary removal of children from
43 their families by identifying family problems and assisting
44 families in resolving problems which could lead to a removal of
45 children and a breakup of the family;

46 (D) In cases where children have been removed from their
47 families, providing time-limited reunification services to the
48 children and the families so as to reunify those children with
49 their families or some portion thereof;

50 (E) Placing children in suitable adoptive homes when
51 reunifying the children with their families, or some portion
52 thereof, is not possible or appropriate; and

53 (F) Assuring the adequate care of children or juveniles who
54 have been placed in the custody of the department or third
55 parties.

56 “Condition requiring emergency medical treatment” means
57 a condition which, if left untreated for a period of a few hours,
58 may result in permanent physical damage; that condition
59 includes, but is not limited to, profuse or arterial bleeding,
60 dislocation or fracture, unconsciousness and evidence of
61 ingestion of significant amounts of a poisonous substance.

62 “Imminent danger to the physical well-being of the child”
63 means an emergency situation in which the welfare or the life of
64 the child is threatened. These conditions may include an
65 emergency situation when there is reasonable cause to believe
66 that any child in the home is or has been sexually abused or
67 sexually exploited, or reasonable cause to believe that the
68 following conditions threaten the health, life, or safety of any
69 child in the home:

70 (A) Nonaccidental trauma inflicted by a parent, guardian,
71 custodian, sibling or a babysitter or other caretaker;

72 (B) A combination of physical and other signs indicating a
73 pattern of abuse which may be medically diagnosed as battered
74 child syndrome;

75 (C) Nutritional deprivation;

76 (D) Abandonment by the parent, guardian or custodian;

77 (E) Inadequate treatment of serious illness or disease;

78 (F) Substantial emotional injury inflicted by a parent,
79 guardian or custodian;

80 (G) Sale or attempted sale of the child by the parent,
81 guardian or custodian;

82 (H) The parent, guardian or custodian’s abuse of alcohol or
83 drugs or other controlled substance as defined in section one
84 hundred one, article one, chapter sixty-a of this code, has
85 impaired his or her parenting skills to a degree as to pose an
86 imminent risk to a child’s health or safety; or

87 (I) Any other condition that threatens the health, life, or
88 safety of any child in the home.

89 “Neglected child” means a child:

90 (A) Whose physical or mental health is harmed or threatened
91 by a present refusal, failure or inability of the child’s parent,
92 guardian or custodian to supply the child with necessary food,
93 clothing, shelter, supervision, medical care or education, when
94 that refusal, failure or inability is not due primarily to a lack of
95 financial means on the part of the parent, guardian or custodian;
96 or

97 (B) Who is presently without necessary food, clothing,
98 shelter, medical care, education or supervision because of the
99 disappearance or absence of the child’s parent or custodian;

100 (C) “Neglected child” does not mean a child whose
101 education is conducted within the provisions of section one,
102 article eight, chapter eighteen of this code.

103 “Petitioner or co-petitioner” means the Department or any
104 reputable person who files a child abuse or neglect petition
105 pursuant to section six hundred one, article four, of this chapter.

106 “Permanency plan” means the part of the case plan which is
107 designed to achieve a permanent home for the child in the least
108 restrictive setting available.

109 “Respondent” means all parents, guardians, and custodians
110 identified in the child abuse and neglect petition who are not
111 petitioners or co-petitioners.

112 “Sexual abuse” means:

113 (A) Sexual intercourse, sexual intrusion, sexual contact, or
114 conduct proscribed by section three, article eight-c, chapter
115 sixty-one, which a parent, guardian or custodian engages in,
116 attempts to engage in, or knowingly procures another person to
117 engage in with a child notwithstanding the fact that for a child

118 who is less than sixteen years of age the child may have
119 willingly participated in that conduct or the child may have
120 suffered no apparent physical injury or mental or emotional
121 injury as a result of that conduct or, for a child sixteen years of
122 age or older the child may have consented to that conduct or the
123 child may have suffered no apparent physical injury or mental or
124 emotional injury as a result of that conduct; or

125 (B) Any conduct where a parent, guardian or custodian
126 displays his or her sex organs to a child, or procures another
127 person to display his or her sex organs to a child, for the purpose
128 of gratifying the sexual desire of the parent, guardian or
129 custodian, of the person making that display, or of the child, or
130 for the purpose of affronting or alarming the child.

131 “Sexual contact” means sexual contact as that term is
132 defined in section one, article eight-b, chapter sixty-one of this
133 code.

134 “Sexual exploitation” means an act where:

135 (A) A parent, custodian or guardian, whether for financial
136 gain or not, persuades, induces, entices or coerces a child to
137 engage in sexually explicit conduct as that term is defined in
138 section one, article eight-c, chapter sixty-one of this code; or

139 (B) A parent, guardian or custodian persuades, induces,
140 entices or coerces a child to display his or her sex organs for the
141 sexual gratification of the parent, guardian, custodian or a third
142 person, or to display his or her sex organs under circumstances
143 in which the parent, guardian or custodian knows that the display
144 is likely to be observed by others who would be affronted or
145 alarmed.

146 “Sexual intercourse” means sexual intercourse as that term
147 is defined in section one, article eight-b, chapter sixty-one of this
148 code.

149 “Sexual intrusion” means sexual intrusion as that term is
150 defined in section one, article eight-b, chapter sixty-one of this
151 code.

152 “Serious physical abuse” means bodily injury which creates
153 a substantial risk of death, which causes serious or prolonged
154 disfigurement, prolonged impairment of health or prolonged loss
155 or impairment of the function of any bodily organ.

**§49-1-202. Definitions related, but not limited, to adult, child,
developmental disability, and transitioning adult
status.**

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited
3 to, adult, child, developmental disability, and transitioning adult
4 status, except in those instances where a different meaning is
5 provided or the context in which the word is used clearly
6 indicates that a different meaning is intended.

7 “Adult” means a person who is at least eighteen years of age.

8 “Child” or “Juvenile” means any person under eighteen
9 years of age or is a transitioning adult. Once a child or juvenile
10 is transferred to a court with criminal jurisdiction pursuant to
11 section seven hundred ten, article four of this chapter, he or she
12 shall remain a child or juvenile for the purposes of the
13 applicability of this chapter. Unless otherwise stated, for the
14 purpose of child care services “child” means an individual who
15 meets one of the following conditions:

16 (A) Is under thirteen years of age;

17 (B) Is thirteen to eighteen years of age and under court
18 supervision; or

19 (C) Is thirteen to eighteen years of age and presenting a
20 significant delay of at least twenty-five percent in one or more

21 areas of development, or a six month delay in two or more areas
22 as determined by an early intervention program, special
23 education program or other multidisciplinary team.

24 “Juvenile delinquent” means a juvenile who has been
25 adjudicated as one who commits an act which would be a crime
26 under state law or a municipal ordinance if committed by an
27 adult.

28 “Status offender” means a juvenile who has been adjudicated
29 as one:

30 (A) Who habitually and continually refuses to respond to the
31 lawful supervision by his or her parents, guardian or legal
32 custodian such that the juvenile’s behavior substantially
33 endangers the health, safety or welfare of the juvenile or any
34 other person;

35 (B) Who has left the care of his or her parents, guardian or
36 custodian without the consent of that person or without good
37 cause; or

38 (C) Who is habitually absent from school without good
39 cause.

40 “Transitioning adult” means an individual with a transfer
41 plan to move to an adult setting who meets one of the following
42 conditions:

43 (A) Is eighteen years of age but under twenty-one years of
44 age, was in the custody of the Department of Health and Human
45 Resources upon reaching eighteen years of age and committed
46 an act of delinquency before reaching eighteen years of age,
47 remains under the jurisdiction of the juvenile court, and requires
48 supervision and care to complete an education and or treatment
49 program which was initiated prior to the eighteenth birthday; or

50 (B) Is eighteen years of age but under twenty-one years of
51 age, was adjudicated abused, neglected, or in the custody of the
52 Department of Health and Human Resources upon reaching
53 eighteen years of age and enters into a contract with the
54 Department of Health and Human Resources to continue in an
55 educational, training, or treatment program which was initiated
56 prior to the eighteenth birthday.

§49-1-203. Definitions related, but not limited, to licensing and approval of programs.

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited
3 to, licensing and approval of programs, except in those instances
4 where a different meaning is provided or the context in which
5 the word is used clearly indicates that a different meaning is
6 intended.

7 “Approval” means a finding by the Secretary of the
8 Department of Health and Human Resources that a facility
9 operated by the state has met the requirements of legislative
10 rules promulgated for operation of that facility and that a
11 Certificate of Approval or a Certificate of Operation has been
12 issued.

13 “Certification of Approval” or “Certificate of Operation”
14 means a statement issued by the Secretary of the Department of
15 Health and Human Resources that a facility meets all of the
16 necessary requirements for operation.

17 “Certificate of license” means a statement issued by the
18 Secretary of the Department of Health and Human Resources
19 authorizing an individual, corporation, partnership, voluntary
20 association, municipality or county, or any agency thereof, to
21 provide specified services for a limited period of time in
22 accordance with the terms of the certificate.

23 “Certificate of registration” means a statement issued by the
24 Secretary of the Department of Health and Human Resources to
25 a family child care home, informal family child care home or
26 relative family child care home, upon receipt of a
27 self-certification statement of compliance with the legislative
28 rules promulgated pursuant to this chapter.

29 “License” means the grant of official permission to a facility
30 to engage in an activity which would otherwise be prohibited.

31 “Registration” means the process by which a family child
32 care home, informal family child care home or a relative family
33 child care home self-certifies compliance with the legislative
34 rules promulgated pursuant to this chapter.

35 “Rule” means legislative rules promulgated by the Secretary
36 of the Department of Health and Human Resources or a
37 statement issued by the Secretary of the Department of Health
38 and Human Resources of the standards to be applied in the
39 various areas of child care.

40 “Variance” means a declaration that a rule may be
41 accomplished in a manner different from the manner set forth in
42 the rule.

43 “Waiver” means a declaration that a certain legislative rule
44 is inapplicable in a particular circumstance.

§49-1-204. Definitions related, but not limited, to custodians, legal guardians and family.

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited
3 to, custodians, legal guardians and family, except in those
4 instances where a different meaning is provided or the context in
5 which the word is used clearly indicates that a different meaning
6 is intended.

7 “Caregiver” means any person who is at least eighteen years
8 of age and:

9 (A) Is related by blood, marriage or adoption to the minor,
10 but who is not the legal custodian or guardian of the minor; or

11 (B) Has resided with the minor continuously during the
12 immediately preceding period of six months or more.

13 “Custodian” means a person who has or shares actual
14 physical possession or care and custody of a child, regardless of
15 whether that person has been granted custody of the child by any
16 contract or agreement.

17 “Dysfunctional family,” for the purposes of part two, article
18 two of this chapter, means a parent or parents or an adult or
19 adults and a child or children living together and functioning in
20 an impaired or abnormal manner so as to cause substantial
21 physical or emotional danger, injury or harm to one or more
22 children thereof regardless of whether those children are natural
23 offspring, adopted children, step children or unrelated children
24 to that parents.

25 “Legal or minor guardianship” means the permanent
26 relationship between a child and a caretaker, established by order
27 of the court having jurisdiction over the child or juvenile,
28 pursuant to this chapter and chapter forty-four of this code.

29 “Parent” means an individual defined as a parent by law or
30 on the basis of a biological relationship, marriage to a person
31 with a biological relationship, legal adoption or other recognized
32 grounds.

33 “Parental rights” means any and all rights and duties
34 regarding a parent to a minor child.

35 “Parenting skills” means a parent’s competency in providing
36 physical care, protection, supervision and psychological support
37 appropriate to a child’s age and state of development.

38 “Siblings” means children who have at least one biological
39 parent in common or who have been legally adopted by the same
40 parent or parents.

§49-1-205. Definitions related, but not limited, to developmental disabilities.

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited
3 to, developmental disabilities, except in those instances where a
4 different meaning is provided or the context in which the word
5 is used clearly indicates that a different meaning is intended.

6 “Developmental disability” means a severe, chronic
7 disability of a person which:

8 (A) Is attributable to a mental or physical impairment or a
9 combination of mental and physical impairments;

10 (B) Is manifested before the person attains age twenty-two;

11 (C) Results in substantial functional limitations in three or
12 more of the following areas of major life activity:

13 (i) Self-care;

14 (ii) Receptive and expressive language;

15 (iii) Learning;

16 (iv) Mobility;

17 (v) Self-direction;

18 (vi) Capacity for independent living; and

19 (vii) Economic self-sufficiency; and

20 (D) Reflects the person’s need for services and supports
21 which are of lifelong or extended duration and are individually
22 planned and coordinated.

23 (E) The term “developmental disability”, when applied to
24 infants and young children, means individuals from birth to age
25 five, inclusive, who have substantial developmental delays or
26 specific congenital or acquired conditions with a high probability
27 of resulting in developmental disabilities if services are not
28 provided.

29 “Family or primary caregiver,” for the purposes of part six,
30 article two of this chapter, means the person or persons with
31 whom the developmentally disabled person resides and who is
32 primarily responsible for the physical care, education, health and
33 nurturing of the disabled person pursuant to the provisions of
34 part six, article two of this chapter. The term does not include
35 hospitals, nursing homes, personal care homes or any other
36 similar institution.

37 “Legal guardian,” for the purposes of part six of article two
38 of this chapter, means the person who is appointed legal
39 guardian of a developmentally disabled person and who is
40 responsible for the physical and financial aspects of caring for
41 that person, regardless of whether the disabled person resides
42 with his or her legal guardian or another family member.

***§49-1-206. Definitions related, but not limited, to child advocacy,
care, residential, and treatment programs.**

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited
3 to, child advocacy, care, residential and treatment programs,
4 except in those instances where a different meaning is provided
5 or the context in which the word is used clearly indicates that a
6 different meaning is intended.

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150),
which passed subsequent to this act.

7 “Child advocacy center (CAC)” means a community-based
8 organization that is a member in good standing with the West
9 Virginia Child Abuse Network, Inc., as set forth in section one
10 hundred one, article three of this chapter.

11 “Child care” means responsibilities assumed and services
12 performed in relation to a child’s physical, emotional,
13 psychological, social and personal needs and the consideration
14 of the child’s rights and entitlements, but does not include secure
15 detention or incarceration under the jurisdiction of the Division
16 of Juvenile Services pursuant to part nine, article two of this
17 chapter. It includes the provision of child care services or
18 residential services.

19 “Child care center” means a facility maintained by the state
20 or any county or municipality thereof, or any agency or facility
21 maintained by an individual, firm, corporation, association or
22 organization, public or private for the care of thirteen or more
23 children for child care services in any setting, if the facility is
24 open for more than thirty days per year per child.

25 “Child care services” means direct care and protection of
26 children during a portion of a twenty-four hour day outside of
27 the child’s own home which provides experiences to children
28 that foster their healthy development and education.

29 “Child placing agency” means a child welfare agency
30 organized for the purpose of placing children in private family
31 homes for foster care or for adoption. The function of a
32 child-placing agency may include the investigation and
33 certification of foster family homes and foster family group
34 homes as provided in this chapter. The function of a child
35 placing agency may also include the supervision of children who
36 are sixteen or seventeen years old and living in unlicensed
37 residences.

38 “Child welfare agency” means any agency or facility
39 maintained by the state or any county or municipality thereof, or
40 any agency or facility maintained by an individual, firm,
41 corporation, association or organization, public or private, to
42 receive children for care and maintenance or for placement in
43 residential care facilities, including, without limitation, private
44 homes, or any facility that provides care for unmarried mothers
45 and their children. A child welfare agency does not include
46 juvenile detention facilities or juvenile correctional facilities
47 operated by or under contract with the Division of Juvenile
48 Services, pursuant to part nine, article two of this chapter, nor
49 any other facility operated by that division for the secure housing
50 or holding of juveniles committed to its custody.

51 “Community based” means a facility, program or service
52 located near the child’s home or family and involving
53 community participation in planning, operation and evaluation
54 and which may include, but is not limited to, medical,
55 educational, vocational, social and psychological guidance,
56 training, special education, counseling, alcoholism and any
57 treatment and other rehabilitation services.

58 “Facility” means a place or residence, including personnel,
59 structures, grounds and equipment, used for the care of a child
60 or children on a residential or other basis for any number of
61 hours a day in any shelter or structure maintained for that
62 purpose. Facility does not include any juvenile detention facility
63 or juvenile correctional facility operated by or under contract
64 with the Division of Juvenile Services, for the secure housing or
65 holding of juveniles committed to its custody.

66 “Family child care facility” means any facility which is used
67 to provide nonresidential child care services for compensation
68 for seven to twelve children, including children who are living
69 in the household, who are under six years of age. No more than
70 four of the total number of children may be under twenty-four

71 months of age. A facility may be in a provider's residence or a
72 separate building.

73 "Family child care home" means a facility which is used to
74 provide nonresidential child care services for compensation in a
75 provider's residence. The provider may care for four to six
76 children, at one time including children who are living in the
77 household, who are under six years of age. No more than two of
78 the total number of children may be under twenty-four months
79 of age.

80 "Family resource network" means:

81 (A) A local community organization charged with service
82 coordination, needs and resource assessment, planning,
83 community mobilization and evaluation, and which has met the
84 following criteria:

85 (i) Agreeing to a single governing entity;

86 (ii) Agreeing to engage in activities to improve service
87 systems for children and families within the community;

88 (iii) Addressing a geographic area of a county or two or
89 more contiguous counties;

90 (iv) Having nonproviders, which include family
91 representatives and other members who are not employees of
92 publicly funded agencies, as the majority of the members of the
93 governing body, and having family representatives as the
94 majority of the nonproviders;

95 (v) Having representatives of local service agencies,
96 including, but not limited to, the public health department, the
97 behavioral health center, the local health and human resources
98 agency and the county school district, on the governing body;
99 and

100 (vi) Accepting principles consistent with the cabinet's
101 mission as part of its philosophy.

102 (B) A family resource network may not provide direct
103 services, which means to provide programs or services directly
104 to children and families.

105 "Family support," for the purposes of part six, article two of
106 this chapter, means goods and services needed by families to
107 care for their family members with developmental disabilities
108 and to enjoy a quality of life comparable to other community
109 members.

110 "Family support program" means a coordinated system of
111 family support services administered by the Department of
112 Health and Human Resources through contracts with behavioral
113 health agencies throughout the state.

114 "Foster family home" means a private residence which is
115 used for the care on a residential basis of no more than five
116 children who are unrelated by blood, marriage or adoption to any
117 adult member of the household.

118 "Health care and treatment" means:

119 (A) Developmental screening;

120 (B) Mental health screening;

121 (C) Mental health treatment;

122 (D) Ordinary and necessary medical and dental examination
123 and treatment;

124 (E) Preventive care including ordinary immunizations,
125 tuberculin testing and well-child care; and

126 (F) Nonemergency diagnosis and treatment. However,
127 nonemergency diagnosis and treatment does not include an
128 abortion.

129 “Home-based family preservation services” means services
130 dispensed by the Department of Human Services or by another
131 person, association or group who has contracted with that
132 division to dispense services when those services are intended to
133 stabilize and maintain the natural or surrogate family in order to
134 prevent the placement of children in substitute care. There are
135 two types of home-based family preservation services and they
136 are as follows:

137 (A) Intensive, short term intervention of four to six weeks;
138 and

139 (B) Home-based, longer term after care following intensive
140 intervention.

141 “Informal family child care” means a home that is used to
142 provide nonresidential child care services for compensation for
143 three or fewer children, including children who are living in the
144 household, who are under six years of age. Care is given in the
145 provider’s own home to at least one child who is not related to
146 the caregiver.

147 “Nonsecure facility” means any public or private residential
148 facility not characterized by construction fixtures designed to
149 physically restrict the movements and activities of individuals
150 held in lawful custody in that facility and which provides its
151 residents access to the surrounding community with supervision.

152 “Out of school time” means a child care service which offers
153 activities to children before and after school, on school holidays,
154 when school is closed due to emergencies, and on school
155 calendar days set aside for teacher activities.

156 “Placement” means any temporary or permanent placement
157 of a child who is in the custody of the state in any foster home,
158 group home or other facility or residence.

159 “Pre-adjudicatory community supervision” means
160 supervision provided to a youth prior to adjudication, a period of
161 supervision up to one year for an alleged status or delinquency
162 offense.

163 “Regional family support council” means the council
164 established by the regional family support agency to carry out
165 the responsibilities specified in part six, article two of this
166 chapter.

167 “Relative family child care” means a home that provides
168 nonresidential child care services only to children related to the
169 caregiver. The caregiver is a grandparent, great grandparent,
170 aunt, uncle, great-aunt, great-uncle or adult sibling of the child
171 or children receiving care. Care is given in the provider’s home.

172 “Residential services” means child care which includes the
173 provision of nighttime shelter and the personal discipline and
174 supervision of a child by guardians, custodians or other persons
175 or entities on a continuing or temporary basis. It may include
176 care and or treatment for transitioning adults. Residential
177 Services does not include or apply to any juvenile detention
178 facility or juvenile correctional facility operated by the Division
179 of Juvenile Services, created pursuant to this chapter, for the
180 secure housing or holding of juveniles committed to its custody.

181 “Secure facility” means any public or private residential
182 facility which includes construction fixtures designed to
183 physically restrict the movements and activities of children or
184 other individuals held in lawful custody in that facility.

185 “Staff-secure facility” means any public or private
186 residential facility characterized by staff restrictions of the

187 movements and activities of individuals held in lawful custody
188 in that facility and which limits its residents' access to the
189 surrounding community, but is not characterized by construction
190 fixtures designed to physically restrict the movements and
191 activities of residents.

192 “State family support council” means the council established
193 by the Department of Health and Human Resources pursuant to
194 part six, article two of this chapter to carry out the
195 responsibilities specified in article two of this chapter.

196 “Time-limited reunification services” means individual,
197 group and family counseling, inpatient, residential or outpatient
198 substance abuse treatment services, mental health services,
199 assistance to address domestic violence, services designed to
200 provide temporary child care and therapeutic services for
201 families, including crisis nurseries and transportation to or from
202 those services, provided during fifteen of the most recent
203 twenty-two months a child or juvenile has been in foster care, as
204 determined by the earlier date of the first judicial finding that the
205 child is subjected to abuse or neglect, or the date which is sixty
206 days after the child or juvenile is removed from home.

§49-1-207. Definitions related to court actions.

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited
3 to, court actions, except in those instances where a different
4 meaning is provided or the context in which the word is used
5 clearly indicates that a different meaning is intended.

6 “Court” means the circuit court of the county with
7 jurisdiction of the case or the judge in vacation unless otherwise
8 specifically provided.

9 “Court appointed special advocate (CASA) program” means
10 a community organization that screens, trains and supervises

11 CASA volunteers to advocate for the best interests of children
12 who are involved in abuse and neglect proceedings section one
13 hundred two, article three of this chapter.

14 “Extrajudicial Statement” means any utterance, written or
15 oral, which was made outside of court.

16 “Multidisciplinary team” means a group of professionals and
17 paraprofessionals representing a variety of disciplines who
18 interact and coordinate their efforts to identify, diagnose and
19 treat specific cases of child abuse and neglect. Multidisciplinary
20 teams may include, but are not limited to, medical, educational,
21 child care and law-enforcement personnel, social workers,
22 psychologists and psychiatrists. Their goal is to pool their
23 respective skills in order to formulate accurate diagnoses and to
24 provide comprehensive coordinated treatment with continuity
25 and follow-up for both parents and children.

26 “Community team” means a multidisciplinary group which
27 addresses the general problem of child abuse and neglect in a
28 given community and may consist of several multidisciplinary
29 teams with different functions.

30 “Res gestae” means a spontaneous declaration made by a
31 person immediately after an event and before the person has had
32 an opportunity to conjure a falsehood.

33 “Valid court order” means an order issued by a court of
34 competent jurisdiction relating to a child brought before the
35 court and who is the subject of that order. Prior to the entry of
36 the order the child shall have received the full due process rights
37 guaranteed to that child or juvenile by the Constitutions of the
38 United States and the State of West Virginia.

39 “Violation of a traffic law of West Virginia” means a
40 violation of chapter seventeen-a, seventeen-b, seventeen-c or
41 seventeen-d of this code except a violation of section one or two,

42 article four, chapter seventeen-c of this code relating to hit and
43 run or section one, two or three, article five of that chapter,
44 relating, respectively, to negligent homicide, driving under the
45 influence of alcohol, controlled substances or drugs and reckless
46 driving.

§49-1-208. Definitions related, but not limited, to state and local agencies.

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited
3 to, state and local agencies, except in those instances where a
4 different meaning is provided or the context in which the word
5 is used clearly indicates that a different meaning is intended.

6 “Department” or “state department” means the West
7 Virginia Department of Health and Human Resources.

8 “Division of Juvenile Services” means the division within
9 the West Virginia Department of Military Affairs and Public
10 Safety.

11 “Law-enforcement officer” means a law-enforcement officer
12 of the State Police, a municipality or county sheriff’s
13 department.

14 “Secretary” means the Secretary of the West Virginia
15 Department of Health and Human Resources.

§49-1-209. Definitions related, but not limited, to missing children.

1 As used in article six of this chapter:

2 “Child” means an individual under the age of eighteen years
3 who is not emancipated;

4 “Clearinghouse” means the West Virginia missing children
5 information clearinghouse;

6 “Custodian” means a parent, guardian, custodian or other
7 person who exercises legal physical control, care or custody of
8 a child;

9 “Missing child” means a child whose whereabouts are
10 unknown to the child’s custodian and the circumstances of
11 whose absence indicate that:

12 (A) The child did not leave the care and control of the
13 custodian voluntarily and the taking of the child was not
14 authorized by law; or

15 (B) The child voluntarily left the care and control of his or
16 her custodian without the custodian’s consent and without intent
17 to return;

18 “Missing child report” means information that is:

19 (A) Given to a law-enforcement agency on a form used for
20 sending information to the national crime information center;
21 and

22 (B) About a child whose whereabouts are unknown to the
23 reporter and who is alleged in the form submitted by the reporter
24 to be missing;

25 “Possible match” means the similarities between an
26 unidentified body of a child and a missing child that would lead
27 one to believe they are the same child;

28 “Reporter” means the person who reports a missing child;
29 and

30 “State agency” means an agency of the state, political
31 subdivision of the state or public post-secondary educational
32 institution.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**PART I. GENERAL AUTHORITY AND DUTIES OF
THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES.****§49-2-101. Authorization and responsibility.**

1 (a) The Department of Health and Human Resources is
2 authorized to provide care, support and protective services for
3 children who are handicapped by dependency, neglect, single
4 parent status, mental or physical disability, or who for other
5 reasons are in need of public service. The department is also
6 authorized to accept children for care from their parent or
7 parents, guardian, custodian or relatives and to accept the
8 custody of children committed to its care by courts. The
9 Department of Health and Human Resources or any county
10 office of the department is also authorized and to accept
11 temporary custody of children for care from any law-
12 enforcement officer in an emergency situation.

13 (b) The Department of Health and Human Resources is
14 responsible for the care of the infant child of an unmarried
15 mother who has been committed to the custody of the
16 department while the infant is placed in the same licensed child
17 welfare agency as his or her mother. The department may
18 provide care for those children in family homes meeting required
19 standards, at board or otherwise, through a licensed child welfare
20 agency, or in a state institution providing care for dependent or
21 neglected children. If practical, when placing any child in the
22 care of a family or a child welfare agency the department shall
23 select a family holding the same religious belief as the parents or
24 relatives of the child or a child welfare agency conducted under
25 religious auspices of the same belief as the parents or relatives.

**§49-2-102. Minimum staffing complement for child protective
services.**

1 For the sole purpose of increasing the number of full time
2 front line child protective service case workers and investigators,

3 the Secretary of the Department of Health and Human Resources
4 shall have the authority to transfer funds between all general
5 revenue accounts under the secretary's authority and/or between
6 personnel and nonpersonnel lines within each account under the
7 secretary's authority. Nothing in this section shall be construed
8 to require the department to hire additional child protective
9 service workers at any time if the department determines that
10 funds are not available for those workers. Additionally, the
11 secretary shall prepare a plan to allow the department to
12 progressively reduce caseload standards in West Virginia for
13 child protective services workers, which if adopted by the
14 Legislature during the regular session of 1995, shall require
15 implementation no later than July 1, 1996, with the plan to be
16 submitted to the joint committee on government and finance by
17 the September 30, 1994, and a final report to be submitted to the
18 Legislature by January 1, 1995.

§49-2-103. Proceedings by the state department.

1 The state department shall have the authority to institute, in
2 the name of the state, proceedings incident to the performance of
3 its duties under the provisions of this chapter.

§49-2-104. Education of the public.

1 The secretary shall provide ongoing education of the public
2 in regard to the requirements of this chapter through the use of
3 mass media and other methods as are deemed appropriate and
4 within fiscal limitations.

§49-2-105. Administrative and judicial review.

1 Any person, corporation, governmental official or child
2 welfare agency, aggrieved by a decision of the secretary made
3 pursuant to this chapter may contest the decision upon making
4 a request for a hearing by the secretary within thirty days of
5 receipt of notice of the decision. Administrative and judicial

6 review shall be made in accordance with article five, chapter
7 twenty-nine-a of this code. Any decision issued by the secretary
8 may be made effective from the date of issuance. Immediate
9 relief therefrom may be obtained upon a showing of good cause
10 made by verified petition to the Circuit Court of Kanawha
11 County or the circuit court of any county where the affected
12 facility or child welfare agency may be located. The dependency
13 of administrative or judicial review shall not prevent the
14 secretary from obtaining injunctive relief pursuant to section one
15 hundred twenty, article two of this chapter.

§49-2-106. Department responsibility for foster care homes.

1 It is the responsibility of the Department of Health and
2 Human Resources to provide care for neglected children who are
3 committed to its care for custody or guardianship. The
4 department may provide this care for children in family homes
5 meeting required standards of certification established and
6 enforced by the Department of Health and Human Resources.

§49-2-107. Foster-home care; minimum standards; certificate of operation; inspection.

1 (a) The department shall establish minimum standards for
2 foster-home care to which all certified foster homes must
3 conform by legislative rule. Any home that conforms to the
4 standards of care set by the department shall receive a certificate
5 of operation.

6 (b) The certificate of operation shall be in force for one year
7 from the date of issuance and may be renewed unless revoked
8 because of willful violation of this chapter.

9 (c) The certificate shall show the name of the person or
10 persons authorized to conduct the home, its exact location and
11 the number of children that may be received and cared for at one
12 time and other information as set forth in legislative rule. No

13 certified foster home shall provide care for more children than
14 are specified in the certificate.

15 (d) No unsupervised foster home shall be certified until an
16 investigation of the home and its standards of care has been
17 made by the department or by a licensed child welfare agency
18 serving as a representative of the department.

§49-2-108. Visits and inspections; records.

1 The department or its authorized agent shall visit and inspect
2 every certified foster home as often as is necessary to assure
3 proper care is given to the children. Every certified foster home
4 shall maintain a record of the children received. This record shall
5 include information as prescribed by the department in
6 legislative rule and shall be in a form and manner as prescribed
7 by the department in legislative rule.

§49-2-109. Placing children from other states in private homes of state.

1 An institution or organization incorporated under the laws of
2 another state shall not place a child in a private home in the state
3 without the approval of the department, and the agency so
4 placing the child shall arrange for supervision of the child
5 through its own staff or through a licensed child welfare agency
6 in this state, and shall maintain responsibility for the child until
7 he or she is adopted or discharged from care with the approval
8 of the department.

§49-2-110. Development of standards of child care.

1 The department shall develop standards for the care of
2 children. It shall cooperate with, advise and assist all child
3 welfare agencies, including state institutions, which care for
4 neglected, delinquent, or mentally or physically handicapped
5 children, and shall supervise those agencies. The department, in

- 6 cooperation with child welfare agencies, shall formulate and
- 7 make available standards of child care and services for children,
- 8 to which all child welfare agencies must conform.

§49-2-111. Supervision of child welfare agencies by the department; records and reports.

1 (a) In order to improve standards of child care, the
2 department shall cooperate with the governing boards of child
3 welfare agencies, assist the staffs of those agencies through
4 advice on progressive methods and procedures of child care and
5 improvement of the service rendered, and assist in the
6 development of community plans of child care. The department,
7 or its duly authorized agent, may visit any child welfare agency
8 to advise the agency on matters affecting the health of children
9 and to inspect the sanitation of the buildings used for their care.

10 (b) Each child welfare agency shall keep records of each
11 child under its control and care as the department may prescribe,
12 and shall report to the department, whenever requested, facts as
13 may be required with reference to the children, upon forms
14 furnished by the department. All records regarding children and
15 all facts learned about children and their parents or relatives shall
16 be regarded as confidential and shall be properly safeguarded by
17 the agency and the department.

§49-2-112. Family homes; approval of incorporation by Secretary of State; approval of articles of incorporation.

1 (a) Before issuing a charter for the incorporation of any
2 organization having as its purpose the receipt of children for care
3 or for placement in family homes, the Secretary of State shall
4 provide a copy of the petition, together with any other
5 information in his or her possession pertaining to the proposed
6 corporation, to the secretary, and no charter for a corporation
7 may be issued unless the secretary shall first certify to the

8 Secretary of State that it has investigated the need for the
9 services proposed and the merits of the proposed charitable
10 corporation and recommends the issuance thereof; applications
11 for amendments of any existing charter shall be similarly
12 referred and shall be granted only upon similar approval.

13 (b) A child welfare agency may not be incorporated in this
14 state unless the articles of incorporation have first been
15 examined and approved by the secretary, or his or her designee.
16 Proposed amendments to articles of incorporation shall be
17 subject to the examination and approval of the secretary, or his
18 or her designee.

**§49-2-113. Residential child care centers; licensure, certification,
approval and registration; requirements.**

1 (a) Any person, corporation or child welfare agency, other
2 than a state agency, which operates a residential child care center
3 shall obtain a license from the department.

4 (b) Any residential child care facility, day care center or any
5 child-placing agency operated by the state shall obtain approval
6 of its operations from the secretary.

7 (c) Any family day care facility which operates in this state,
8 including family day care facilities approved by the department
9 for receipt of funding, shall obtain a statement of certification
10 from the department.

11 (d) Every family day care home which operates in this state,
12 including family day care homes approved by the department for
13 receipt of funding, shall obtain a certificate of registration from
14 the department. The facilities and placing agencies shall
15 maintain the same standards of care applicable to licensed
16 facilities, centers or placing agencies of the same category.

17 (e) This section does not apply to:

18 (1) A kindergarten, preschool or school education program
19 which is operated by a public school or which is accredited by
20 the state Department of Education, or any other kindergarten,
21 preschool or school programs which operate with sessions not
22 exceeding four hours per day for any child;

23 (2) An individual or facility which offers occasional care of
24 children for brief periods while parents are shopping, engaging
25 in recreational activities, attending religious services or engaging
26 in other business or personal affairs;

27 (3) Summer recreation camps operated for children attending
28 sessions for periods not exceeding thirty days;

29 (4) Hospitals or other medical facilities which are primarily
30 used for temporary residential care of children for treatment,
31 convalescence or testing;

32 (5) Persons providing family day care solely for children
33 related to them;

34 (6) Any juvenile detention facility or juvenile correctional
35 facility operated by or under contract with the Division of
36 Juvenile Services for the secure housing or holding of juveniles
37 committed to its custody;

38 (7) Any out-of-school time program that has been awarded
39 a grant by the West Virginia Department of Education to provide
40 out-of-school time programs to kindergarten through twelfth
41 grade students when the program is monitored by the West
42 Virginia Department of Education; or

43 (8) Any out-of-school time program serving children six
44 years of age or older and meets all of the following
45 requirements, or is an out-of-school time program that is
46 affiliated and in good standing with a national Congressionally

47 chartered organization and meets all of the following
48 requirements:

49 (A) The program is located in a facility that meets all fire
50 and health codes;

51 (B) The program performs background checks on all
52 volunteers and staff;

53 (C) The program's primary source of funding is not from
54 fees for service; and

55 (D) The program has a formalized monitoring system in
56 place.

57 (f) The secretary is authorized to issue an emergency rule
58 relating to conducting a survey of existing facilities in this state
59 in which children reside on a temporary basis in order to
60 ascertain whether they should be subject to licensing under this
61 article or applicable licensing provisions relating to behavioral
62 health treatment providers.

63 (g) Any informal family child care home or relative family
64 child care home may voluntarily register and obtain a certificate
65 of registration from the department.

66 (h) All facilities or programs that provide out-of-school time
67 care shall register with the department upon commencement of
68 operations and on an annual basis thereafter. The department
69 shall obtain information, such as the name of the facility or
70 program, the description of the services provided and any other
71 information relevant to the determination by the department as
72 to whether the facility or program meets the criteria for
73 exemption under this section.

74 (i) Any child care service that is licensed or receives a
75 certificate of registration shall have a written plan for evacuation

76 in the event of fire, natural disaster or other threatening situation
77 that may pose a health or safety hazard to the children in the
78 child care service.

79 (1) The plan shall include, but not be limited to:

80 (A) A designated relocation site and evacuation;

81 (B) Procedures for notifying parents of the relocation and
82 ensuring family reunification;

83 (C) Procedures to address the needs of individual children
84 including children with special needs;

85 (D) Instructions relating to the training of staff or the
86 reassignment of staff duties, as appropriate;

87 (E) Coordination with local emergency management
88 officials; and

89 (F) A program to ensure that appropriate staff are familiar
90 with the components of the plan.

91 (2) A child care service shall update the evacuation plan by
92 December 31, of each year. If a child care service fails to update
93 the plan, no action shall be taken against the child care service's
94 license or registration until notice is provided and the child care
95 service is given thirty days after the receipt of notice to provide
96 an updated plan.

97 (3) A child care service shall retain an updated copy of the
98 plan for evacuation and shall provide notice of the plan and
99 notification that a copy of the plan will be provided upon request
100 to any parent, custodian or guardian of each child at the time of
101 the child's enrollment in the child care service and when the plan
102 is updated.

103 (4) All child care centers and family child care facilities
104 shall provide the plan and each updated copy of the plan to the
105 Director of the Office of Emergency Services in the county
106 where the center or facility is located.

§49-2-114. Application for license or approval.

1 (a) Any person or corporation or any governmental agency
2 intending to act as a child welfare agency shall apply for a
3 license, approval or registration certificate to operate child care
4 facilities regulated by this chapter. Applications for licensure,
5 approval or registration shall be made separately for each child
6 care facility to be licensed, approved, certified or registered.

7 (b) The secretary shall prescribe by legislative rule forms
8 and reasonable application procedures including, but not limited
9 to, fingerprinting of applicants and other persons responsible for
10 the care of children for submission to the State Police and, if
11 necessary, to the Federal Bureau of Investigation for criminal
12 history record checks.

13 (c) Before issuing a license, or approval, the secretary shall
14 investigate the facility, program and persons responsible for the
15 care of children. The investigation shall include, but not be
16 limited to, review of resource need, reputation, character and
17 purposes of applicants, a check of personnel criminal records, if
18 any, and personnel medical records, the financial records of
19 applicants, review of the facilities emergency evacuation plan
20 and consideration of the proposed plan for child care from intake
21 to discharge.

22 (d) Before a home registration is granted, the secretary shall
23 make inquiry as to the facility, program and persons responsible
24 for the care of children. The inquiry shall include
25 self-certification by the prospective home of compliance with
26 standards including, but not limited to:

- 27 (1) Physical and mental health of persons present in the
28 home while children are in care;
- 29 (2) Criminal and child abuse or neglect history of persons
30 present in the home while children are in care;
- 31 (3) Discipline;
- 32 (4) Fire and environmental safety;
- 33 (5) Equipment and program for the children in care; and
- 34 (6) Health, sanitation and nutrition.
- 35 (e) Further inquiry and investigation may be made as the
36 secretary may direct and sees as necessary.
- 37 (f) The secretary shall make a decision on each application
38 within sixty days of its receipt and shall provide to unsuccessful
39 applicants written reasons for the decision.

§49-2-115. Conditions of licensure, approval and registration.

- 1 (a) A license or approval is effective for a period up to two
2 years from the date of issuance, unless revoked or modified to
3 provisional status based on evidence of a failure to comply with
4 this chapter or any legislative rules promulgated by the secretary.
5 The license or approval shall be reinstated upon application to
6 the secretary and a determination of compliance.
- 7 (b) An initial six-month license or approval shall be issued
8 to an applicant establishing a new service found to be in
9 compliance on initial review with regard to policy, procedure,
10 organization, risk management, human resources, service
11 environment and record keeping regulations.
- 12 (c) A provisional license or approval may be issued when a
13 licensee is not in compliance with the legislative rules

14 promulgated by the secretary but does not pose a significant risk
15 to the rights, well-being, health and safety of a consumer. It shall
16 expire not more than six months from date of issuance, and not
17 be consecutively reissued unless the provisional
18 recommendation is that of the State Fire Marshal.

19 (d) A renewal license or approval may be issued of any
20 duration up to two years at the discretion of the secretary. In the
21 event a renewal license is not issued, the facility must make
22 discharge plans for residents and cease operation within thirty
23 days of the expiration of the license.

24 (e) A certificate of registration is effective for a period up to
25 two years from the date of issuance, unless revoked based on
26 evidence of a failure to comply with this article or any rules
27 promulgated pursuant to this article. The certificate of
28 registration shall be reinstated upon application to the secretary,
29 including a statement of assurance of continued compliance with
30 the legislative rules promulgated pursuant to this article.

31 (f) The license, approval or registration issued under this
32 article is not transferable and applies only to the facility and its
33 location stated in the application. The license, registration or
34 approval shall be publicly displayed. The foster and adoptive
35 family homes, informal family child care homes and relative
36 family child care homes shall be required to display registration
37 certificates of registration or approval upon request rather than
38 by posting.

39 (g) Provisional certificates of registration may be issued to
40 family child care homes.

41 (h) The secretary, as a condition of issuing a license,
42 registration or approval, may:

43 (1) Limit the age, sex or type of problems of children
44 allowed admission to a particular facility;

45 (2) Prohibit intake of any children; or

46 (3) Reduce the number of children which the agency, facility
47 or home operated by the agency is licensed, approved, certified
48 or registered to receive.

§49-2-116. Investigative authority; evaluation; complaint.

1 (a) The secretary shall enforce this article.

2 (b) An on-site evaluation of every facility regulated pursuant
3 to this chapter, except registered family child care homes,
4 informal family child care and relative family child care homes
5 shall be conducted no less than once per year by announced or
6 unannounced visits.

7 (c) A random sample of not less than five percent of the total
8 number of registered family child care homes, informal family
9 child care homes and relative family child care homes shall be
10 monitored annually through on-site evaluations.

11 (d) The secretary shall have access to the premises,
12 personnel, children in care and records of each facility subject to
13 inspection, including at a minimum, case records, corporate and
14 financial records and board minutes. Applicants for licenses,
15 approvals, and certificates of registration shall consent to
16 reasonable on-site administrative inspections, made with or
17 without prior notice, as a condition of licensing, approval, or
18 registration.

19 (e) When a complaint is received by the secretary alleging
20 violations of licensure, approval, or registration requirements,
21 the secretary shall investigate the allegations. The secretary may
22 notify the facility's director before or after a complaint is
23 investigated and shall cause a written report of the results of the
24 investigation to be made.

25 (f) The secretary may enter any unlicensed, unregistered or
26 unapproved child care facility or personal residence for which
27 there is probable cause to believe that the facility or residence is
28 operating in violation of this article. Those entries shall be made
29 with a law-enforcement officer present. The secretary may enter
30 upon the premises of any unregistered residence only after two
31 attempts by the secretary to bring this facility into compliance.

§49-2-117. Revocation; provisional licensure and approval.

1 (a) The secretary may revoke or make provisional the
2 licensure registration of any home facility or child welfare
3 agency regulated pursuant to this chapter if a facility materially
4 violates this article, or any terms or conditions of the license,
5 registration or approval issued, or fails to maintain established
6 requirements of child care. This section does not apply to family
7 child care homes.

8 (b) The secretary may revoke the certificate of registration
9 of any family child care home if a facility materially violates this
10 article, or any terms or conditions of the registration certificate
11 issued, or fails to maintain established requirements of child
12 care.

§49-2-118. Closing of facilities by the secretary; placement of children.

1 When the secretary finds that the operation of a facility
2 constitutes an immediate danger of serious harm to children
3 served by the facility, the secretary shall issue an order of
4 closure terminating operation of the facility. When necessary,
5 the secretary shall place or direct the placement of the children
6 in a residential facility which has been closed into appropriate
7 facilities. A facility closed by the secretary may not operate
8 pending administrative or judicial review without court order.

§49-2-119. Supervision; consultation; State Fire Marshall to cooperate.

1 (a) The secretary shall provide supervision to ascertain
2 compliance with the rules promulgated pursuant to this chapter
3 through regular monitoring, visits to facilities, documentation,
4 evaluation and reporting. The secretary is responsible for
5 training and education, within fiscal limitations, specifically for
6 the improvement of care in family child care homes and
7 facilities. The secretary shall consult with applicants, the
8 personnel of child welfare agencies, and children under care to
9 assure the highest quality child care possible.

10 (b) The State Fire Marshal shall cooperate with the secretary
11 in the administration of this article by providing reports and
12 assistance as may be requested by the secretary.

§49-2-120. Penalties; injunctions; venue.

1 (a) Any individual or corporation which operates a child
2 welfare agency, residential facility or child care center without
3 a license when a license is required is guilty of a misdemeanor
4 and, upon conviction, shall be confined in jail not exceeding one
5 year, or fined not more than \$500, or both fined and confined.

6 (b) Any family child care facility which operates without a
7 license when a license is required is guilty of a misdemeanor
8 and, upon conviction, shall be fined not more than \$500.

9 (c) Where a violation of this article or a legislative rule
10 promulgated by the secretary may result in serious harm to
11 children under care, the secretary may seek injunctive relief
12 against any person, corporation, child welfare agency, child
13 placing agency, child care center, family child care facility,
14 family child care home or governmental official through
15 proceedings instituted by the Attorney General, or the
16 appropriate county prosecuting attorney, in the Circuit Court of

17 Kanawha County or in the circuit court of any county where the
18 children are residing or may be found.

§49-2-121. Rule-making.

1 (a) The secretary shall promulgate legislative rules in
2 accordance with chapter twenty-nine-a of this code regarding the
3 licensure, approval, certification and registration of child care
4 facilities and the implementation of this article. The rules shall
5 provide at a minimum the requirement that every residential
6 child care facility shall be subject to an annual time study
7 regarding the quantification of staff supervision time at each
8 facility. Every residential child care facility shall participate in
9 the time study at the request of the department.

10 (b) The secretary shall review the rules promulgated
11 pursuant to this article at least once every five years, making
12 revisions when necessary or convenient.

13 (c) The rules shall incorporate by reference the requirements
14 of the Integrated Pest Management Program established by
15 legislative rule by the Department of Agriculture under section
16 four, article sixteen-a, chapter nineteen of this code.

§49-2-122. Waivers and variances to rules.

1 Waivers or variances of rules may be granted by the
2 secretary if the health, safety or well-being of a child would not
3 be endangered thereby. The secretary shall promulgate by
4 legislative rule criteria and procedures for the granting of
5 waivers or variances so that uniform practices may be
6 maintained throughout the state.

**§49-2-123. Annual reports; directory; licensing reports and
recommendations.**

1 (a) The secretary shall submit on or before January 1, of
2 each year a report to the Governor and the Legislative Oversight

3 Commission on Health and Human Resources Accountability,
4 concerning the regulation of child welfare agencies, child
5 placing agencies, child care centers, family child care facilities,
6 family child care homes, informal family child care homes,
7 relative family child care homes and child care facilities during
8 the year. The report shall include at a minimum, data on the
9 number of children and staff at each facility (except family child
10 care, informal family child care homes and relative family child
11 care), applications received, types of licenses, approvals and
12 registrations granted, denied, made provisional or revoked and
13 any injunctions obtained or facility closures ordered.

14 (b) The secretary also shall compile annually a directory of
15 licensed, certified and approved child care providers including
16 a brief description of their program and facilities, the program's
17 capacity and a general profile of children served. A listing of
18 family child care homes shall also be compiled annually.

19 (c) Licensing reports and recommendations for licensure
20 which are a part of the yearly review of each licensed facility
21 shall be sent to the facility director. Copies shall be available to
22 the public upon written request to the secretary.

§49-2-124. Certificate of need not required; conditions; review.

1 (a) A certificate of need, as provided in article two-d, chapter
2 sixteen of this code, is not required by an entity proposing
3 behavioral health care facilities or behavioral health care
4 services for children who are placed out of their home, or who
5 are at imminent risk of being placed out of their home, if a
6 summary review is performed in accordance with this section.

7 (b) A summary review of proposed health care facilities or
8 health care services for children who are placed out of their
9 home, or who are at imminent risk of being placed out of their
10 home, is initiated when the proposal is recommended to the

11 health care cost review authority by the Secretary of the
12 Department of Health and Human Resources and the secretary
13 has made the following findings:

14 (1) That the proposed facility or service is consistent with
15 the state health plan;

16 (2) That the proposed facility or service is consistent with
17 the department's programmatic and fiscal plan for behavioral
18 health services for children with mental health and addiction
19 disorders;

20 (3) That the proposed facility or service contributes to
21 providing services that are child and family driven, with priority
22 given to keeping children in their own homes;

23 (4) That the proposed facility or service will contribute to
24 reducing the number of child placements in out-of-state facilities
25 by making placements available in in-state facilities;

26 (5) That the proposed facility or service contributes to
27 reducing the number of child placements in in-state or
28 out-of-state facilities by returning children to their families,
29 placing them in foster care programs or making available
30 school-based and out-patient services; and

31 (6) If applicable, that the proposed services will be
32 community-based, locally accessible and provided in an
33 appropriate setting consistent with the unique needs and
34 potential of each child and his or her family.

35 (c) The secretary's findings required by subsection (b) of
36 this section shall be filed with the secretary's recommendation
37 and appropriate documentation. If the secretary's findings are
38 supported by the accompanying documentation, the proposal
39 shall not require a certificate of need.

40 (d) Any entity that does not qualify for summary review
41 shall be subject to certificate of need review.

42 (e) Notwithstanding any other provision of law to the
43 contrary, the provision of regular or therapeutic foster care
44 services does not constitute a behavioral health care facility or
45 a behavioral health care service that would subject it to the
46 summary review procedure established in this section or to the
47 certificate of need requirements provided in article two-d,
48 chapter sixteen of this code.

**§49-2-125. Commission to Study Residential Placement of
Children; findings; requirements; reports;
recommendations; termination.**

1 (a) The Legislature finds that the state's current system of
2 serving children and families in need of or at risk of needing
3 social, emotional and behavioral health services is fragmented.
4 The existing categorical structure of government programs and
5 their funding streams discourages collaboration, resulting in
6 duplication of efforts and a waste of limited resources. Children
7 are usually involved in multiple child-serving systems, including
8 child welfare, juvenile justice and special education. More than
9 ten percent of children presently in care are presently in
10 out-of-state placements. Earlier efforts at reform have focused
11 on quick fixes for individual components of the system at the
12 expense of the whole. It is the purpose of this section to establish
13 a mechanism to achieve systemic reform by which all of the
14 state's child-serving agencies involved in the residential
15 placement of at-risk youth jointly and continually study and
16 improve upon this system and make recommendations to their
17 respective agencies and to the Legislature regarding funding and
18 statutory, regulatory and policy changes. It is further the
19 Legislature's intent to build upon these recommendations to
20 establish an integrated system of care for at-risk youth and
21 families that makes prudent and cost-effective use of limited

22 state resources by drawing upon the experience of successful
23 models and best practices in this and other jurisdictions, which
24 focuses on delivering services in the least restrictive setting
25 appropriate to the needs of the child, and which produces better
26 outcomes for children, families and the state.

27 (b) There is created within the Department of Health and
28 Human Resources the Commission to Study the Residential
29 Placement of Children. The commission consists of the Secretary
30 of the Department of Health and Human Resources, the
31 Commissioner of the Bureau for Children and Families, the
32 Commissioner for the Bureau for Behavioral Health and Health
33 Facilities, the Commissioner for the Bureau for Medical
34 Services, the State Superintendent of Schools, a representative
35 of local educational agencies, the Director of the Office of
36 Institutional Educational Programs, the Director of the Office of
37 Special Education Programs and Assurance, the Director of the
38 Division of Juvenile Services and the Executive Director of the
39 Prosecuting Attorney's Institute. At the discretion of the West
40 Virginia Supreme Court of Appeals, circuit and family court
41 judges and other court personnel, including the Administrator of
42 the Supreme Court of Appeals and the Director of the Juvenile
43 Probation Services Division, may serve on the commission.
44 These statutory members may further designate additional
45 persons in their respective offices who may attend the meetings
46 of the commission if they are the administrative head of the
47 office or division whose functions necessitate their inclusion in
48 this process. In its deliberations, the commission shall also
49 consult and solicit input from families and service providers.

50 (c) The Secretary of the Department of Health and Human
51 Resources shall serve as chair of the commission, which shall
52 meet on a quarterly basis at the call of the chair.

53 (d) At a minimum, the commission shall study:

54 (1) The current practices of placing children out-of-home
55 and into in-residential placements, with special emphasis on
56 out-of-state placements;

57 (2) The adequacy, capacity, availability and utilization of
58 existing in-state facilities to serve the needs of children requiring
59 residential placements;

60 (3) Strategies and methods to reduce the number of children
61 who must be placed in out-of-state facilities and to return
62 children from existing out-of-state placements, initially targeting
63 older youth who have been adjudicated delinquent;

64 (4) Staffing, facilitation and oversight of multidisciplinary
65 treatment planning teams;

66 (5) The availability of and investment in community-based,
67 less restrictive and less costly alternatives to residential
68 placements;

69 (6) Ways in which up-to-date information about in-state
70 placement availability may be made readily accessible to state
71 agency and court personnel, including an interactive secure web
72 site;

73 (7) Strategies and methods to promote and sustain
74 cooperation and collaboration between the courts, state and local
75 agencies, families and service providers, including the use of
76 inter-agency memoranda of understanding, pooled funding
77 arrangements and sharing of information and staff resources;

78 (8) The advisability of including “no-refusal” clauses in
79 contracts with in-state providers for placement of children whose
80 treatment needs match the level of licensure held by the
81 provider;

82 (9) Identification of in-state service gaps and the feasibility
83 of developing services to fill those gaps, including funding;

84 (10) Identification of fiscal, statutory and regulatory barriers
85 to developing needed services in-state in a timely and responsive
86 way;

87 (11) Ways to promote and protect the rights and
88 participation of parents, foster parents and children involved in
89 out-of-home care;

90 (12) Ways to certify out-of-state providers to ensure that
91 children who must be placed out-of-state receive high quality
92 services consistent with this state's standards of licensure and
93 rules of operation; and

94 (13) Any other ancillary issue relative to foster care
95 placement.

96 (e) The commission shall report annually to the Legislative
97 Oversight Commission on Health and Human Resources
98 Accountability its conclusions and recommendations, including
99 an implementation plan whereby:

100 (1) Out-of-state placements shall be reduced by at least ten
101 percent per year and by at least fifty percent within three years;

102 (2) Child-serving agencies shall develop joint operating and
103 funding proposals to serve the needs of children and families that
104 cross their jurisdictional boundaries in a more seamless way;

105 (3) Steps shall be taken to obtain all necessary federal plan
106 waivers or amendments in order for agencies to work
107 collaboratively while maximizing the availability of federal
108 funds;

109 (4) Agencies shall enter into memoranda of understanding to
110 assume joint responsibilities;

111 (5) System of care components and cooperative relationships
112 shall be incrementally established at the local, state and regional

113 levels, with links to existing resources, such as family resource
114 networks and regional summits, wherever possible; and

115 (6) Recommendations for changes in fiscal, statutory and
116 regulatory provisions are included for legislative action.

117 (f) The commission shall terminate on December 31, 2015,
118 unless continued by act of the Legislature.

PART II. HOME-BASED FAMILY PRESERVATION ACT

§49-2-201. Findings and purpose.

1 The Legislature finds that there exists a need in this state to
2 assist dysfunctional families by providing nurture and care to
3 those families' children as an alternative to removing children
4 from the families.

5 The Legislature also finds that the family is the primary
6 social institution responsible for meeting the needs of children
7 and that the state has an obligation to assist families in this
8 regard.

9 The Legislature further finds that children have significant
10 emotional and social ties to the natural or surrogate family
11 beyond basic care and nurture for which the family is
12 responsible.

13 The purpose of this article is to establish a pilot program to
14 evaluate the utility of providing intensive intervention with the
15 families of children that are at risk of being removed from the
16 home. For these limited purposes, the department is authorized
17 to use available appropriate funds for that intervention service,
18 but only to the extent that moneys would normally be available
19 for the removal and placement of the particular child at risk.

§49-2-202. When family preservation services required.

1 Home-based family preservation services are required in all
2 cases where the removal of a child or children is seriously being
3 considered, whether from a natural home or a surrogate home,
4 wherein a child or children have lived for a substantial period of
5 time. However, those services are not required when the child
6 appears in imminent danger of serious bodily or serious
7 emotional injury.

§49-2-203. Caseload limits for home-based preservation services.

1 For purposes of this article, no contractor employee of the
2 department may exceed three families during any period of time
3 when that contractor employee is engaged in providing intensive,
4 short term home-based family preservation intervention. In
5 addition, no caseload may exceed six families during any period
6 of time when home-based aftercare is provided pursuant to this
7 article. When providing either type of home-based family
8 preservation services to any family, the department or contractor
9 shall provide trained personnel who shall be available during
10 nonworking hours to assist families on an emergency basis.

§49-2-204. Situational criteria requiring service.

1 The services required by this article shall be made available
2 to any dysfunctional family in which there exists an imminent
3 risk of placement of at least one child outside the home as the
4 result of abuse, neglect, dependency or delinquency or any
5 emotional and behavioral problems. Payment for contractual
6 services shall be on a cost-per-family basis. Any renewal of a
7 contract shall be based on performance.

**§49-2-205. Service delivery through service contracts;
accountability.**

1 The services required by this article which are not practically
2 deliverable directly from the department may be subcontracted

3 to professionally qualified private individuals, associations,
4 agencies, corporations, partnerships or groups. The service
5 provider shall be required to submit monthly activity reports as
6 to any services rendered to the department of human services.
7 The activity reports shall include project evaluation in relation
8 to individual families being served as well as statistical data
9 concerning families that are referred for services which are not
10 served due to unavailability of resources. The costs of program
11 evaluation are an allowable cost consideration in any service
12 contract negotiated in accordance with this article. The
13 department shall conduct a thorough investigation of the
14 contractors utilized by the department pursuant to this article.

§49-2-206. Special services to be provided.

1 The costs of providing special services to families receiving
2 regular services in accordance with this article are allowable to
3 the extent those goods and services are justified pursuant to
4 carrying out the purposes of this article. Those special services
5 may include, but are not limited to, homemaker assistance, food,
6 clothing, educational materials, respite care and recreational or
7 social activities.

§49-2-207. Development of home-based family preservation services.

1 The department is authorized to use appropriate state,
2 federal, and/or private funds within its budget for the provision
3 of family preservation and reunification services. Appropriated
4 state funding made available through capture of additional
5 federal funds shall be utilized to provide family preservation and
6 reunification services as described in this article. Costs of
7 providing home-based services described in this article shall not
8 exceed the costs of out-of-home care which would be incurred
9 otherwise.

PART III. QUALITY IMPROVEMENT AND
RATING SYSTEM FOR CHILD CARE.

§49-2-301. Findings and intent; advisory council.

1 (a) The Legislature finds that:

2 (1) High quality early childhood development substantially
3 improves the intellectual and social potential of children and
4 reduces societal costs;

5 (2) A child care program quality rating and improvement
6 system provides incentives and resources to improve the quality
7 child care programs; and

8 (3) A child care program quality rating and improvement
9 system provides information about the quality of child care
10 programs to parents so they may make more informed decisions
11 about the placement of their children.

12 (b) It is the intent of the Legislature to require the Secretary
13 of the Department of Health and Human Resources promulgate
14 a legislative rule and establish a plan for the phased
15 implementation of a child care program quality rating and
16 improvement system not inconsistent with the provisions of this
17 article.

18 (c) The Secretary of the Department of Health and Human
19 Resources shall create a Quality Rating and Improvement
20 System Advisory Council to provide advice on the development
21 of the rule and plan for the phased implementation of a child
22 care program quality rating and improvement system and the
23 ongoing program review and policies for quality improvement.
24 The secretary shall facilitate meetings of the advisory council.
25 The advisory council shall include representatives from the
26 provider community, advocacy groups, the Legislature,
27 providers of professional development services for the early

28 childhood community, regulatory agencies and others who may
29 be impacted by the creation of a quality rating and improvement
30 system.

31 (d) Nothing in this article requires an appropriation, or any
32 specific level of appropriation, by the Legislature.

§49-2-302. Creation of statewide quality rating system; rule-making; minimum requirements.

1 (a) The Secretary of the Department of Health and Human
2 Resources shall propose rules for legislative approval in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code to implement a quality rating and
5 improvement system. The quality rating and improvement
6 system shall be applicable to licensed child care centers and
7 facilities and registered family child care homes. If other types
8 of child care settings, such as school-age child care programs
9 become licensed after the implementation of a statewide quality
10 rating and improvement system, the secretary may develop
11 quality criteria and incentives that will allow the other types of
12 child care settings to participate in the quality rating and
13 improvement system. The rules shall include, but are not limited
14 to, the following:

15 (1) A four-star rating system for registered family child care
16 homes and a four-star rating system for all licensed programs,
17 including family child care facilities and child care centers, to
18 easily communicate to consumers four progressively higher
19 levels of quality child care. One star indicating meeting the
20 minimum acceptable standard and four stars indicating meeting
21 or exceeding the highest standard. The system shall reflect the
22 cumulative attainment of the standards at each level and all
23 lesser levels. However, any program accredited by the National
24 Association for the Education of Young Children or the National

25 Association for Family Child Care, as applicable, shall
26 automatically be awarded four-star status;

27 (2) Program standards for registered family child care homes
28 and program standards for all licensed programs, including
29 family child care facilities and child care centers, that are each
30 divided into four levels of attributes that progressively improve
31 the quality of child care beginning with basic state registration
32 and licensing requirements at level one, through achievement of
33 a national accreditation by the appropriate organization at level
34 four. Participation beyond the first level is voluntary. The
35 program standards shall be categorized using the West Virginia
36 State Training and Registry System Core Knowledge Areas or its
37 equivalent;

38 (3) Accountability measures that provide for a fair, valid,
39 accurate and reliable assessment of compliance with quality
40 standards, including, but not limited to:

41 (A) Evaluations conducted by trained evaluators with
42 appropriate early childhood education and training on the
43 selected assessment tool and with a demonstrated inter-rater
44 reliability of eighty-five percent or higher. The evaluations shall
45 include an on-site inspection conducted at least annually to
46 determine whether programs are rated correctly and continue to
47 meet the appropriate standards. The evaluations and observations
48 shall be conducted on at least a statistically valid percentage of
49 center classrooms, with a minimum of one class per age group;

50 (B) The use of valid and reliable observation and assessment
51 tools, such as environmental rating scales for early childhood,
52 infant and toddler, school-age care and family child care as
53 appropriate for the particular setting and age group;

54 (C) An annual self-assessment using the proper observation
55 and assessment tool for programs rated at two stars; and

56 (D) Model program improvement planning shall be designed
57 to help programs improve their evaluation results and level of
58 program quality.

59 (b) The rules required pursuant to this section shall include
60 policies relating to the review, reduction, suspension or
61 disqualification of child care programs from the quality rating
62 and improvement system.

63 (c) The rules shall provide for implementation of the
64 statewide quality rating system effective July 1, 2011, subject to
65 section three hundred four of this article.

**§49-2-303. Statewide quality improvement system; financial plan;
staffing requirements; public awareness campaign;
management information system; financial assistance
for child care programs; program staff; child care
consumers.**

1 Attached to the proposed rules required in section three
2 hundred two of this article, the Secretary of the Department of
3 Health and Human Resources shall submit a financial plan to
4 support the implementation of a statewide quality rating and
5 improvement system and help promote quality improvement.
6 The financial plan shall be considered a part of the rule and shall
7 include specific proposals for implementation of the provisions
8 of this section as determined by the secretary. The plan shall
9 address, but is not limited to, the following:

10 (1) State agency staffing requirements may include the
11 following:

12 (A) Highly trained evaluators to monitor the assessment
13 process and ensure inter-rater reliability of eighty-five percent or
14 higher;

15 (B) Technical assistance staff responsible for career
16 advising, accreditation support services, improvement planning,

17 portfolio development and evaluations for improvement
18 planning only. The goal for technical assistance staffing is to
19 ensure that individualized technical assistance is available to
20 participating programs;

21 (C) A person within the department to collaborate with other
22 professional development providers to maximize funding for
23 training, scholarships and professional development. The person
24 filling this position also shall encourage community and
25 technical colleges to provide courses through nontraditional
26 means, such as online training, evening classes and off-campus
27 training;

28 (D) Additional infant and toddler specialists to provide high
29 level professional development for staff caring for infants and to
30 provide on-site assistance with infant and toddler issues;

31 (E) At least one additional training specialist at each of the
32 child care resource and referral agencies to support new training
33 topics and to provide training for school-age child care
34 programs. Training providers, such as the child care resource and
35 referral agencies shall purchase new training programs on topics,
36 such as business management, the Devereux Resiliency Training
37 and Mind in the Making; and

38 (F) Additional staff necessary for program administration;

39 (2) Implementation of a broad public awareness campaign
40 and communication strategies that may include the following:

41 (A) Brochures, internet sites, posters, banners, certificates,
42 decals and pins to educate parents; and

43 (B) Strategies, such as earned media campaigns, paid
44 advertising campaigns, e-mail and internet-based outreach,
45 face-to-face communication with key civic groups and grassroots
46 organizing techniques; and

47 (3) Implementation of an internet-based management
48 information system that meets the following requirements:

49 (A) The system shall allow for multiple agencies to access
50 and input data;

51 (B) The system shall provide the data necessary to determine
52 if the quality enhancements result in improved care and better
53 outcomes for children;

54 (C) The system shall allow access by Department of Health
55 and Human Resources subsidy and licensing staff, child care
56 resource and referral agencies, the agencies that provide training
57 and scholarships, evaluators and the child care programs;

58 (D) The system shall include different security levels in
59 order to comply with the numerous confidentiality requirements;

60 (E) The system shall assist in informing practice;
61 determining training needs; and tracking changes in availability
62 of care, cost of care, changes in wages and education levels; and

63 (F) The system shall provide accountability for child care
64 programs and recipients and assure funds are being used
65 effectively;

66 (4) Financial assistance for child care programs needed to
67 improve learning environments, attain high ratings and sustain
68 long-term quality without passing additional costs on to families
69 that may include, but are not limited to:

70 (A) Assistance to programs in assessment and individual
71 program improvement planning and providing the necessary
72 information, coaching and resources to assist programs to
73 increase their level of quality;

74 (B) Subsidizing participating programs for providing child
75 care services to children of low-income families in accordance
76 with the following:

77 (i) Base payment rates shall be established at the
78 seventy-fifth percentile of market rate; and

79 (ii) A system of tiered reimbursement shall be established
80 which increases the payment rates by a certain amount above the
81 base payment rates in accordance with the rating tier of the child
82 care program;

83 (C) Two types of grants shall be awarded to child care
84 programs in accordance with the following:

85 (i) An incentive grant shall be awarded based on the type of
86 child care program and the level at which the child care program
87 is rated with the types of child care programs having more
88 children and child care programs rated at higher tiers being
89 awarded a larger grant than the types of child care programs
90 having less children and child care programs rated at lower tiers;
91 and

92 (ii) Grants for helping with the cost of national accreditation
93 shall be awarded on an equitable basis.

94 (5) Support for increased salaries and benefits for program
95 staff to increase educational levels essential to improving the
96 quality of care that may include, but are not limited to:

97 (A) Wage supports and benefits provided as an incentive to
98 increase child care programs ratings and as an incentive to
99 increase staff qualifications in accordance with the following:

100 (i) The cost of salary supplements shall be phased in over a
101 five-year period;

102 (ii) The Secretary of the Department of Health and Human
103 Resources shall establish a salary scale for each of the top three
104 rating tiers that varies the salary support based on the education
105 of the care giver and the rating tier of the program; and

106 (iii) Any center with at least a tier two rating that employs at
107 least one staff person participating in the scholarship program
108 required pursuant to paragraph (B) of this subdivision or
109 employs degree staff may apply to the Secretary of the
110 Department of Health and Human Resources for funding to
111 provide health care benefits based on the Teacher Education and
112 Compensation Helps model in which insurance costs are shared
113 among the employees, the employer and the state; and

114 (B) The provision of scholarships and establishment of
115 professional development plans for center staff that would
116 promote increasing the credentials of center staff over a
117 five-year period; and

118 (6) Financial assistance to the child care consumers whose
119 income is at two hundred percent of the federal poverty level or
120 under to help them afford the increased market price of child
121 care resulting from increased quality.

**§49-2-304. Quality rating and improvement system pilot projects;
independent third-party evaluation; modification of
proposed rule and financial plan; report to
Legislature; limitations on implementation.**

1 The secretary shall report annually to the Legislature on the
2 progress on development and implementation of a child care
3 quality rating and improvement system and its impact on
4 improving the quality of child care in the state. The secretary
5 may propose amendments to the rules and financial plan
6 necessary to promote implementation of the quality rating and
7 improvement system and improve the quality of child care and

8 may recommend needed legislation. Nothing in this article
9 requires the implementation of a quality rating and improvement
10 system unless funds are appropriated therefore. The secretary
11 may prioritize the components of the financial plan for
12 implementation and quality improvement for funding purposes.
13 If insufficient funds are appropriated for full implementation of
14 the quality rating and improvement system, the rules shall
15 provide for gradual implementation over a period of several
16 years.

PART IV. CHILDREN'S TRUST FUND.

§49-2-401. Continuation, transfer and renaming of trust fund; funding.

1 (a) The Children's Fund, created for the sole purpose of
2 awarding grants, loans and loan guarantees for child abuse and
3 neglect prevention activities by enactment of chapter
4 twenty-seven, Acts of the Legislature, 1984, as last amended and
5 reenacted by chapter one hundred fifty-nine, Acts of the
6 Legislature, 1999, is hereby continued and renamed the West
7 Virginia Children's Trust Fund. The fund shall be administered
8 by the Commissioner of the Bureau for Children and Families.
9 Gifts, bequests or donations for this purpose, in addition to
10 appropriations to the fund, shall be deposited in the State
11 Treasury in a special revenue account under the control of the
12 Secretary of the Department of Health and Human Resources or
13 his or her designee.

14 (b) Each state taxpayer may voluntarily contribute a portion
15 of the taxpayer's state income tax refund to the Children's Trust
16 Fund by designating the contribution on the state personal
17 income tax return form. The bureau shall approve the wording of
18 the designation on the income tax return form. The State Tax
19 Commissioner shall determine by July 1, of each year the total
20 amount designated pursuant to this subsection and shall report

21 that amount to the State Treasurer, who shall credit that amount
22 to the Children's Trust Fund.

23 (c) All interest accruing from investment of moneys in the
24 Children's Trust Fund shall be credited to the fund. The
25 Legislative Auditor shall conduct an audit of the fund at least
26 every five fiscal years.

27 (d) Grants, loans and loan guarantees may be awarded from
28 the Children's Trust Fund by the Commissioner of the Bureau
29 for Children and Families for child abuse and neglect prevention
30 activities.

31 (e) Upon the effective date of the enactment of this section,
32 all employees, records, responsibilities, obligations, assets and
33 property, of whatever kind and character, of the Governor's
34 Cabinet on Children and Families are hereby transferred to the
35 Bureau for Children and Families within the Department of
36 Health and Human Resources, including, but not limited to, all
37 rights and obligations held by the Governor's Cabinet on
38 Children and Families under any grants, loans or loan guarantees
39 previously awarded from the Children's Trust Fund.

40 (f) All orders, determinations, rules, permits, grants,
41 contracts, certificates, licenses, waivers, bonds, authorizations
42 and privileges which have been issued, made, granted or allowed
43 to become effective by the Governor, by any state department or
44 agency or official thereof, or by a court of competent
45 jurisdiction, in the performance of functions which have been
46 transferred to the Bureau for Children and Families within the
47 Department of Health and Human Resources, and were in effect
48 on the date the transfer occurred continue in effect, for the
49 benefit of the department, according to their terms until
50 modified, terminated, superseded, set aside or revoked in
51 accordance with the law by the Governor, the Secretary of the

52 Department of Health and Human Resources or other authorized
53 official, a court of competent jurisdiction or by operation of law.

PART V. CHILDREN WITH SPECIAL NEEDS.

§49-2-501. Children to whom article applies; intent.

1 It is the intention of this article that services for children
2 with special health care needs shall be extended only to those
3 children for whom adequate care, treatment and rehabilitation
4 are not available from other than public sources.

§49-2-502. Powers of the secretary.

1 In the care and treatment of children with special health care
2 needs the Secretary of the Department of Health and Human
3 Resources shall, so far as funds are available for the following
4 purposes:

5 (1) Locate children with special health care needs requiring
6 medical, surgical or other corrective treatment and provide
7 competent diagnosis to determine the treatment required.

8 (2) Supply to children with special health care needs
9 treatment, including hospitalization and aftercare leading to
10 correction and rehabilitation.

11 (3) Guide and supervise children with special health care
12 needs to assure adequate care and treatment.

§49-2-503. Report of birth of special health care needs child.

1 Within thirty days after the birth of a child with a congenital
2 deformity, the physician, midwife or other person attending the
3 birth shall report to the Department of Health and Human
4 Resources, on forms prescribed by them, the birth of the child.

5 The report shall be solely for the use of the Department of
6 Health and Human Resources and shall not be open for public
7 inspection.

§49-2-504. Assistance by other agencies.

1 So far as practicable, the services and facilities of the State
2 Department of Education, The Division of Vocational
3 Rehabilitation Services and Division of Corrections or their
4 successor organizations shall be available to the Department of
5 Health and Human Resources for the purposes of this article.

§49-2-505. Cost of treatment.

1 All payments from any corporation, association, program or
2 fund providing insurance coverage or other payment for
3 medicine, medical, surgical and hospital treatment, crutches,
4 artificial limbs and those other and additional approved
5 mechanical appliances and devices as may be reasonably
6 required for a child with special health care needs, shall be
7 applied toward the total cost of treatment.

PART VI. WEST VIRGINIA FAMILY SUPPORT PROGRAM.

§49-2-601. Findings; intent.

1 (a) The West Virginia Legislature finds that families are the
2 greatest resource available to individuals with developmental
3 disabilities, and they must be supported in their role as primary
4 caregivers. It further finds that supporting families in their effort
5 to care for their family members at home is more efficient, cost
6 effective and humane than placing the developmentally disabled
7 person in an institutional setting.

8 (b) The Legislature accepts the following as basic principles
9 for providing services to support families of people with
10 developmental disabilities:

11 (1) The quality of life of children with developmental
12 disabilities, their families and communities is enhanced by
13 caring for the children within their own homes. Children with
14 disabilities benefit by growing up in their own families, families
15 benefit by staying together and communities benefit from the
16 inclusion of people with diverse abilities.

17 (2) Adults with developmental disabilities should be
18 afforded the opportunity to make decisions for themselves, live
19 in typical homes and communities and exercise their full rights
20 as citizens. Developmentally disabled adults should have the
21 option of living separately from their families but when this is
22 not the case, families of disabled adults should be provided the
23 support services they need.

24 (3) Services and support for families should be
25 individualized and flexible, should focus on the entire family and
26 should promote the inclusion of people with developmental
27 disabilities in all aspects of school and community life.

28 (4) Families are the best experts about what they need. The
29 service system can best assist families by supporting families as
30 decision makers as opposed to making decisions for them.

31 (c) The Legislature finds that there are at least ten thousand
32 West Virginians with developmental disabilities who live with
33 and are supported by their families, and that the state's policy is
34 to prevent the institutionalization of people with developmental
35 disabilities.

36 (d) To maximize the number of families supported by this
37 program, each family will contribute to the cost of goods and
38 services based on their ability to pay, taking into account their
39 needs and resources.

40 (e) Therefore, it is the intent of the Legislature to initiate,
41 within the resources available, a program of services to support

42 families who are caring for family members with developmental
43 disabilities in their homes.

§49-2-602. Family support services; responsibilities; funds; case management; outreach; differential fees.

1 (a) The regional family support agency, designated under
2 article two of this chapter, shall direct and be responsible for the
3 individual assessment of each developmentally disabled person
4 which it has designated and shall prepare a service plan with the
5 developmentally disabled person's family. The needs and
6 preferences of the family will be the basis for determining what
7 goods and services will be made available within the resources
8 available.

9 (b) The family support program may provide funds to
10 families to purchase goods and services included in the family
11 service plan. Those goods and services related to the care of the
12 developmentally disabled person may include, but are not
13 limited to:

14 (1) Respite care;

15 (2) Personal and attendant care;

16 (3) Child care;

17 (4) Architectural and vehicular modifications;

18 (5) Health-related costs not otherwise covered;

19 (6) Equipment and supplies;

20 (7) Specialized nutrition and clothing;

21 (8) Homemaker services;

22 (9) Transportation;

23 (10) Utility costs;

24 (11) Integrated community activities; and

25 (12) Training and technical assistance.

26 (c) As part of the family support program, the regional
27 family support agency, designated under section six hundred two
28 of this article, shall provide case management for each family to
29 provide information, service coordination and other assistance as
30 needed by the family.

31 (d) The family support program shall assist families of
32 developmentally disabled adults in planning and obtaining
33 community living arrangements, employment services and other
34 resources needed to achieve, to the greatest extent possible,
35 independence, productivity and integration of the
36 developmentally disabled adult into the community.

37 (e) The family support program shall conduct outreach to
38 identify families in need of assistance and shall maintain a
39 waiting list of individuals and families in the event that there are
40 insufficient resources to provide services to all those who request
41 them.

42 (f) The family support program may provide for differential
43 fees for services under the program or for appropriate cost
44 participation by the recipient families consistent with the goals
45 of the program and the overall financial condition of the family.

46 (g) Funds, goods or services provided to eligible families by
47 the family support program under this article shall not be
48 considered as income to those families for any purpose under
49 this code or under the rules and regulations of any agency of
50 state government.

§49-2-603. Eligibility; primary focus.

1 (a) To be eligible for the family support program, a family
2 must have at least one family member who has a developmental
3 disability, as defined in this article, living with the family.

4 (b) The primary focus of the family support program is
5 supporting: (1) Developmentally disabled children, school age
6 and younger, within their families; (2) adults with developmental
7 disabilities who choose to live with their families; and (3) adults
8 with developmental disabilities for whom other community
9 living arrangements are not available and who are living with
10 their families.

**§49-2-604. Program administration; implementation; procedures;
annual evaluation; coordination; plans; grievances;
reports.**

1 (a) The administering agency for the family support program
2 is the Department of Health and Human Resources.

3 (b) The Department of Health and Human Resources shall
4 initially implement the family support program through contracts
5 with an agency within four of the state's behavioral health
6 regions, with the four regions to be determined by the
7 Department of Health and Human Resources in consultation with
8 the state family support council. These regional family support
9 agencies of the family support program will be responsible for
10 implementing this article and subsequent policies for the families
11 of persons with developmental disabilities residing within their
12 respective regions.

13 (c) The Department of Health and Human Resources, in
14 conjunction with the state family support council, shall adopt
15 policies and procedures regarding:

16 (1) Development of annual budgets;

- 17 (2) Program specifications;
- 18 (3) Criteria for awarding contracts for operation of regional
19 family support programs and the role of regional family support
20 councils;
- 21 (4) Annual evaluation of services provided by each regional
22 family support agency, including consumer satisfaction;
- 23 (5) Coordination of the family support program and the use
24 of its funds, throughout the state and within each region, with
25 other publicly funded programs, including Medicaid;
- 26 (6) Performance of family needs assessments and
27 development of family service plans;
- 28 (7) Methodology for allocating resources to families within
29 the funds available; and
- 30 (8) Resolution of grievances filed by families pertaining to
31 actions of the family support program.
- 32 (d) The Department of Health and Human Resources shall
33 submit a report to the Governor and the Legislature on the family
34 support program by September 15, of every year so long as the
35 program is funded.

**§49-2-605. Regional and state family support councils;
membership; meetings; reimbursement of
expenses.**

- 1 (a) Each regional family support agency shall establish a
2 regional family support council comprised of at least seven
3 members, of whom at least a majority shall be persons with
4 developmental disabilities or their parents or primary caregivers.
5 Each regional family support council shall meet at least quarterly
6 to advise the regional family support agency on matters related
7 to local implementation of the family support program and to

8 communicate information and recommendations regarding the
9 family support program to the State Family Support Council.

10 (b) The Secretary of the Department of Health and Human
11 Resources shall appoint a State Family Support Council
12 comprised of at least twenty-two members, of whom at least a
13 majority shall be persons with developmental disabilities or their
14 parents or primary caregivers. A representative elected by each
15 regional council shall serve on the state council. The state
16 council shall also include a representative from each of the
17 following agencies: The State Developmental Disabilities
18 Council, the State Protection and Advocacy Agency, the Center
19 for Excellence in Disabilities, the Office of Special Education,
20 the Behavioral Health Care Providers Association and the Early
21 Intervention Interagency Coordinating Council.

22 (c) The state council shall meet at least quarterly. The state
23 council will participate in the development of program policies
24 and procedures, annual contracts and perform other duties as are
25 necessary for statewide implementation of the family support
26 program.

27 (d) Members of the state and regional councils who are a
28 member of the family or the primary caregiver of a
29 developmentally disabled person shall be reimbursed for travel
30 and lodging expenses incurred in attending official meetings of
31 their councils. Child care expenses related to the
32 developmentally disabled person shall also be reimbursed.
33 Members of regional councils who are eligible for expense
34 reimbursement shall be reimbursed by their respective regional
35 family support agencies.

PART VII. CAREGIVERS CONSENT ACT.

§49-2-701. Caregiver consent for minor's health care; treatment.

1 (a) Except for minor children placed under the custody of the
2 Department of Health and Human Resources pursuant to

3 proceedings established by this chapter, a caregiver who
4 possesses and presents a notarized affidavit pursuant to section
5 seven hundred three of this article may consent on behalf of a
6 minor to health care and treatment.

7 (b) Examination and treatment shall be prescribed by or
8 under the supervision of a physician, advanced practice nurse,
9 dentist or mental health professional licensed to practice in the
10 state.

§49-2-702. Duty of health care facility or practitioner.

1 The decision of a caregiver who possesses and presents a
2 notarized affidavit of caregiver consent for a minor's health care
3 pursuant to section seven hundred three of this article shall be
4 honored by a health care facility or practitioner unless the health
5 care facility or practitioner has actual knowledge that a parent,
6 legal custodian or guardian of a minor has made a contravening
7 decision to consent to or to refuse medical treatment for the
8 minor.

§49-2-703. Affidavit of caregiver consent; requirements.

1 An affidavit of caregiver consent for a minor's health care
2 shall include the following:

3 (1) The caregiver's name and current home address;

4 (2) The caregiver's birth date;

5 (3) The relationship of the caregiver to the minor;

6 (4) The minor's name;

7 (5) The minor's birth date;

8 (6) The length of time the minor has resided with the
9 caregiver;

10 (7) The caregiver's signature under oath affirming the truth
11 of the matter asserted in the affidavit;

12 (8) The signature of the minor's parent, guardian or legal
13 custodian consenting to the caregiver's authority over the
14 minor's health care. The signature of the minor's parent,
15 guardian or legal custodian is not necessary if the affidavit
16 includes the following:

17 (A) A statement that the caregiver has attempted, but has
18 been unable to obtain, the signature of the minor's parent,
19 guardian or legal custodian;

20 (B) A statement that the minor's parent, guardian or legal
21 custodian has not refused to give consent for health care and
22 treatment of the minor child; and

23 (C) A description, in detail, of the attempts the caregiver
24 made to obtain the signature of the minor's parent, guardian or
25 legal custodian; and

26 (9) A statement, as follows:

27 "General Notices:

28 This declaration does not affect the rights of the minor's
29 parent, guardian or legal custodian regarding the care, custody
30 and control of the minor, other than with respect to health care,
31 and does not give the caregiver legal custody of the minor.

32 This affidavit is valid for one year unless the minor no
33 longer resides in the caregiver's home. Furthermore, the minor's
34 parent, guardian or legal custodian may at any time rescind this
35 affidavit of caregiver consent for a minor's health care by
36 providing written notification of the rescission to the appropriate
37 health care professional.

38 A person who relies in good faith on this affidavit of
39 caregiver consent for a minor's health care has no obligation to
40 conduct any further inquiry or investigation and is not subject to
41 civil or criminal liability or to professional disciplinary action
42 because of that reliance."

§49-2-704. Revocation and termination of consent; written notice; validity.

1 (a) The affidavit of caregiver consent for a minor's health
2 care is superseded by written notification from the minor's
3 parent, guardian or legal custodian to the health care
4 professionals providing services to the minor that the affidavit
5 has been rescinded.

6 (b) The affidavit of caregiver consent for a minor's health
7 care is valid for one year unless the minor no longer resides in
8 the caregiver's home or a parent, guardian or legal custodian
9 revokes his or her approval by written notification to the health
10 care professionals providing services to the minor that the
11 affidavit has been rescinded. If a parent, guardian or legal
12 custodian revokes approval, the caregiver shall notify any health
13 care provider or health service plans with which the minor has
14 been involved through the caregiver.

§49-2-705. Good faith reliance on affidavit; applicability.

1 (a) Any person who relies in good faith on the affidavit of
2 caregiver consent for a minor's health care:

3 (1) Has no obligation to conduct any further inquiry or
4 investigation; and

5 (2) Is not subject to civil or criminal liability or to
6 professional disciplinary action because of the reliance.

7 (b) Subsection (a) of this section applies even if medical
8 treatment is provided to a minor in contravention of a decision

9 of a parent, legal custodian or guardian of the minor who signed
10 the affidavit if the person providing care has no actual
11 knowledge of the decision of the parent, legal custodian or
12 guardian.

§49-2-706. Exceptions to applicability.

1 The consent authorized by this section is not applicable for
2 purposes of the Individuals with Disabilities Education Act, 20
3 U.S.C. §1400 *et seq.*, or Section 504 of the Rehabilitation Act of
4 1973, 29 U.S.C. §701.

§49-2-707. Penalty for false statement.

1 A person who knowingly makes a false statement in an
2 affidavit under this article is guilty of a misdemeanor and, upon
3 conviction, shall be fined not more than \$1,000.

§49-2-708. Rule-making authority.

1 The Secretary of the Department of Health and Human
2 Resources is authorized to propose rules necessary to implement
3 this article for legislative approval in accordance with article
4 three, chapter twenty-nine-a of this code.

PART VIII. REPORTS OF CHILDREN SUSPECTED OF ABUSE.

§49-2-801. Purpose.

1 It is the purpose of this article through the complete
2 reporting of child abuse and neglect:

3 (1) To protect the best interests of the child;

4 (2) To offer protective services in order to prevent any
5 further harm to the child or any other children living in the
6 home;

7 (3) To stabilize the home environment, to preserve family
8 life whenever possible;

9 (4) To promote adult responsibility for protecting children;
10 and

11 (5) To encourage cooperation among the states to prevent
12 future incidents of child abuse and neglect and in dealing with
13 the problems of child abuse and neglect.

**§49-2-802. Establishment of child protective services; general
duties and powers; administrative procedure;
immunity from civil liability; cooperation of other
state agencies.**

1 (a) The department shall establish or designate in every
2 county a local child protective services office to perform the
3 duties and functions set forth in this article.

4 (b) The local child protective services office shall investigate
5 all reports of child abuse or neglect. Under no circumstances
6 may investigating personnel be relatives of the accused, the child
7 or the families involved. In accordance with the local plan for
8 child protective services, it shall provide protective services to
9 prevent further abuse or neglect of children and provide for or
10 arrange for and coordinate and monitor the provision of those
11 services necessary to ensure the safety of children. The local
12 child protective services office shall be organized to maximize
13 the continuity of responsibility, care and service of individual
14 workers for individual children and families. Under no
15 circumstances may the secretary or his or her designee
16 promulgate rules or establish any policy which restricts the scope
17 or types of alleged abuse or neglect of minor children which are
18 to be investigated or the provision of appropriate and available
19 services.

20 (c) Each local child protective services office shall:

21 (1) Receive or arrange for the receipt of all reports of
22 children known or suspected to be abused or neglected on a
23 twenty-four hour, seven-day-a-week basis and cross-file all
24 reports under the names of the children, the family and any
25 person substantiated as being an abuser or neglecter by
26 investigation of the Department of Health and Human
27 Resources, with use of cross-filing of the person's name limited
28 to the internal use of the department;

29 (2) Provide or arrange for emergency children's services to
30 be available at all times;

31 (3) Upon notification of suspected child abuse or neglect,
32 commence or cause to be commenced a thorough investigation
33 of the report and the child's environment. As a part of this
34 response, within fourteen days there shall be a face-to-face
35 interview with the child or children and the development of a
36 protection plan, if necessary for the safety or health of the child,
37 which may involve law-enforcement officers or the court;

38 (4) Respond immediately to all allegations of imminent
39 danger to the physical well-being of the child or of serious
40 physical abuse. As a part of this response, within seventy-two
41 hours there shall be a face-to-face interview with the child or
42 children and the development of a protection plan, which may
43 involve law-enforcement officers or the court; and

44 (5) In addition to any other requirements imposed by this
45 section, when any matter regarding child custody is pending, the
46 circuit court or family court may refer allegations of child abuse
47 and neglect to the local child protective services office for
48 investigation of the allegations as defined by this chapter and
49 require the local child protective services office to submit a
50 written report of the investigation to the referring circuit court or
51 family court within the time frames set forth by the circuit court
52 or family court.

53 (d) In those cases in which the local child protective services
54 office determines that the best interests of the child require court
55 action, the local child protective services office shall initiate the
56 appropriate legal proceeding.

57 (e) The local child protective services office shall be
58 responsible for providing, directing or coordinating the
59 appropriate and timely delivery of services to any child
60 suspected or known to be abused or neglected, including services
61 to the child's family and those responsible for the child's care.

62 (f) To carry out the purposes of this article, all departments,
63 boards, bureaus and other agencies of the state or any of its
64 political subdivisions and all agencies providing services under
65 the local child protective services plan shall, upon request,
66 provide to the local child protective services office any
67 assistance and information as will enable it to fulfill its
68 responsibilities.

69 (g)(1) In order to obtain information regarding the location
70 of a child who is the subject of an allegation of abuse or neglect,
71 the Secretary of the Department of Health and Human Resources
72 may serve, by certified mail or personal service, an
73 administrative subpoena on any corporation, partnership,
74 business or organization for the production of information
75 leading to determining the location of the child.

76 (2) In case of disobedience to the subpoena, in compelling
77 the production of documents, the secretary may invoke the aid
78 of:

79 (A) The circuit court with jurisdiction over the served party
80 if the person served is a resident; or

81 (B) The circuit court of the county in which the local child
82 protective services office conducting the investigation is located
83 if the person served is a nonresident.

84 (3) A circuit court shall not enforce an administrative
85 subpoena unless it finds that:

86 (A) The investigation is one the Division of Child Protective
87 Services is authorized to make and is being conducted pursuant
88 to a legitimate purpose;

89 (B) The inquiry is relevant to that purpose;

90 (C) The inquiry is not too broad or indefinite;

91 (D) The information sought is not already in the possession
92 of the Division of Child Protective Services; and

93 (E) Any administrative steps required by law have been
94 followed.

95 (4) If circumstances arise where the secretary, or his or her
96 designee, determines it necessary to compel an individual to
97 provide information regarding the location of a child who is the
98 subject of an allegation of abuse or neglect, the secretary, or his
99 or her designee, may seek a subpoena from the circuit court with
100 jurisdiction over the individual from whom the information is
101 sought.

102 (h) No child protective services caseworker may be held
103 personally liable for any professional decision or action taken
104 pursuant to that decision in the performance of his or her official
105 duties as set forth in this section or agency rules promulgated
106 thereupon. However, nothing in this subsection protects any
107 child protective services worker from any liability arising from
108 the operation of a motor vehicle or for any loss caused by gross
109 negligence, willful and wanton misconduct or intentional
110 misconduct.

***§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.**

1 (a) Any medical, dental or mental health professional,
2 Christian Science practitioner, religious healer, school teacher or
3 other school personnel, social service worker, child care or foster
4 care worker, emergency medical services personnel, peace
5 officer or law-enforcement official, humane officer, member of
6 the clergy, circuit court judge, family court judge, employee of
7 the Division of Juvenile Services, magistrate, youth camp
8 administrator or counselor, employee, coach or volunteer of an
9 entity that provides organized activities for children, or
10 commercial film or photographic print processor who has
11 reasonable cause to suspect that a child is neglected or abused or
12 observes the child being subjected to conditions that are likely to
13 result in abuse or neglect shall immediately, and not more than
14 forty-eight hours after suspecting this abuse or neglect, report the
15 circumstances or cause a report to be made to the Department of
16 Health and Human Resources. In any case where the reporter
17 believes that the child suffered serious physical abuse or sexual
18 abuse or sexual assault, the reporter shall also immediately
19 report, or cause a report to be made, to the State Police and any
20 law-enforcement agency having jurisdiction to investigate the
21 complaint. Any person required to report under this article who
22 is a member of the staff or volunteer of a public or private
23 institution, school, entity that provides organized activities for
24 children, facility or agency shall also immediately notify the
25 person in charge of the institution, school, entity that provides
26 organized activities for children, facility or agency, or a
27 designated agent thereof, who may supplement the report or
28 cause an additional report to be made.

* **NOTE:** This section was also amended by Com. Sub. For H. B. 2939
(Chapter 47) which passed subsequent to this Act.

29 (b) Any person over the age of eighteen who receives a
30 disclosure from a credible witness or observes any sexual abuse
31 or sexual assault of a child, shall immediately, and not more than
32 forty-eight hours after receiving that disclosure or observing the
33 sexual abuse or sexual assault, report the circumstances or cause
34 a report to be made to the Department of Health and Human
35 Resources or the State Police or other law-enforcement agency
36 having jurisdiction to investigate the report. In the event that the
37 individual receiving the disclosure or observing the sexual abuse
38 or sexual assault has a good faith belief that the reporting of the
39 event to the police would expose either the reporter, the subject
40 child, the reporter's children or other children in the subject
41 child's household to an increased threat of serious bodily injury,
42 the individual may delay making the report while he or she
43 undertakes measures to remove themselves or the affected
44 children from the perceived threat of additional harm and the
45 individual makes the report as soon as practicable after the threat
46 of harm has been reduced. The law-enforcement agency that
47 receives a report under this subsection shall report the
48 allegations to the Department of Health and Human Resources
49 and coordinate with any other law-enforcement agency, as
50 necessary to investigate the report.

51 (c) Nothing in this article is intended to prevent individuals
52 from reporting suspected abuse or neglect on their own behalf.
53 In addition to those persons and officials specifically required to
54 report situations involving suspected abuse or neglect of
55 children, any other person may make a report if that person has
56 reasonable cause to suspect that a child has been abused or
57 neglected in a home or institution or observes the child being
58 subjected to conditions or circumstances that would reasonably
59 result in abuse or neglect.

§49-2-804. Notification of disposition of reports.

1 The Department of Health and Human Resources shall
2 continue to develop, update and implement a procedure to notify

3 any person mandated to report suspected child abuse and neglect
4 pursuant to section eight hundred three of this article, of whether
5 an investigation into the reported suspected abuse or neglect has
6 been initiated and when the investigation is completed.

§49-2-805. Educational programs; requirements.

1 Subject to appropriation in the budget, the department shall
2 conduct educational and training programs for persons required
3 to report suspected abuse or neglect, and the general public, as
4 well as implement evidence-based programs that reduce
5 incidents of child maltreatment including sexual abuse. Training
6 for persons require to report and the general public shall include:

7 (1) Indicators of child abuse and neglect;

8 (2) Tactics used by sexual abusers;

9 (3) How and when to make a report; and

10 (4) Protective factors that prevent abuse and neglect in order
11 to promote adult responsibility for protecting children,
12 encourage maximum reporting of child abuse and neglect, and
13 to improve communication, cooperation and coordination among
14 all agencies involved in the identification, prevention and
15 treatment of the abuse and neglect of children.

**§49-2-806. Mandatory reporting of suspected animal cruelty by
child protective service workers.**

1 In the event a child protective service worker, in response to
2 a report mandated by section eight hundred two and eight
3 hundred three of this article, forms a reasonable suspicion that an
4 animal is the victim of cruel or inhumane treatment, he or she
5 shall report the suspicion and the basis therefor to the county
6 humane officer provided under section one, article ten, chapter
7 seven of this code within twenty-four hours of the response to
8 the report.

§49-2-807. Mandatory reporting to medical examiner or coroner; postmortem investigation.

1 Any person or official who is required pursuant to section
2 eight hundred three of this article to report cases of suspected
3 child abuse or neglect and who has reasonable cause to suspect
4 that a child has died as a result of child abuse or neglect, shall
5 report that fact to the appropriate medical examiner or coroner.
6 Upon the receipt of that report, the medical examiner or coroner
7 shall cause an investigation to be made and report his or her
8 findings to the police, the appropriate prosecuting attorney, the
9 local child protective service agency and, if the institution
10 making a report is a hospital, to the hospital.

§49-2-808. Photographs and X rays.

1 Any person required to report cases of children suspected of
2 being abused and neglected may take or cause to be taken, at
3 public expense, photographs of the areas of trauma visible on a
4 child and, if medically indicated, cause to be performed
5 radiological examinations of the child. Any photographs or X
6 rays taken shall be sent to the appropriate child protective
7 service as soon as possible.

§49-2-809. Reporting procedures.

1 (a) Reports of child abuse and neglect pursuant to this article
2 shall be made immediately by telephone to the local department
3 child protective service agency and shall be followed by a
4 written report within forty-eight hours if so requested by the
5 receiving agency. The state department shall establish and
6 maintain a twenty-four hour, seven-day-a-week telephone
7 number to receive those calls reporting suspected or known child
8 abuse or neglect.

9 (b) A copy of any report of serious physical abuse, sexual
10 abuse or assault shall be forwarded by the department to the

11 appropriate law-enforcement agency, the prosecuting attorney or
12 the coroner or medical examiner's office. All reports under this
13 article are confidential. Reports of known or suspected
14 institutional child abuse or neglect shall be made and received as
15 all other reports made pursuant to this article.

§49-2-810. Immunity from liability.

1 Any person, official or institution participating in good faith
2 in any act permitted or required by this article are immune from
3 any civil or criminal liability that otherwise might result by
4 reason of those actions.

§49-2-811. Abrogation of privileged communications; exception.

1 The privileged quality of communications between husband
2 and wife and between any professional person and his or her
3 patient or his or her client, except that between attorney and
4 client, is hereby abrogated in situations involving suspected or
5 known child abuse or neglect.

***§49-2-812. Failure to report; penalty.**

1 Any person, official or institution required by this article to
2 report a case involving a child known or suspected to be abused
3 or neglected, or required by section eight hundred nine of this
4 article to forward a copy of a report of serious injury, who
5 knowingly fails to do so or knowingly prevents another person
6 acting reasonably from doing so, is guilty of a misdemeanor and,
7 upon conviction, shall be confined in jail not more than thirty
8 days or fined not more than \$1,000, or both fined and confined.

§49-2-813. Statistical index; reports.

1 The Department of Health and Human Resources shall
2 maintain a statewide child abuse and neglect statistical index of

* **NOTE:** This section was also amended by Com. Sub. For H. B. 2939
(Chapter 47) which passed subsequent to this Act.

3 all substantiated allegations of child abuse or neglect cases to
4 include information contained in the reports required under this
5 article and any other information considered appropriate by the
6 Secretary of the Department of Health and Human Resources.
7 Nothing in the statistical data index maintained by the
8 Department of Health and Human Resources may contain
9 information of a specific nature that would identify individual
10 cases or persons. Notwithstanding section two hundred one,
11 article four of this chapter, the Department of Health and Human
12 Resources shall provide copies of the statistical data maintained
13 pursuant to this subsection to the State Police child abuse and
14 neglect investigations unit to carry out its responsibilities to
15 protect children from abuse and neglect.

PART IX. GENERAL AUTHORITY AND DUTIES
OF THE DIVISION OF JUVENILE SERVICES.

§49-2-901. Policy; cooperation.

1 (a) It is the policy of the state to:

2 (1) Provide a coordinated continuum of care for its children
3 who have been charged with an offense which would be a crime
4 if committed by an adult, whether they are taken into custody
5 and securely detained or released pending adjudication by the
6 court; and

7 (2) Ensure the safe and efficient custody of a securely
8 detained child through the entire juvenile justice process, and
9 this can best be accomplished by the state by providing for
10 cooperation and coordination between the agencies of
11 government which are charged with responsibilities for the
12 children of the state.

13 (b) When any juvenile is ordered by the court to be
14 transferred from the custody of one of these agencies into the
15 custody of the other, the Department of Health and Human

16 Resources and the Division of Juvenile Services shall cooperate
17 with each other to the maximum extent necessary in order to
18 ease the child's transition and to reduce unnecessary cost,
19 duplication and delay.

**§49-2-902. Division of Juvenile Services; transfer of functions;
juvenile placement.**

1 (a) The Division of Juvenile Services is created within the
2 Department of Military Affairs and Public Safety. The director
3 shall be appointed by the Governor with the advice and consent
4 of the Senate and shall be responsible for the control and
5 supervision of each of its offices. The director may appoint
6 deputy directors and assign them duties as may be necessary for
7 the efficient management and operation of the division.

8 (b) The Division of Juvenile Services consists, at a
9 minimum, of three subdivisions:

10 (1) The Office of Juvenile Detention, which is responsible
11 for operating and maintaining centers for the predispositional
12 detention of juveniles, including juveniles who have been
13 transferred to adult criminal jurisdiction pursuant to part eight,
14 article four of this chapter and juveniles who are awaiting
15 transfer to a juvenile corrections facility;

16 (2) The Office of Juvenile Corrections, which is also
17 responsible for operating and maintaining juvenile corrections
18 facilities; and

19 (3) The Office of Community-Based Services, shall provide
20 at a minimum, masters level therapy services; family, individual
21 and group counseling; community service activities;
22 transportation; and aftercare programs.

23 (c) Notwithstanding any provisions of this code to the
24 contrary, whenever a juvenile is ordered into the custody of the

25 Division of Juvenile Services, the director may place the juvenile
26 while he or she is in the division's custody at whichever facility
27 operated by the division is deemed by the director to be most
28 appropriate considering the juvenile's well-being and any
29 recommendations of the court placing the juvenile in the
30 division's custody.

**§49-2-903. Powers and duties; comprehensive strategy;
cooperation.**

1 The Division of Juvenile Services has the following duties
2 as to juveniles in detention facilities or juvenile corrections
3 facilities:

4 (1) Cooperating with the United States Department of Justice
5 in operating, maintaining and improving juvenile correction
6 facilities and predispositional detention centers, complying with
7 regulations thereof, and receiving and expending federal funds
8 for the services;

9 (2) Providing care for children needing secure detention
10 pending disposition by a court having juvenile jurisdiction or
11 temporary care following a court action;

12 (3) Assigning the necessary personnel and providing
13 adequate space for the support and operation of any facility
14 providing for the secure detention of children committed to the
15 care of the Division of Juvenile Services;

16 (4) Proposing rules which outline policies and procedures
17 governing the operation of correctional, detention and other
18 facilities in its division wherein juveniles may be securely
19 housed;

20 (5) Assigning the necessary personnel and providing
21 adequate space for the support and operation of its facilities;

22 (6) Developing a comprehensive plan to maintain and
23 improve a unified state system of regional predispositional
24 detention centers for juveniles;

25 (7) Working in cooperation with the Department of Health
26 and Human Resources in establishing, maintaining, and
27 continuously refining and developing a balanced and
28 comprehensive state program for children who have been
29 adjudicated delinquent;

30 (8) In cooperation with the Department of Health and
31 Human Resources establishing programs and services within
32 available funds, designed to:

33 (A) Prevent juvenile delinquency;

34 (B) To divert juveniles from the juvenile justice system;

35 (C) To provide community-based alternatives to juvenile
36 detention and correctional facilities; and

37 (D) To encourage a diversity of alternatives within the
38 juvenile justice system;

39 Working in collaboration with the Department of Health and
40 Human Resources, the Division of Juvenile Services shall
41 employ a comprehensive strategy for the social and rehabilitative
42 programming and treatment of juveniles, consistent with the
43 principles adopted by the Office of Juvenile Justice and
44 Delinquency Prevention of the Office of Justice Programs of the
45 United States Department of Justice.

**§49-2-904. Rules for specialized training for juvenile corrections
officers and detention center employees.**

1 The Division of Juvenile Services shall propose rules for
2 Legislative approval pursuant to chapter twenty-nine-a of this

3 code, which require juvenile corrections officers and detention
4 center employees to complete specialized training and
5 certification. The training programs shall meet the standards of
6 those offered or endorsed by the Office of Juvenile Justice and
7 Delinquency Prevention of the Office of Justice Programs of the
8 United States Department of Justice.

§49-2-905. Juvenile detention and corrections facility personnel.

1 (a) All persons employed at a juvenile detention or
2 corrections facility shall be employed at a salary and with
3 benefits consistent with the approved plan of compensation of
4 the Division of Personnel, created under section five, article six,
5 chapter twenty-nine of this code; all employees will also be
6 covered by the policies and procedures of the West Virginia
7 Public Employees Grievance Board, created under article two,
8 chapter six-c of this code and the classified service protection
9 policies of the Division of Personnel.

10 (b) The Division of Juvenile Services of the Department of
11 Military Affairs and Public Safety is authorized to assign the
12 necessary personnel and provide adequate space for the support
13 and operation of any facility operated by the Division of Juvenile
14 Services of the Department of Military Affairs and Public Safety
15 providing for the detention of children as provided in this article,
16 subject to and not inconsistent with the appropriation and
17 availability of funds.

**§49-2-906. Medical and other treatment of juveniles in custody of
the division; consent; service providers; medical
care; pregnant inmates; claims processing and
administration by the department; authorization of
cooperative agreements.**

1 (a) Notwithstanding any other provision of law to the
2 contrary, the director, or his or her designee, is hereby authorized

3 to consent to the medical or other treatment of any juvenile in
4 the legal or physical custody of the director or the division.

5 (b) In providing or arranging for the necessary medical and
6 other care and treatment of juveniles committed to the division's
7 custody, the director shall use service providers who provide the
8 same or similar services to juveniles under existing contracts
9 with the Department of Health and Human Resources. In order
10 to obtain the most advantageous reimbursement rates, to
11 capitalize on an economy of scale and to avoid duplicative
12 systems and procedures, the department shall administer and
13 process all claims for medical or other treatment of juveniles
14 committed to the division's custody.

15 (c) In providing or arranging for the necessary medical and
16 other care and treatment of juveniles committed to the division's
17 custody, the director shall assure that pregnant inmates will not
18 be restrained after reaching the second trimester of pregnancy
19 until the end of the pregnancy. However, if the inmate, based
20 upon her classification, discipline history or other factors
21 deemed relevant by the director poses a threat of escape, or to
22 the safety of herself, the public, staff, or the unborn child, the
23 inmate may be restrained in a manner reasonably necessary.
24 Additionally, that prior to directing the application of restraints
25 and where there is no threat to the safety of the inmate, the
26 public, staff or the fetus, the director or designee shall consult
27 with an appropriate health care professional to assure that the
28 manner of restraint will not pose an unreasonable risk of harm to
29 the inmate or the fetus.

30 (d) For purposes of implementing the mandates of this
31 section, the director is hereby authorized and directed to enter
32 into any necessary agreements with the Department of Health
33 and Human Resources. An agreement will include, at a
34 minimum, for the direct and incidental costs associated with that
35 care and treatment to be paid by the Division of Juvenile
36 Services.

***§49-2-907. Examination, diagnosis, classification and treatment; period of custody.**

1 (a) As a part of the dispositional proceeding for a juvenile
2 who has been adjudicated delinquent, the court may, upon its
3 own motion or upon request of counsel, order the juvenile to be
4 delivered into the custody of the Director of the Division of
5 Juvenile Services, who shall cause the juvenile to be transferred
6 to a juvenile diagnostic center for a period not to exceed sixty
7 days. During this period, the juvenile will undergo examination,
8 diagnosis, classification and a complete medical examination
9 and shall at all times be kept apart from the general juvenile
10 population in the director's custody.

11 (b) During the examination period established by subsection
12 (a) of this section, the director, or his or her designee, shall
13 convene and direct a multidisciplinary treatment team for the
14 juvenile which team will include the juvenile, if appropriate, the
15 juvenile's probation officer, the juvenile's social worker, if any,
16 the juvenile's custodial parent or parents, the juvenile's
17 guardian, attorneys representing the juvenile or the parents, the
18 guardian ad litem, if any, the prosecuting attorney and an
19 appropriate school official or representative. The team may also
20 include, where appropriate, a court-appointed special advocate,
21 a member of a child advocacy center and any other person who
22 may assist in providing recommendations for the particular
23 needs of the juvenile and the family.

24 (c) Not later than sixty days after commitment pursuant to
25 this section the juvenile shall be remanded and delivered to the
26 custody of the director, an appropriate agency or any other
27 person that the court by its order directs. Within ten days after
28 the end of the examination, diagnosis and classification, the

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150) which passed subsequent to this Act.

29 Director of the Division of Juvenile Services shall make or cause
30 to be made a report to the court containing the results, findings,
31 conclusions and recommendations of the multidisciplinary team
32 with respect to that juvenile.

**§49-2-908. Educational services for juveniles placed in
predispositional and postdispositional facilities;
authorization; cooperation; rule making.**

1 (a) The State Board of Education is authorized to provide for
2 adequate and appropriate education opportunities for juveniles
3 placed in secure predispositional or post dispositional centers
4 operated by or under contract with the Division of Juvenile
5 Services.

6 (b) Subject to appropriations by the Legislature, the state
7 board is authorized:

8 (1) To provide education programs and services for juveniles
9 on the grounds of secure predispositional or postdispositional
10 centers;

11 (2) To hire classroom teachers and other school personnel
12 necessary to provide adequate and appropriate education
13 opportunities to these juveniles; and

14 (3) To provide education services for the detained juveniles
15 on a twelve-month basis.

16 (c) The Division of Juvenile Services shall cooperate with
17 the state board and the state superintendent in the establishment
18 and maintenance of education programs authorized under this
19 section. Subject to appropriations by the Legislature, the
20 Division of Juvenile Services shall provide, or cause to be
21 provided, adequate space and facilities for the education
22 programs. The state board may not be required to construct,
23 improve or maintain any building, other improvement to real

24 estate or fixtures attached thereto at any secure predispositional
25 detention center for the purpose of establishing and maintaining
26 an education program.

27 (d) The state board may develop and approve rules in
28 accordance with article three-a, chapter twenty-nine-a of this
29 code for the education of juveniles in secure predispositional
30 detention centers.

§49-2-909. Arrest authority of juvenile correctional and detention officers.

1 (a) Persons employed by the Division of Juvenile Services
2 as juvenile correctional officers are authorized and empowered
3 to arrest persons already in the custody of the Division of
4 Juvenile Services for violations of law that occur in the officer's
5 presence, including escape.

6 (b) Nothing in this section may be construed as to make a
7 juvenile correctional officer employed by the Division of
8 Juvenile Services a law-enforcement officer as defined in section
9 one, article twenty-nine, chapter thirty of this code.

§49-2-910. Juvenile trustee accounts and funds, earnings and personal property of juveniles; return of property; reports.

1 (a) The Director of Juvenile Services may establish at each
2 facility under his or her jurisdiction a "Juvenile Trustee Fund".
3 The administrator or designee of each facility may receive and
4 take charge of the money and personal property, as defined by
5 policy, of all juveniles in his or her facility and all money or
6 personal property, as defined by policy, sent to the juveniles or
7 earned by the juveniles as compensation for work performed
8 while they are domiciled there. The administrator or designee
9 shall credit the money and earnings to the juveniles entitled to it
10 and shall keep an accurate account of all the money and personal

11 property so received, which account is subject to examination by
12 the Director of Juvenile Services and the Assistant Director of
13 Budget and Finance of the Division of Juvenile Services. The
14 administrator or designee shall deposit the moneys in one or
15 more responsible banks in accounts to be designated a “Juvenile
16 Trustee Fund”.

17 (b) The administrator or designee shall keep in an account
18 for all juveniles at least ten percent of all money earned during
19 the juveniles commitment and pay the money to the juvenile at
20 the time of the juvenile’s release. The administrator or designee
21 may authorize the juvenile to withdraw money from his or her
22 mandatory savings for the purpose of preparing the juvenile for
23 reentry into society.

24 (c) The administrator or designee shall deliver to the juvenile
25 at the time he or she leaves the facility, or as soon as practicable
26 after departure, all personal property, moneys and earnings then
27 credited to the juvenile, or in case of the death of the juvenile
28 before authorized release from the facility, the administrator or
29 designee shall deliver the property to the juvenile’s personal
30 representative. If a conservator is appointed for the juvenile
31 while he or she is domiciled at the facility, the administrator or
32 designee shall deliver to the conservator, upon proper demand,
33 all moneys and personal property belonging to the juvenile that
34 are in the custody of the administrator.

35 (d) If any money is credited to a former juvenile resident
36 after remittance of the sum of money as provided in subsection
37 (c) of this section, the administrator or designee shall mail the
38 funds to the former juvenile resident’s last known address. If the
39 funds are returned to the facility, the administrator or designee
40 will forward those funds to the Division of Juvenile Service’s
41 Assistant Director of Budget and Finance to submit the funds to
42 the State Treasurer’s Office-Unclaimed Property Division.

43 (e) The facility shall compile a monthly report that
44 specifically documents juvenile trustee fund receipts and
45 expenditures and submit the reconciled monthly bank statements
46 to the Division of Juvenile Service's Assistant Director of
47 Budget and Finance.

§49-2-911. Juvenile benefit funds; uses; reports.

1 (a) There is hereby established a special revenue account in
2 the State Treasury for each juvenile benefit fund established by
3 the director. Moneys received by an institution for deposit in an
4 juvenile benefit fund shall be deposited with the State Treasurer
5 to be credited to the special revenue account created for the
6 institution's juvenile benefit fund. Moneys in a special revenue
7 account established for a juvenile benefit fund may be expended
8 by the institution for the purposes set forth in this section.

9 (b) Moneys in an account established for a juvenile benefit
10 fund may be expended by the facility for the purposes set forth
11 in this section. Moneys to be deposited into a juvenile benefit
12 fund consist of:

13 (1) All profit from the exchange or commissary operation
14 and, if the commissary is operated by a vendor, whether a public
15 or private entity, the profit is the negotiated commission paid to
16 the Division of Juvenile Services by the vendor;

17 (2) All net proceeds from vending machines used for
18 juvenile resident visitation;

19 (3) All proceeds from contracted juvenile resident telephone
20 commissions;

21 (4) Any funds that may be assigned by juveniles or donated
22 to the facility by the general public or a service organization on
23 behalf of all the juveniles; and

24 (5) Any funds confiscated considered contraband.

25 (c) The juvenile benefit fund may only be used for the
26 following purposes at juvenile facilities:

27 (1) Open-house visitation functions or other nonroutine
28 campus-wide activities which will enhance programming goals
29 of the facility;

30 (2) Holiday functions which may include decorations, food
31 and gifts for residents or family of residents;

32 (3) Rental of videos;

33 (4) Payment of video license;

34 (5) Supplemental supplies and equipment which will enrich
35 the facilities' program activities;

36 (6) Hardship needs for juvenile residents if approved by the
37 Division of Juvenile Services Director; and

38 (7) Any special activities or rewards for residents.

39 (d) The facility shall compile a monthly report that
40 specifically documents juvenile benefit fund receipts and
41 expenditures and submit the reconciled monthly bank statements
42 to the Division of Juvenile Services Assistant Director of Budget
43 and Finance.

PART X. WEST VIRGINIA
JUVENILE OFFENDER REHABILITATION ACT.

§49-2-1001. Purpose; intent.

1 It is the intent of the Legislature to provide for the creation
2 of all reasonable means and methods that can be established by
3 a humane and enlightened state, solicitous of the welfare of its
4 children, for the prevention of delinquency and for the care and
5 rehabilitation of juvenile delinquents and status offenders. It is

6 further the intent of the Legislature that this state, through the
7 Department of Health and Human Resources and the Division of
8 Juvenile Services, establish, maintain, and continuously refine
9 and develop, a balanced and comprehensive state program for
10 juveniles who are potentially delinquent or are status offenders
11 or juvenile delinquents in the care or custody of the department.

***§49-2-1002. Responsibilities of the Department of Health and
Human Resources and Division of Juvenile
Services of the Department of Military Affairs
and Public Safety; programs and services;
rehabilitation; cooperative agreements.**

1 (a) The Department of Health and Human Resources and the
2 Division of Juvenile Services of the Department of Military
3 Affairs and Public Safety shall establish programs and services
4 designed to prevent juvenile delinquency, to divert juveniles
5 from the juvenile justice system, to provide community-based
6 alternatives to juvenile detention and correctional facilities and
7 to encourage a diversity of alternatives within the child welfare
8 and juvenile justice system. The development, maintenance and
9 expansion of programs and services may include, but not be
10 limited to, the following:

11 (1) Community-based programs and services for the
12 prevention and treatment of juvenile delinquency through the
13 development of foster-care and shelter-care homes, group
14 homes, halfway houses, homemaker and home health services,
15 twenty-four hour intake screening, volunteer and crisis home
16 programs, day treatment and any other designated
17 community-based diagnostic, treatment or rehabilitative service;

18 (2) Community-based programs and services to work with
19 parents and other family members to maintain and strengthen the

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.

20 family unit so that the juvenile may be retained in his or her
21 home;

22 (3) Youth service bureaus and other community-based
23 programs to divert youth from the juvenile court or to support,
24 counsel, or provide work and recreational opportunities for status
25 offenders, juvenile delinquents and other youth to help prevent
26 delinquency;

27 (4) Projects designed to develop and implement programs
28 stressing advocacy activities aimed at improving services for and
29 protecting rights of youth affected by the juvenile justice system;

30 (5) Educational programs or supportive services designed to
31 encourage status offenders, juvenile delinquents, and other youth
32 to remain in elementary and secondary schools or in alternative
33 learning situations;

34 (6) Expanded use of professional and paraprofessional
35 personnel and volunteers to work effectively with youth;

36 (7) Youth initiated programs and outreach programs
37 designed to assist youth who otherwise would not be reached by
38 traditional youth assistance programs;

39 (8) A statewide program designed to reduce the number of
40 commitments of juveniles to any form of juvenile facility as a
41 percentage of the state juvenile population; to increase the use of
42 nonsecure community-based facilities as a percentage of total
43 commitments to juvenile facilities; and to discourage the use of
44 secure incarceration and detention; and

45 (9) Transitional programs designed to assist youth who are
46 in the custody of the state upon reaching the age of eighteen
47 years.

48 (b)(1) The Department of Health and Human Resources shall
49 establish an individualized program of rehabilitation for each
50 status offender referred to the department and to each alleged

51 juvenile delinquent referred to the department after being
52 allowed a preadjudicatory community supervision period by the
53 juvenile court, and for each adjudicated juvenile delinquent who,
54 after adjudication, is referred to the department for investigation
55 or treatment or whose custody is vested in the department.

56 (2) Individualized program of rehabilitation shall take into
57 account the programs and services to be provided by other public
58 or private agencies or personnel which are available in the
59 community to deal with the circumstances of the particular
60 juvenile.

61 (3) For alleged juvenile delinquents and status offenders,
62 those individualized program of rehabilitation shall be furnished
63 to the juvenile court and made available to counsel for the
64 juvenile; it may be modified from time to time at the direction of
65 the department or by order of the juvenile court.

66 (4) The department may develop an individualized program
67 of rehabilitation for any juvenile referred for noncustodial
68 counseling pursuant to section seven hundred two, article four of
69 this chapter, or for any other juvenile upon the request of a
70 public or private agency.

71 (c) The Department of Health and Human Resources and the
72 Division of Juvenile Services are directed to enter into
73 cooperative arrangements and agreements with each other and
74 with private agencies or with agencies of the state and its
75 political subdivisions to fulfill their respective duties under this
76 article and chapter.

***§49-2-1003. Rehabilitative facilities for status offenders;
requirements; educational instruction.**

1 (a) The Department of Health and Human Resources shall
2 establish and maintain one or more rehabilitative facilities to be

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.

3 used exclusively for the lawful custody of status offenders. Each
4 facility will be a nonsecure facility having as its purpose the
5 rehabilitation of status offenders. The facility will have a bed
6 capacity for not more than twenty juveniles, and shall minimize
7 the institutional atmosphere and prepare the juvenile for
8 reintegration into the community.

9 (b) Rehabilitative programs and services shall be provided
10 by or through each facility and may include, but not be limited
11 to, medical, educational, vocational, social and psychological
12 guidance, training, counseling, alcoholism treatment, drug
13 treatment and other rehabilitative services. The Department of
14 Health and Human Resources shall provide to each status
15 offender committed to the facility a program of treatment and
16 services consistent with the individualized program of
17 rehabilitation developed for the juvenile. In the case of any other
18 juvenile residing at the facility, the department shall provide
19 those programs and services as may be proper in the
20 circumstances including, but not limited to, any programs or
21 services directed to be provided by the court.

22 (c) The board of education of the county in which the facility
23 is located shall provide instruction for juveniles residing at the
24 facility. Residents who can be permitted to do so shall attend
25 local schools, and instruction shall otherwise take place at the
26 facility.

27 (d) Facilities established pursuant to this section will be
28 structured as community-based facilities.

**§49-2-1004. The Juvenile Services Reimbursement Offender Fund;
use; expenditures.**

1 There is created within the State Treasury a special revenue
2 account designated "The Juvenile Services Reimbursement
3 Offender Fund" within and for the benefit of the Division of

4 Juvenile Services for expenses incurred in servicing juvenile
5 status offenders in need of stabilization and specialized
6 supervision. Moneys shall be paid into the account by the
7 Department of Health and Human Resources, based upon an
8 established per diem rate, or other funding sources. The
9 Department of Health and Human Resources and the Division of
10 Juvenile Services shall jointly establish the per diem rate to be
11 paid into the fund by the Department of Health and Human
12 Resources for each juvenile status offender in need of
13 stabilization and specialized supervision by the Division of
14 Juvenile Services pursuant to this article and by cooperative
15 agreement. The Director of Juvenile Services is authorized to
16 make expenditures from the fund in accordance with article
17 three, chapter twelve of this code to offset expenses incurred by
18 the Division of Juvenile Services in housing, treatment and
19 caring for juvenile offenders.

§49-2-1005. Legal custody; law-enforcement agencies.

1 The Department of Health and Human Resources may
2 require any juvenile committed to its legal custody to remain at
3 and to return to the residence to which the juvenile is assigned
4 by the department or by the juvenile court. In aid of that
5 authority, and upon request of a designated employee of the
6 department, any police officer, sheriff, deputy sheriff, or juvenile
7 court probation officer is authorized to take the juvenile into
8 custody and return the juvenile to his or her place of residence or
9 into the custody of a designated employee of the department.

§49-2-1006. Reporting requirements; cataloguing of services.

1 (a) The Department of Health and Human Resources and the
2 Division of Juvenile Services shall annually review its programs
3 and services and submit a report by December 31, of each year
4 to the Governor, the Legislature and the Supreme Court of
5 Appeals. This report shall analyze and evaluate the effectiveness

6 of the programs and services being carried out by the
7 Department of Health and Human Resources or the Division of
8 Juvenile Services. That report shall include, but is not limited to:

9 (1) An analysis and evaluation of programs and services
10 continued, established and discontinued during the period
11 covered by the report;

12 (2) A description of programs and services which should be
13 implemented to further the purposes of this article;

14 (3) Relevant information concerning the number of juveniles
15 comprising the population of any rehabilitative facility during
16 the period covered by the report;

17 (4) The length of residence, the nature of the problems of
18 each juvenile, the juvenile's response to programs and services;
19 and

20 (5) Any other information as will enable a user of the report
21 to ascertain the effectiveness of the facility as a rehabilitative
22 facility.

23 (b) The Department of Health and Human Resources and the
24 Division of Juvenile Services shall prepare a descriptive
25 catalogue of its juvenile programs and services available in local
26 communities throughout this state and shall distribute copies of
27 the same to every juvenile court in the state and, at the direction
28 of the juvenile court, the catalogue shall be distributed to
29 attorneys practicing before the court. The catalogue shall:

30 (1) Be made available to members of the general public upon
31 request;

32 (2) Contain sufficient information as to particular programs
33 and services so as to enable a user of the catalogue to make
34 inquiries and referrals; and

35 (3) Be constructed so as to meaningfully identify and
36 describe programs and services.

37 (c) The requirements of this section are not satisfied by a
38 simple listing of specific agencies or the individuals in charge of
39 programs at a given time. The catalogue shall be updated and
40 republished or supplemented from time to time as may be
41 required to maintain its usefulness as a resource manual.

ARTICLE 3. SPECIALIZED ADVOCACY PROGRAMS.

§49-3-101. Child advocacy centers; services; requirements.

1 Child advocacy centers provide the following services to
2 children in the child welfare program in West Virginia:

3 (1) Operation of a child-appropriate or child-friendly facility
4 that provides a comfortable, private setting that is both
5 physically and psychologically safe for clients.

6 (2) Participation in a multidisciplinary team for response to
7 child abuse allegations.

8 (3) Operate a legal entity responsible for program and fiscal
9 operations that has established and implemented basic sound
10 administrative practices.

11 (4) Promote policies, practices and procedures that are
12 culturally competent and diverse. Cultural competency is defined
13 as the capacity to function in more than one culture, requiring
14 the ability to appreciate, understand and interact with members
15 of diverse populations within the local community.

16 (5) Conduct forensic interviews in a manner which is of a
17 neutral, fact-finding nature and coordinated to avoid duplicative
18 interviewing.

19 (6) Provide specialized medical evaluation and treatment
20 made available to clients as part of the team response, either at

21 the CAC or through coordination and referral with other
22 specialized medical providers.

23 (7) Offer therapeutic intervention through specialized mental
24 health services made available as part of the team response,
25 either at the child advocacy center or through coordination and
26 referral with other appropriate treatment providers.

27 (8) Victim support and advocacy as part of the team
28 response, either at the child advocacy center or through
29 coordination with other providers, throughout the investigation
30 and subsequent legal proceedings.

31 (9) Conducting team discussions and providing information
32 sharing regarding the investigation, case status and services
33 needed by the child and family are to occur on a routine basis.

34 (10) Developing and implementing a system for monitoring
35 case progress and tracking case outcomes for team components.

36 (11) May establish a safe exchange location for children and
37 families who have a parenting agreement or an order providing
38 for visitation or custody of the children that require a safe
39 exchange location.

§49-3-102. Court appointed special advocate; operations.

1 A court appointed special advocate (CASA) shall operate as
2 follows:

3 (1) Standards: CASA programs shall be members in good
4 standing with the West Virginia Court Appointed Special
5 Advocate Association, Inc., and the National Court Appointed
6 Special Advocates Association and adhere to all standards set
7 forth by these entities.

8 (2) Organizational capacity: A designated legal entity is
9 responsible for program and fiscal operations has been
10 established and implements basic sound administrative practice.

11 (3) Cultural competency and diversity: CASA programs
12 shall promote policies, practices and procedures that are
13 culturally competent. “Cultural competency” is defined as the
14 capacity to function in more than one culture, requiring the
15 ability to appreciate, understand and interact with members of
16 diverse populations within the local community.

17 (4) Case management: CASA programs must utilize a
18 uniform case management system to monitor case progress and
19 track outcomes.

20 (5) Case review: CASA volunteers shall meet with CASA
21 staff on a routine basis to discuss case status and outcomes.

22 (6) Training: Court appointed special advocates shall serve
23 as volunteers without compensation and shall receive training
24 consistent with state and nationally developed standards.

ARTICLE 4. COURT ACTIONS.

PART I. GENERAL PROVISIONS.

§49-4-101. Exercise of powers and jurisdiction by judge in vacation.

1 The powers and jurisdiction of the court, under the
2 provisions of this chapter, may be exercised by the judge in
3 vacation.

§49-4-102. Procedure for appealing decisions.

1 Cases under this chapter, if tried in any inferior court, may
2 be reviewed by writ of error or appeal to the circuit court, and if
3 tried or reviewed in a circuit court, by writ of error or appeal to
4 the Supreme Court of Appeals.

§49-4-103. Proceedings may not be evidence against child, or be published; adjudication is not a conviction and not a bar to civil service eligibility.

1 Any evidence given in any cause or proceeding under this
2 chapter, or any order, judgment or finding therein, or any
3 adjudication upon the status of juvenile delinquent heretofore
4 made or rendered, may not in any civil, criminal or other cause
5 or proceeding whatever in any court, be lawful or proper
6 evidence against the child for any purpose whatsoever except in
7 subsequent cases under this chapter involving the same child;
8 nor may the name of any child, in connection with any
9 proceedings under this chapter, be published in any newspaper
10 without a written order of the court; nor may any adjudication
11 upon the status of any child by a juvenile court operate to impose
12 any of the civil disabilities ordinarily imposed by conviction, nor
13 may any child be deemed a criminal by reason of the
14 adjudication, nor may the adjudication be deemed a conviction,
15 nor may any adjudication operate to disqualify a child in any
16 future civil service examination, appointment, or application.

§49-4-104. General provisions relating to court orders regarding custody; rules.

1 (a) The Supreme Court of Appeals, in consultation with the
2 Department of Health and Human Resources and the Division of
3 Juvenile Services in order to eliminate unnecessary state funding
4 of out-of-home placements where federal funding is available,
5 shall develop and disseminate form court orders to effectuate
6 chapter forty-nine of this code which authorize disclosure and
7 transfer of juvenile records between agencies while requiring
8 maintenance of confidentiality, Child Welfare Services, 42
9 U.S.C. §620, *et seq.*, and 42 U.S.C. §670, *et seq.*, relating to the
10 promulgation of uniform court orders for placement of minor
11 children and the rules promulgated thereunder, for use in the
12 courts of the state.

13 (b) Judges and magistrates, upon being supplied the form
14 orders required by subsection (a) of this section, shall act to
15 ensure the proper form order is entered in the case so as to allow
16 federal funding of eligible out-of-home placements.

§49-4-105. Hearing required to determine “reasonable efforts.”

1 A hearing by a circuit court of competent jurisdiction is
2 required to determine whether or not “reasonable efforts” have
3 been made to stabilize and maintain the family situation before
4 any child may be placed outside the home, except that in the
5 event any child appears in imminent danger of serious bodily or
6 emotional injury or death in any home, a post-removal hearing
7 shall be substituted for the pre-removal hearing.

§49-4-106. Limitation on out-of-home placements.

1 Before any child may be directed for placement in a
2 particular facility or for services of a child welfare agency
3 licensed by the department, a court shall make inquiry into the
4 bed space of the facility available to accommodate additional
5 children and the ability of the child welfare agency to meet the
6 particular needs of the child. A court may not order the
7 placement of a child in a particular facility, including status
8 offender facilities operated by the Division of Juvenile Services,
9 if it has reached its licensed capacity or order conditions on the
10 placement of the child which conflict with licensure regulations
11 applicable to the facility promulgated pursuant to article two of
12 this chapter and articles one-a, nine and seventeen, chapter
13 twenty-seven of this code. Further, a child welfare agency is not
14 required to accept placement of a child at a particular facility if
15 the facility remains at licensed capacity or is unable to meet the
16 particular needs of the child. A child welfare agency is not
17 required to make special dispensation or accommodation,
18 reorganize existing child placement, or initiate early release of
19 children in placement to reduce actual occupancy at the facility.

§49-4-107. Penalties.

1 A person who violates an order, rule, or regulation made
2 under the authority of this chapter, or who violates this chapter
3 for which punishment has not been specifically provided, is
4 guilty of a misdemeanor and, upon conviction shall be fined not
5 less than \$10 nor more than \$100, or confined in jail not less
6 than five days nor more than six months, or both fined and
7 confined.

§49-4-108. Payment of services.

1 At any time during any proceedings brought pursuant to this
2 article, the court may upon its own motion, or upon a motion of
3 any party, order the Department of Health and Human Resources
4 to pay for professional services rendered by a psychologist,
5 psychiatrist, physician, therapist or other health care professional
6 to a child or other party to the proceedings. Professional services
7 include, but are not limited to, treatment, therapy, counseling,
8 evaluation, report preparation, consultation and preparation of
9 expert testimony. The Department of Health and Human
10 Resources shall set the fee schedule for the services in
11 accordance with the Medicaid rate, if any, or the customary rate
12 and adjust the schedule as appropriate. Every psychologist,
13 psychiatrist, physician, therapist or other health care professional
14 shall be paid by the Department of Health and Human Resources
15 upon completion of services and submission of a final report or
16 other information and documentation as required by the policies
17 and procedures implemented by the Department of Health and
18 Human Resources.

§49-4-109. Guardianship of estate of child unaffected.

1 This chapter may not be construed to give the guardian
2 appointed hereunder the guardianship of the estate of the child,
3 or to change the age of minority for any other purpose except the
4 custody of the child.

5 The guardian of the estate of a child committed to
6 guardianship hereunder shall furnish, when and in the form as
7 may be required, full information concerning the property of the
8 child to the state department or to the court or judge before
9 whom the case of the child is heard.

§49-4-110. Foster care; quarterly status review; transitioning adults; annual permanency hearings.

1 (a) For each child who remains in foster care as a result of a
2 juvenile proceeding or as a result of a child abuse and neglect
3 proceeding, the circuit court with the assistance of the
4 multidisciplinary treatment team shall conduct quarterly status
5 reviews in order to determine the safety of the child, the
6 continuing necessity for and appropriateness of the placement,
7 the extent of compliance with the case plan, and the extent of
8 progress which has been made toward alleviating or mitigating
9 the causes necessitating placement in foster care, and to project
10 a likely date by which the child may be returned to and safety
11 maintained in the home or placed for adoption or legal
12 guardianship. Quarterly status reviews shall commence three
13 months after the entry of the placement order. The permanency
14 hearing provided in subsection (c) of this section may be
15 considered a quarterly status review.

16 (b) For each transitioning adult as that term is defined in
17 section two hundred two, article one of this chapter who remains
18 in foster care, the circuit court shall conduct status review
19 hearings as described in subsection (a) of this section once every
20 three months until permanency is achieved.

21 (c) For each child or transitioning adult who continues to
22 remain in foster care, the circuit court shall conduct a
23 permanency hearing no later than twelve months after the date
24 the child or transitioning adult is considered to have entered
25 foster care, and at least once every twelve months thereafter until

26 permanency is achieved. For purposes of permanency planning
27 for transitioning adults, the circuit court shall make factual
28 findings and conclusions of law as to whether the department
29 made reasonable efforts to finalize a permanency plan to prepare
30 a transitioning adult for emancipation or independence or
31 another approved permanency option such as, but not limited to,
32 adoption or legal guardianship pursuant to the West Virginia
33 Guardianship and Conservatorship Act.

34 (d) Nothing in this section may be construed to abrogate the
35 responsibilities of the circuit court from conducting required
36 hearings as provided in other provisions of this code, procedural
37 court rules, or setting required hearings at the same time.

**§49-4-111. Criteria and procedure for temporary removal of child
from foster home; foster care arrangement
termination; notice of child's availability for
placement; adoption; sibling placements; limitations.**

1 (a) The department may temporarily remove a child from a
2 foster home based on an allegation of abuse or neglect, including
3 sexual abuse, that occurred while the child resided in the home.
4 If the department determines that reasonable cause exists to
5 support the allegation, the department shall remove all foster
6 children from the arrangement, preclude contact between the
7 children and the foster parents, provide written notice to the
8 multidisciplinary treatment team members and schedule an
9 emergency team meeting to address placement options. If, after
10 investigation, the allegation is determined to be true by the
11 department or after a judicial proceeding a court finds the
12 allegation to be true or if the foster parents fail to contest the
13 allegation in writing within twenty calendar days of receiving
14 written notice of the allegations, the department shall
15 permanently terminate all foster care arrangements with the
16 foster parents. If the department determines that the abuse
17 occurred due to no act or failure to act on the part of the foster

18 parents and that continuation of the foster care arrangement is in
19 the best interests of the child, the department may, in its
20 discretion, elect not to terminate the foster care arrangement or
21 arrangements.

22 (b) When a child has been placed in a foster care
23 arrangement for a period in excess of eighteen consecutive
24 months, and the department determines that the placement is a
25 fit and proper place for the child to reside, the foster care
26 arrangement may not be terminated unless the termination is in
27 the best interest of the child and:

28 (1) The foster care arrangement is terminated pursuant to
29 subsection (a) of this section;

30 (2) The foster care arrangement is terminated due to the
31 child being returned to his or her parent or parents;

32 (3) The foster care arrangement is terminated due to the
33 child being united or reunited with a sibling or siblings;

34 (4) The foster parent or parents agree to the termination in
35 writing;

36 (5) The foster care arrangement is terminated at the written
37 request of a foster child who has attained the age of fourteen; or

38 (6) A court orders the termination upon a finding that the
39 department has developed a more suitable long-term placement
40 for the child upon hearing evidence in a proceeding brought by
41 the department seeking removal and transfer.

42 (c) When a child has been residing in a foster home for a
43 period in excess of six consecutive months in total and for a
44 period in excess of thirty days after the parental rights of the
45 child's biological parents have been terminated and the foster
46 parents have not made an application to the department to

47 establish an intent to adopt the child within thirty days of
48 parental rights being terminated, the department may terminate
49 the foster care arrangement if another, more beneficial,
50 long-term placement of the child is developed. If the child is
51 twelve years of age or older, the child shall be provided the
52 option of remaining in the existing foster care arrangement if the
53 child so desires and if continuation of the existing arrangement
54 is in the best interest of the child.

55 (d)(1) When a child is placed into foster care or becomes
56 eligible for adoption and a sibling or siblings have previously
57 been placed in foster care or have been adopted, the department
58 shall notify the foster parents or adoptive parents of the
59 previously placed or adopted sibling or siblings of the child's
60 availability for foster care placement or adoption to determine if
61 the foster parents or adoptive parents are desirous of seeking a
62 foster care arrangement or adoption of the child.

63 (2) Where a sibling or siblings have previously been
64 adopted, the department shall also notify the adoptive parents of
65 a sibling of the child's availability for foster care placement in
66 that home and a foster care arrangement entered into to place the
67 child in the home if the adoptive parents of the sibling are
68 otherwise qualified or can become qualified to enter into a foster
69 care arrangement with the department and if the arrangement is
70 in the best interests of the child.

71 (3) The department may petition the court to waive
72 notification to the foster parents or adoptive parents of the
73 child's siblings. This waiver may be granted, ex parte, upon a
74 showing of compelling circumstances.

75 (e)(1) When a child is in a foster care arrangement and is
76 residing separately from a sibling or siblings who are in another
77 foster home or who have been adopted by another family and the
78 parents with whom the placed or adopted sibling or siblings

79 reside have made application to the department to establish an
80 intent to adopt or to enter into a foster care arrangement
81 regarding a child so that the child may be united or reunited with
82 a sibling or siblings, the department shall, upon a determination
83 of the fitness of the persons and household seeking to enter into
84 a foster care arrangement or seek an adoption which would unite
85 or reunite siblings, and if termination and new placement are in
86 the best interests of the children, terminate the foster care
87 arrangement and place the child in the household with the sibling
88 or siblings.

89 (2) If the department is of the opinion based upon available
90 evidence that residing in the same home would have a harmful
91 physical, mental or psychological effect on one or more of the
92 sibling children or if the child has a physical or mental disability
93 which the existing foster home can better accommodate, or if the
94 department can document that the reunification of the siblings
95 would not be in the best interest of one or all of the children, the
96 department may petition the circuit court for an order allowing
97 the separation of the siblings to continue.

98 (3) If the child is twelve years of age or older, the
99 department shall provide the child the option of remaining in the
100 existing foster care arrangement if remaining is in the best
101 interests of the child. In any proceeding brought by the
102 department to maintain separation of siblings, the separation
103 may be ordered only if the court determines that clear and
104 convincing evidence supports the department's determination.

105 (4) In any proceeding brought by the department seeking to
106 maintain separation of siblings, notice afforded, in addition to
107 any other persons required by any provision of this code to
108 receive notice, to the persons seeking to adopt a sibling or
109 siblings of a previously placed or adopted child and the persons
110 may be parties to the action.

111 (f) Where two or more siblings have been placed in separate
112 foster care arrangements and the foster parents of the siblings
113 have made application to the department to enter into a foster
114 care arrangement regarding the sibling or siblings not in their
115 home or where two or more adoptive parents seek to adopt a
116 sibling or siblings of a child they have previously adopted, the
117 department's determination as to placing the child in a foster
118 care arrangement or in an adoptive home shall be based solely
119 upon the best interests of the siblings.

§49-4-112. Subsidized adoption and legal guardianship; conditions.

1 (a) From funds appropriated to the Department of Health and
2 Human Resources, the secretary shall establish a system of
3 assistance for facilitating the adoption or legal guardianship of
4 children. An adoption subsidy shall be available for children who
5 are legally free for adoption and who are dependents of the
6 department or a child welfare agency licensed to place children
7 for adoption. A legal guardianship subsidy may not require the
8 surrender or termination of parental rights. For either subsidy,
9 the children must be in special circumstances because one or
10 more of the following conditions inhibit their adoption or legal
11 guardianship placement:

12 (1) They have a physical or mental disability;

13 (2) They are emotionally disturbed;

14 (3) They are older children;

15 (4) They are a part of a sibling group; or

16 (5) They are a member of a racial or ethnic minority.

17 (b) (1) The department shall provide assistance in the form
18 of subsidies or other services to parents who are found and
19 approved for adoption or legal guardianship of a child certified

20 as eligible for subsidy by the department, but before the final
21 decree of adoption or order of legal guardianship is entered,
22 there must be a written agreement between the family entering
23 into the subsidized adoption or legal guardianship and the
24 department.

25 (2) Adoption or legal guardianship subsidies in individual
26 cases may commence with the adoption or legal guardianship
27 placement, and will vary with the needs of the child as well as
28 the availability of other resources to meet the child's needs. The
29 subsidy may be for special services only, or for money
30 payments, and either for a limited period, or for a long term, or
31 for any combination of the foregoing.

32 (3) The specific financial terms of the subsidy shall be
33 included in the agreement between the department and the
34 adoptive parents or legal guardians. The agreement may
35 recognize and provide for direct payment by the department of
36 attorney's fees to an attorney representing the adoptive parent.

37 (4) The amount of the time-limited or long-term subsidy
38 may in no case exceed that which would be allowable from time
39 to time for the child under foster family care or, in the case of a
40 special service, the reasonable fee for the service rendered.

41 (5) In addition, the department shall provide either Medicaid
42 or other health insurance coverage for any special needs child for
43 whom there is an adoption or legal guardianship assistance
44 agreement between the department and the adoptive parent or
45 legal guardian and who the department determines cannot be
46 placed with an adoptive parent or legal guardian without medical
47 assistance because the child has special needs for medical,
48 mental health or rehabilitative care.

49 (c) After reasonable efforts have been made without the use
50 of subsidy and no appropriate adoptive family or legal guardian

51 has been found for the child, the department shall certify the
52 child as eligible for a subsidy in the event of adoption or a legal
53 guardianship. Reasonable efforts to place a child without a
54 subsidy shall not be required if it is in the best interest of the
55 child because of the factors as the existence of significant
56 emotional ties developed between the child and the prospective
57 parent or guardian while in care as a foster child.

58 (d) If the child is the dependent of a voluntary licensed
59 child-placing agency, that agency shall present to the department
60 evidence of the inability to place the child for adoption or legal
61 guardianship without the use of subsidy or evidence that the
62 efforts would not be in the best interests of the child. In no event
63 may the value of the services and assistance provided by the
64 department under an agreement pursuant to this section exceed
65 the value of assistance available to foster families in similar
66 circumstances. All records regarding subsidized adoptions or
67 legal guardianships are to be held in confidence; however,
68 records regarding the payment of public funds for subsidized
69 adoptions or legal guardianships shall be available for public
70 inspection provided they do not directly or indirectly identify
71 any child or persons receiving funds for the child.

**§49-4-113. Duration of custody or guardianship of children
committed to department.**

1 (a) A child committed to the department for guardianship,
2 after termination of parental rights, shall remain in the care of
3 the department until he or she attains the age of eighteen years,
4 or is married, or is adopted, or guardianship is relinquished
5 through the court.

6 (b) A child committed to the department for custody shall
7 remain in the care of the department until he or she attains the
8 age of eighteen years, or until he or she is discharged because he
9 or she is no longer in need of care.

§49-4-114. Consent by agency or department to adoption of child; statement of relinquishment by parent; counseling services; petition to terminate parental rights; notice; hearing; court orders.

1 (a)(1) Whenever a child welfare agency licensed to place
2 children for adoption or the Department of Health and Human
3 Resources has been given the permanent legal and physical
4 custody of any child and the rights of the mother and the rights
5 of the legal, determined, putative, outside or unknown father of
6 the child have been terminated by order of a court of competent
7 jurisdiction or by a legally executed relinquishment of parental
8 rights, the child welfare agency or the department may consent
9 to the adoption of the child pursuant to article twenty-two,
10 chapter forty-eight of this code.

11 (2) Relinquishment for an adoption to an agency or to the
12 department is required of the same persons whose consent or
13 relinquishment is required under section three hundred one,
14 article twenty-two, chapter forty-eight of this code. The form of
15 any relinquishment so required shall conform as nearly as
16 practicable to the requirements established in section three
17 hundred three, article twenty-two, chapter forty-eight, and all
18 other provisions of that article providing for relinquishment for
19 adoption shall govern the proceedings herein.

20 (3) For purposes of any placement of a child for adoption by
21 the department, the department shall first consider the suitability
22 and willingness of any known grandparent or grandparents to
23 adopt the child. Once grandparents who are interested in
24 adopting the child have been identified, the department shall
25 conduct a home study evaluation, including home visits and
26 individual interviews by a licensed social worker. If the
27 department determines, based on the home study evaluation, that
28 the grandparents would be suitable adoptive parents, it shall
29 assure that the grandparents are offered the placement of the

30 child prior to the consideration of any other prospective adoptive
31 parents.

32 (4) The department shall make available, upon request, for
33 purposes of any private or agency adoption proceeding,
34 preplacement and post-placement counseling services by persons
35 experienced in adoption counseling, at no cost, to any person
36 whose consent or relinquishment is required pursuant to article
37 twenty-two, chapter forty-eight of this code.

38 (b)(1) Whenever the mother has executed a relinquishment
39 pursuant to this section, and the legal, determined, putative,
40 outsider or unknown father, as those terms are defined pursuant
41 to part one, article twenty-two, chapter forty-eight of this code,
42 has not executed a relinquishment, the child welfare agency or
43 the department may, by verified petition, seek to have the
44 father's rights terminated based upon the grounds of
45 abandonment or neglect of the child. Abandonment may be
46 established in accordance with section three hundred six, article
47 twenty-two, chapter forty-eight of this code.

48 (2) Unless waived by a writing acknowledged as in the case
49 of deeds or by other proper means, notice of the petition shall be
50 served on any person entitled to parental rights of a child prior
51 to its adoption who has not signed a relinquishment of custody
52 of the child.

53 (3) In addition, notice shall be given to any putative, outsider
54 or unknown father who has asserted or exercised parental rights
55 and duties to and with the child and who has not relinquished
56 any parental rights and the rights have not otherwise been
57 terminated, or who has not had reasonable opportunity before or
58 after the birth of the child to assert or exercise those rights,
59 except that if the child is more than six months old at the time
60 the notice would be required and the father has not asserted or
61 exercised his or her parental rights and he or she knew the

62 whereabouts of the child, then the father shall be presumed to
63 have had reasonable opportunity to assert or exercise any rights.

64 (c)(1) Upon the filing of the verified petition seeking to have
65 the parental rights terminated, the court shall set a hearing on the
66 petition. A copy of the petition and notice of the date, time and
67 place of the hearing on the petition shall be personally served on
68 any respondent at least twenty days prior to the date set for the
69 hearing.

70 (2) The notice shall inform the person that his or her parental
71 rights, if any, may be terminated in the proceeding and that the
72 person may appear and defend any rights within twenty days of
73 the service. In the case of a person who is a nonresident or whose
74 whereabouts are unknown, service shall be achieved: (1) By
75 personal service; (2) by registered or certified mail, return
76 receipt requested, postage prepaid, to the person's last known
77 address, with instructions to forward; or (3) by publication. If
78 personal service is not acquired, then if the person giving notice
79 has any knowledge of the whereabouts of the person to be
80 served, including a last known address, service by mail shall be
81 first attempted as herein provided. Service achieved by mail
82 shall be complete upon mailing and is sufficient service without
83 the need for notice by publication. In the event that no return
84 receipt is received giving adequate evidence of receipt of the
85 notice by the addressee or of receipt of the notice at the address
86 to which the notice was mailed or forwarded, or if the
87 whereabouts of the person are unknown, then the person required
88 to give notice shall file with the court an affidavit setting forth
89 the circumstances of any attempt to serve the notice by mail, and
90 the diligent efforts to ascertain the whereabouts of the person to
91 be served. If the court determines that the whereabouts of the
92 person to be served cannot be ascertained and that due diligence
93 has been exercised to ascertain the person's whereabouts, then
94 the court shall order service of the notice by publication as a
95 Class II publication in compliance with article three, chapter

96 fifty-nine of this code, and the publication area shall be the
97 county where the proceedings are had, and in the county where
98 the person to be served was last known to reside. In the case of
99 a person under disability, service shall be made on the person
100 and his or her personal representative, or if there be none, on a
101 guardian ad litem.

102 (3) In the case of service by publication or mail or service on
103 a personal representative or a guardian ad litem, the person is
104 allowed thirty days from the date of the first publication or
105 mailing of the service on a personal representative or guardian
106 ad litem in which to appear and defend the parental rights.

107 (d) A petition under this section may be instituted in the
108 county where the child resides or where the child is living.

109 (e) If the court finds that the person certified to parental
110 rights is guilty of the allegations set forth in the petition, the
111 court shall enter an order terminating his or her parental rights
112 and shall award the legal and physical custody and control of the
113 child to the petitioner.

§49-4-115. Emancipation.

1 (a) A child over the age of sixteen may petition a court to be
2 declared emancipated. The parents or custodians shall be made
3 respondents and, in addition to personal service thereon, there
4 shall be publication as a Class II legal advertisement in
5 compliance with article three, chapter fifty-nine of this code.

6 (b) Upon a showing that the child can provide for his or her
7 physical and financial well-being and has the ability to make
8 decisions for himself or herself, the court may for good cause
9 shown declare the child emancipated. The child shall thereafter
10 have full capacity to contract in his or her own right and the
11 parents or custodians have no right to the custody and control of

12 the child or duty to provide the child with care and financial
13 support.

14 (c) A child over the age of sixteen years who marries is
15 emancipated by operation of law. An emancipated child has all
16 of the privileges, rights and duties of an adult, including the right
17 of contract, except that the child remains a child as defined for
18 the purposes of part ten, article two, or part seven, article four of
19 this chapter.

**§49-4-116. Voluntary placement; petition; requirements; attorney
appointed; court hearing; orders.**

1 (a) Within ninety days of the date of the signatures to a
2 voluntary placement agreement, after receipt of physical
3 custody, the department shall file with the court a petition for
4 review of the placement. The petition shall include:

5 (1) A statement regarding the child's situation; and,

6 (2) The circumstance that gives rise to the voluntary
7 placement.

8 (b) If the department intends to extend the voluntary
9 placement agreement, the department shall file with the court a
10 copy of the child's case plan.

11 (c) The court shall appoint an attorney for the child, who
12 shall receive a copy of the case plan as provided in subsection
13 (b) of this section.

14 (d) The court shall schedule a hearing and give notice of the
15 time and place and right to be present at the hearing to:

16 (1) The child's attorney;

17 (2) The child, if twelve years of age or older;

18 (3) The child's parents or guardians;

19 (4) The child's foster parents;

20 (5) Any preadoptive parent or relative providing care for the
21 child; and

22 (6) Any other persons as the court may in its discretion
23 direct.

24 The child's presence at the hearing may be waived by the
25 child's attorney at the request of the child or if the child would
26 suffer emotional harm.

27 (e) At the conclusion of the proceedings, but no later than
28 ninety days after the date of the signatures to the voluntary
29 placement agreement, the court shall enter an order:

30 (1) Determining whether or not continuation of the voluntary
31 placement is in the best interests of the child;

32 (2) Specifying under what conditions the child's placement
33 will continue;

34 (3) Specifying whether or not the department is required to
35 and has made reasonable efforts to preserve and to reunify the
36 family; and

37 (4) Providing a plan for the permanent placement of the
38 child.

PART II. EMERGENCY POSSESSION OF CERTAIN RELINQUISHED CHILDREN.

§49-4-201. Accepting possession of certain relinquished children.

1 (a) A hospital or health care facility operating in this state,
2 shall, without a court order, take possession of a child if the child

3 is voluntarily delivered to the hospital or health care facility by
4 the child's parent within thirty days of the child's birth, and the
5 parent did not express an intent to return for the child.

6 (b) A hospital or health care facility that takes possession of
7 a child under this article shall perform any act necessary to
8 protect the physical health or safety of the child. In accepting
9 possession of the child, the hospital or health care facility may
10 not require the person to identify himself or herself and shall
11 otherwise respect the person's desire to remain anonymous.

**§49-4-202. Notification of possession of relinquished child;
department responsibilities.**

1 (a) Not later than the close of the first business day after the
2 date on which a hospital or health care facility takes possession
3 of a child pursuant to section two hundred one of this article, the
4 hospital or health care facility shall notify the Child Protective
5 Services division of the Department of Health and Human
6 Resources that it has taken possession of the child and shall
7 provide the division any information provided by the parent
8 delivering the child. The hospital or health care facility shall
9 refer any inquiries about the child to the Child Protective
10 Services division.

11 (b) The Department of Health and Human Resources shall
12 assume the care, control and custody of the child as of the time
13 of delivery of the child to the hospital or health care facility, and
14 may contract with private child care agency for the care and
15 placement of the child after the child leaves the hospital or
16 health care facility.

**§49-4-203. Filing petition after accepting possession of relinquished
child.**

1 A child of whom the Department of Health and Human
2 Resources assumes care, control and custody under this article

3 is a relinquished child and to be treated in all respects as a child
4 taken into custody pursuant to section three hundred three,
5 article four of this chapter. Upon taking custody of a child under
6 this article, the department, with the cooperation of the county
7 prosecuting attorney, shall cause a petition to be presented
8 pursuant to section six hundred two, article four of this chapter.
9 The department and county prosecuting attorney may not
10 identify in the petition the parent(s) who utilized this article to
11 relinquish his or her child. Thereafter, the department shall
12 proceed in compliance with part six, of this article.

§49-4-204. Immunity from certain prosecutions.

1 A parent who relinquishes his or her child in good faith
2 within thirty days of the child's birth under this article is
3 immune from prosecution under subsection (a), section four,
4 article eight-d, chapter sixty-one of this code.

§49-4-205. Adoption eligibility.

1 The child is eligible for adoption as an abandoned child
2 under chapter forty-eight of the code.

PART III. EMERGENCY CUSTODY OF CHILDREN
PRIOR TO PETITION.

**§49-4-301. Custody of a neglected child by law enforcement in
emergency situations; protective custody;
requirements; notices; petition for appointment of
special guardian; discharge; immunity.**

1 (a) A child believed to be a neglected child or an abused
2 child may be taken into custody without the court order
3 otherwise required by section six hundred two of this article by
4 a law-enforcement officer if:

5 (1) The child is without supervision or shelter for an
6 unreasonable period of time in light of the child's age and the

7 ability to care for himself or herself in circumstances presenting
8 an immediate threat of serious harm to that child; or

9 (2) That officer determines that the child is in a condition
10 requiring emergency medical treatment by a physician and the
11 child's parents, parent, guardian or custodian refuses to permit
12 the treatment, or is unavailable for consent. A child who suffers
13 from a condition requiring emergency medical treatment, whose
14 parents, parent, guardian or custodian refuses to permit the
15 providing of the emergency medical treatment, may be retained
16 in a hospital by a physician against the will of the parents,
17 parent, guardian or custodian, as provided in subsection (c) of
18 this section.

19 (b) A child taken into protective custody pursuant to
20 subsection (a) of this section may be housed by the department
21 or in any authorized child shelter facility. The authority to hold
22 the child in protective custody, absent a petition and proper order
23 granting temporary custody pursuant to section six hundred two
24 of this article, terminates by operation of law upon the happening
25 of either of the following events, whichever occurs first:

26 (1) The expiration of ninety-six hours from the time the child
27 is initially taken into protective custody; or

28 (2) The expiration of the circumstances which initially
29 warranted the determination of an emergency situation.

30 No child may be considered in an emergency situation and
31 custody withheld from the child's parents, parent, guardian or
32 custodian presenting themselves, himself or herself in a fit and
33 proper condition and requesting physical custody of the child.
34 No child may be removed from a place of residence as in an
35 emergency under this section until after:

36 (1) All reasonable efforts to make inquiries and
37 arrangements with neighbors, relatives and friends have been
38 exhausted; or if no arrangements can be made; and

39 (2) The state department may place in the residence a home
40 services worker with the child for a period of not less than
41 twelve hours to await the return of the child's parents, parent,
42 guardian or custodian.

43 Prior to taking a child into protective custody as abandoned
44 at a place at or near the residence of the child, the
45 law-enforcement officer shall post a typed or legibly handwritten
46 notice at the place the child is found, informing the parents,
47 parent, guardian or custodian that the child was taken by a
48 law-enforcement officer, the name, address and office telephone
49 number of the officer, the place and telephone number where
50 information can continuously be obtained as to the child's
51 whereabouts, and if known, the worker for the state department
52 having responsibility for the child.

53 (c) A child taken into protective custody pursuant to this
54 section for emergency medical treatment may be held in a
55 hospital under the care of a physician against the will of the
56 child's parents, parent, guardian or custodian for a period not to
57 exceed ninety-six hours. The parents, parent, guardian or
58 custodian may not be denied the right to see or visit with the
59 child in a hospital. The authority to retain a child in protective
60 custody in a hospital as requiring emergency medical treatment
61 terminates by operation of law upon the happening of either of
62 the following events, whichever occurs first:

63 (1) When the condition, in the opinion of the physician, no
64 longer required emergency hospitalization, or;

65 (2) Upon the expiration of ninety-six hours from the
66 initiation of custody, unless within that time, a petition is
67 presented and a proper order obtained from the circuit court.

68 (d) Prior to assuming custody of a child from a
69 law-enforcement officer, pursuant to this section, a physician or

70 worker from the department shall require a typed or legibly
71 handwritten statement from the officer identifying the officer's
72 name, address and office telephone number and specifying all
73 the facts upon which the decision to take the child into protective
74 custody was based, and the date, time and place of the taking.

75 (e) Any worker for the department assuming custody of a
76 child pursuant to this section shall immediately notify the
77 parents, parent, guardian or custodian of the child of the taking
78 of the custody and the reasons therefor, if the whereabouts of the
79 parents, parent, guardian or custodian are known or can be
80 discovered with due diligence; and if not, notice and explanation
81 shall be given to the child's closest relative, if his or her
82 whereabouts are known or can be discovered with due diligence
83 within a reasonable time. An inquiry shall be made of relatives
84 and neighbors, and if a relative or appropriate neighbor is willing
85 to assume custody of the child, the child will temporarily be
86 placed in custody.

87 (f) No child may be taken into custody under circumstances
88 not justified by this section or pursuant to section six hundred
89 two of this article without appropriate process. Any retention of
90 a child or order for retention of a child not complying with the
91 time limits and other requirements specified in this article shall
92 be void by operation of law.

93 (g) *Petition for appointment of special guardian.* — Upon
94 the verified petition of any person showing:

95 (1) That any person under the age of eighteen years is
96 threatened with or there is a substantial possibility that the
97 person will suffer death, serious or permanent physical or
98 emotional disability, disfigurement or suffering; and

99 (2) That disability, disfigurement or suffering is the result of
100 the failure or refusal of any parent, guardian or custodian to

101 procure, consent to or authorize necessary medical treatment, the
102 circuit court of the county in which the person is located may
103 direct the appointment of a special guardian for the purposes of
104 procuring, consenting to and giving authorization for the
105 administration of necessary medical treatment. The circuit court
106 may not consider any petition filed in accordance with this
107 section unless it is accompanied by a supporting affidavit of a
108 licensed physician.

109 (h) *Notice of petition.* — So far as practicable, the parents,
110 guardian or custodian of any person for whose benefit medical
111 treatment is sought shall be given notice of the petition for the
112 appointment of a special guardian under this section. Notice is
113 not necessary if it would cause a delay that would result in the
114 death or irreparable harm to the person for whose benefit
115 medical treatment is sought. Notice may be given in a form and
116 manner as may be necessary under the circumstances.

117 (i) *Discharge of special guardian.* — Upon the termination of
118 necessary medical treatment to any person under this section, the
119 circuit court order the discharge of the special guardian from any
120 further authority, responsibility or duty.

121 (j) *Immunity from civil liability.* — No person appointed
122 special guardian in accordance with this article is civilly liable
123 for any act done by virtue of the authority vested in him or her
124 by order of the circuit court.

**§49-4-302. Authorizing a family court judge to order custody of a
child in emergency situations; requirements;
orders; investigative reports; notification required.**

1 (a) Notwithstanding the jurisdictional limitations contained
2 in section two, article two-a, chapter fifty-one of this code,
3 family court judges are authorized to order the department to
4 take emergency custody of a child who is in the physical custody
5 of a party to an action or proceeding before the family court, if

6 the family court judge finds that there is clear and convincing
7 evidence that:

8 (1) There exists an imminent danger to the physical
9 well-being of the child as defined in section two hundred one,
10 article one of this chapter;

11 (2) The child is not the subject of a pending action before the
12 circuit court alleging abuse and neglect of the child; and

13 (3) There are no reasonable available alternatives to the
14 emergency custody order.

15 (b) An order entered pursuant to subsection (a) of this
16 section must include specific written findings.

17 (c) A copy of the order issued pursuant to subsection (a) of
18 this section shall be transmitted forthwith to the department, the
19 circuit court and the prosecuting attorney.

20 (d) Upon receipt of an order issued pursuant to subsection
21 (a) of this section, the department shall immediately respond and
22 assist the family court judge in emergency placement of the
23 child.

24 (e)(1) Upon receipt of an order issued pursuant to subsection
25 (a) of this section, the circuit court shall cause to be entered and
26 served, an administrative order in the name of and regarding the
27 affected child, directing the department to submit, within
28 ninety-six hours from the time the child was taken into custody,
29 an investigative report to both the circuit and family court.

30 (2) The investigative report shall include a statement of
31 whether the department intends to file a petition pursuant to
32 section six hundred two of this article.

33 (f)(1) An order issued pursuant to subsection (a) of this
34 section terminates by operation of law upon expiration of

35 ninety-six hours from the time the child is initially taken into
36 protective custody unless a petition is filed with the circuit court
37 under section six hundred two of this article within ninety-six
38 hours from the time the child is initially taken into protective
39 custody.

40 (2) The filing of a petition within ninety-six hours from the
41 time the child is initially taken into protective custody extends
42 the emergency custody order issued pursuant to subsection (a) of
43 this section until a preliminary hearing is held before the circuit
44 court, unless the circuit court orders otherwise.

45 (g)(1) Any worker for the department assuming custody of
46 a child pursuant to this section shall immediately notify the
47 parents, parent, grandparents, grandparent, guardian or custodian
48 of the child of the taking of the custody and the reasons therefor
49 if the whereabouts of the parents, parent, grandparents,
50 grandparent, guardian or custodian are known or can be
51 discovered with due diligence and, if not, a notice and
52 explanation shall be given to the child's closest relative if his or
53 her whereabouts are known or can be discovered with due
54 diligence within a reasonable time. An inquiry shall be made of
55 relatives and neighbors and, if an appropriate relative or
56 neighbor is willing to assume custody of the child, the child will
57 temporarily be placed in that person's custody.

58 (2) In the event no other reasonable alternative is available
59 for temporary placement of a child pursuant to subdivision (1) of
60 this subsection, the child may be housed by the department in an
61 authorized child shelter facility.

**§49-4-303. Emergency removal by department before filing of
petition; conditions; referee; application for
emergency custody; order.**

1 Prior to the filing of a petition, a child protective service
2 worker may take the child or children into his or her custody
3 (also known as removing the child) without a court order when:

4 (1) In the presence of a child protective service worker a
5 child or children are in an emergency situation which constitutes
6 an imminent danger to the physical well-being of the child or
7 children, as that phrase is defined in section two hundred one,
8 article one of this chapter; and

9 (2) The worker has probable cause to believe that the child
10 or children will suffer additional child abuse or neglect or will be
11 removed from the county before a petition can be filed and
12 temporary custody can be ordered.

13 After taking custody of the child or children prior to the
14 filing of a petition, the worker shall forthwith appear before a
15 circuit judge or referee of the county where custody was taken
16 and immediately apply for an order. If no judge or referee is
17 available, the worker shall appear before a circuit judge or
18 referee of an adjoining county, and immediately apply for an
19 order. This order shall ratify the emergency custody of the child
20 pending the filing of a petition.

21 The circuit court of every county in the state shall appoint at
22 least one of the magistrates of the county to act as a referee. He
23 or she serves at the will and pleasure of the appointing court, and
24 shall perform the functions prescribed for the position by this
25 subsection.

26 The parents, guardians or custodians of the child or children
27 may be present at the time and place of application for an order
28 ratifying custody. If at the time the child or children are taken
29 into custody by the worker he or she knows which judge or
30 referee is to receive the application, the worker shall so inform
31 the parents, guardians or custodians.

32 The application for emergency custody may be on forms
33 prescribed by the Supreme Court of Appeals or prepared by the
34 prosecuting attorney or the applicant, and shall set forth facts

35 from which it may be determined that the probable cause
36 described above in this subsection exists. Upon the sworn
37 testimony or other evidence as the judge or referee deems
38 sufficient, the judge or referee may order the emergency taking
39 by the worker to be ratified. If appropriate under the
40 circumstances, the order may include authorization for an
41 examination as provided in subsection (b), section six hundred
42 three of this article.

43 If a referee issues an order, the referee shall by telephonic
44 communication have that order orally confirmed by a circuit
45 judge of the circuit or an adjoining circuit who shall, on the next
46 judicial day, enter an order of confirmation. If the emergency
47 taking is ratified by the judge or referee, emergency custody of
48 the child or children is vested in the department until the
49 expiration of the next two judicial days, at which time any child
50 taken into emergency custody shall be returned to the custody of
51 his or her parent or guardian or custodian unless a petition has
52 been filed and custody of the child has been transferred under
53 section six hundred two of this article.

PART IV. MULTIDISCIPLINARY TEAMS, CASE PLANS, TRANSITION PLANS AND AFTERCARE PLANS.

§49-4-401. Purpose; system to be a complement to existing programs.

1 (a) This article:

2 (1) Provides a system for evaluation of and coordinated
3 service delivery for children who may be victims of abuse or
4 neglect and children undergoing certain status offense and
5 delinquency proceedings;

6 (2) Establishes, as a complement to other programs of the
7 Department of Health and Human Resources, a multidisciplinary
8 screening, advisory and planning system to assist courts in

9 facilitating permanency planning, following the initiation of
10 judicial proceedings, to recommend alternatives and to
11 coordinate evaluations and in-community services; and

12 (3) Ensures that children are safe from abuse and neglect and
13 to coordinate investigation of alleged child abuse offenses and
14 competent criminal prosecution of offenders to ensure that
15 safety, as determined appropriate by the prosecuting attorney.

16 (b) Nothing in this article precludes any multidisciplinary
17 team from considering any case upon the consent of the
18 members of the team.

**§49-4-402. Multidisciplinary investigative teams; establishment;
membership; procedures; coordination among
agencies; confidentiality.**

1 (a) The prosecuting attorney of each county shall establish
2 a multidisciplinary investigative team in that county. The
3 multidisciplinary team shall be headed and directed by the
4 prosecuting attorney, or his or her designee, and includes as
5 permanent members:

6 (1) The prosecuting attorney, or his or her designee;

7 (2) A local child protective services caseworker from the
8 Department of Health and Human Resources;

9 (3) A local law-enforcement officer employed by a
10 law-enforcement agency in the county;

11 (4) A child advocacy center representative, where available;

12 (5) A health care provider with pediatric and child abuse
13 expertise, where available;

14 (6) A mental health professional with pediatric and child
15 abuse expertise, where available;

16 (7) An educator; and

17 (8) A representative from a licensed domestic violence
18 program serving the county.

19 The Department of Health and Human Resources and any
20 local law-enforcement agency or agencies selected by the
21 prosecuting attorney shall appoint their representatives to the
22 team by submitting a written designation of the team to the
23 prosecuting attorney of each county within thirty days of the
24 prosecutor's request that the appointment be made. Within
25 fifteen days of the appointment, the prosecuting attorney shall
26 notify the chief judge of each circuit within which the county is
27 situated of the names of the representatives so appointed. Any
28 other person or any other appointee of an agency who may
29 contribute to the team's efforts to assist a minor child as may be
30 determined by the permanent members of the team may also be
31 appointed as a member of the team by the prosecutor with
32 notification to the chief judge.

33 (b) Any permanent member of the multidisciplinary
34 investigative team shall refer all cases of accidental death of any
35 child reported to their agency and all cases when a child dies
36 while in the custody of the state for investigation and review by
37 the team. The multidisciplinary investigative team shall meet at
38 regular intervals at least once every calendar month.

39 (c) The investigative team shall be responsible for
40 coordinating or cooperating in the initial and ongoing
41 investigation of all civil and criminal allegations pertinent to
42 cases involving child sexual assault, child sexual abuse, child
43 abuse and neglect and shall make a recommendation to the
44 county prosecuting attorney as to the initiation or
45 commencement of a civil petition and/or criminal prosecution.

46 (d) State, county and local agencies shall provide the
47 multidisciplinary investigative team with any information

48 requested in writing by the team as allowable by law or upon
49 receipt of a certified copy of the circuit court's order directing
50 the agencies to release information in its possession relating to
51 the child. The team shall assure that all information received and
52 developed in connection with this article remains confidential.
53 For purposes of this section, the term "confidential" shall be
54 construed in accordance with article five of this chapter.

***§49-4-403. Multidisciplinary treatment planning process;
coordination; access to information.**

1 (a)(1) A multidisciplinary treatment planning process for
2 cases initiated pursuant to part six and part seven of article four,
3 shall be established within each county of the state, either
4 separately or in conjunction with a contiguous county, by the
5 secretary of the department with advice and assistance from the
6 prosecutor's advisory council as set forth in section four, article
7 four, chapter seven of this code. The Division of Juvenile
8 Services shall establish a similar treatment planning process for
9 delinquency cases in which the juvenile has been committed to
10 its custody, including those cases in which the juvenile has been
11 committed for examination and diagnosis.

12 (2) This section does not require a multidisciplinary team
13 meeting to be held prior to temporarily placing a child or
14 juvenile out-of-home under exigent circumstances or upon a
15 court order placing a juvenile in a facility operated by the
16 Division of Juvenile Services.

17 (b) The case manager in the Department of Health and
18 Human Resources for the child, family or juvenile or the case
19 manager in the Division of Juvenile Services for a juvenile shall
20 convene a treatment team in each case when it is required
21 pursuant to this article.

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.

22 (1) Prior to disposition, in each case in which a treatment
23 planning team has been convened, the team shall advise the court
24 as to the types of services the team has determined are needed
25 and the type of placement, if any, which will best serve the needs
26 of the child. If the team determines that an out-of-home
27 placement will best serve the needs of the child, the team shall
28 first consider placement with appropriate relatives then with
29 foster care homes, facilities or programs located within the state.
30 The team may only recommend placement in an out-of-state
31 facility if it concludes, after considering the best interests and
32 overall needs of the child, that there are no available and suitable
33 in-state facilities which can satisfactorily meet the specific needs
34 of the child.

35 (2) Any person authorized by this chapter to convene a
36 multidisciplinary team meeting may seek and receive an order of
37 the circuit court setting the meeting and directing attendance.
38 Members of the multidisciplinary team may participate in team
39 meetings by telephone or video conferencing. This subsection
40 does not prevent the respective agencies from designating a
41 person other than the case manager as a facilitator for treatment
42 team meetings. Written notice shall be provided to all team
43 members of the availability to participate by videoconferencing.

44 (c) The treatment team shall coordinate its activities and
45 membership with local family resource networks and coordinate
46 with other local and regional child and family service planning
47 committees to assure the efficient planning and delivery of child
48 and family services on a local and regional level.

49 (d) The multidisciplinary treatment team shall be afforded
50 access to information in the possession of the Department of
51 Health and Human Resources, Division of Juvenile Services,
52 law-enforcement agencies and other state, county and local
53 agencies. Those agencies shall cooperate in the sharing of
54 information, as may be provided in article five or this chapter or

55 any other relevant provision of law. Any multidisciplinary team
56 member who acquires confidential information may not disclose
57 the information except as permitted by this code or court rules.

§49-4-404. Court review of service plan; hearing; required findings; order; team member's objections.

1 (a) In any case in which a multidisciplinary treatment team
2 develops an individualized service plan for a child or family
3 pursuant to this article, the court shall review the proposed
4 service plan to determine if implementation of the plan is in the
5 child's best interests. If the multidisciplinary team cannot agree
6 on a plan or if the court determines not to adopt the team's
7 recommendations, it shall, upon motion or *sua sponte*, schedule
8 and hold within ten days of the determination, and prior to the
9 entry of an order placing the child in the custody of the
10 department or in an out-of-home setting, a hearing to consider
11 evidence from the team as to its rationale for the proposed
12 service plan. If, after a hearing held pursuant to this section, the
13 court does not adopt the teams's recommended service plan, it
14 shall make specific written findings as to why the team's
15 recommended service plan was not adopted.

16 (b) In any case in which the court decides to order the child
17 placed in an out-of-state facility or program it shall set forth in
18 the order directing the placement the reasons why the child was
19 not placed in an in-state facility or program.

20 (c) Any member of the multidisciplinary treatment team who
21 disagrees with recommendations of the team may inform the
22 court of his or her own recommendations and objections to the
23 team's recommendations. The recommendations and objections
24 of the dissenting team member may be made in a hearing on the
25 record, made in writing and served upon each team member and
26 filed with the court and indicated in the case plan, or both made
27 in writing and indicated in the case plan. Upon receiving

28 objections, the court will conduct a hearing pursuant to
29 paragraph (a) of this section.

**§49-4-405. Multidisciplinary treatment planning process involving
child abuse and neglect; team membership; duties;
reports; admissions.**

1 (a) Within thirty days of the initiation of a judicial
2 proceeding pursuant to part six, of this article, the Department of
3 Health and Human Services shall convene a multidisciplinary
4 treatment team to assess, plan and implement a comprehensive,
5 individualized service plan for children who are victims of abuse
6 or neglect and their families. The multidisciplinary team shall
7 obtain and utilize any assessments for the children or the adult
8 respondents that it deems necessary to assist in the development
9 of that plan.

10 (b) In a case initiated pursuant to part six of this article, the
11 treatment team consists of:

12 (1) The child or family's case manager in the Department of
13 Health and Human Resources;

14 (2) The adult respondent or respondents;

15 (3) The child's parent or parents, guardians, any
16 copetitioners, custodial relatives of the child, foster or
17 preadoptive parents;

18 (4) Any attorney representing an adult respondent or other
19 member of the treatment team;

20 (5) The child's counsel or the guardian ad litem;

21 (6) The prosecuting attorney or his or her designee;

22 (7) A member of a child advocacy center when the child has
23 been processed through the child advocacy center program or

24 programs or it is otherwise appropriate that a member of the
25 child advocacy center participate;

26 (8) Any court-appointed special advocate assigned to a case;

27 (9) Any other person entitled to notice and the right to be
28 heard;

29 (10) An appropriate school official; and

30 (11) Any other person or agency representative who may
31 assist in providing recommendations for the particular needs of
32 the child and family, including domestic violence service
33 providers.

34 The child may participate in multidisciplinary treatment
35 team meetings if the child's participation is deemed appropriate
36 by the multidisciplinary treatment team. Unless otherwise
37 ordered by the court, a party whose parental rights have been
38 terminated and his or her attorney may not be given notice of a
39 multidisciplinary treatment team meeting and does not have the
40 right to participate in any treatment team meeting.

41 (c) Prior to disposition in each case which a treatment
42 planning team has been convened, the team shall advise the court
43 as to the types of services the team has determined are needed
44 and the type of placement, if any, which will best serve the needs
45 of the child. If the team determines that an out-of-home
46 placement will best serve the needs of the child, the team shall
47 first consider placement with appropriate relatives then with
48 foster care homes, facilities or programs located within the state.
49 The team may only recommend placement in an out-of-state
50 facility if it concludes, after considering the best interests and
51 overall needs of the child, that there are no available and suitable
52 in-state facilities which can satisfactorily meet the specific needs
53 of the child.

54 (d) The multidisciplinary treatment team shall submit written
55 reports to the court as required by the rules governing this type
56 of proceeding or by the court, and shall meet as often as deemed
57 necessary but at least every three months until the case is
58 dismissed from the docket of the court. The multidisciplinary
59 treatment team shall be available for status conferences and
60 hearings as required by the court.

61 (e) If a respondent or copetitioner admits the underlying
62 allegations of child abuse or neglect, or both abuse and neglect,
63 in the multidisciplinary treatment planning process, his or her
64 statements may not be used in any subsequent criminal
65 proceeding against him or her, except for perjury or false
66 swearing.

***§49-4-406. Multidisciplinary treatment process for juvenile status
offenders and delinquents; requirements; custody;
procedure; reports; cooperation; inadmissability of
certain statements.**

1 (a) When a juvenile is adjudicated as a status offender
2 pursuant to section seven hundred eleven, of this article, the
3 Department of Health and Human Resources shall promptly
4 convene a multidisciplinary treatment team and conduct an
5 assessment, utilizing a standard uniform comprehensive
6 assessment instrument or protocol, to determine the juvenile's
7 mental and physical condition, maturity and education level,
8 home and family environment, rehabilitative needs and
9 recommended service plan, which shall be provided in writing
10 to the court and team members. Upon completion of the
11 assessment, the treatment team shall prepare and implement a
12 comprehensive, individualized service plan for the juvenile.

13 (b) When a juvenile is adjudicated as a delinquent or has
14 been granted a preadjudicatory community supervision period

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.

15 pursuant to section seven hundred eight of this article, the court,
16 either upon its own motion or motion of a party, may require the
17 Department of Health and Human Resources to convene a
18 multidisciplinary treatment team and conduct an assessment,
19 utilizing a standard uniform comprehensive assessment
20 instrument or protocol, to determine the juvenile's mental and
21 physical condition, maturity and education level, home and
22 family environment, rehabilitative needs and recommended
23 service plan, which shall be provided in writing to the court and
24 team members. A referral to the Department of Health and
25 Human Resources to convene a multidisciplinary treatment team
26 and to conduct an assessment shall be made when the court is
27 considering placing the juvenile in the department's custody or
28 placing the juvenile out-of-home at the department's expense
29 pursuant to section seven hundred fourteen, of this article. In any
30 delinquency proceeding in which the court requires the
31 Department of Health and Human Resources to convene a
32 multidisciplinary treatment team, the probation officer shall
33 notify the department at least fifteen working days before the
34 court proceeding in order to allow the department sufficient time
35 to convene and develop an individualized service plan for the
36 juvenile.

37 (c) When a juvenile has been adjudicated and committed to
38 the custody of the Director of the Division of Juvenile Services,
39 including those cases in which the juvenile has been committed
40 for examination and diagnosis, the Division of Juvenile Services
41 shall promptly convene a multidisciplinary treatment team and
42 conduct an assessment, utilizing a standard uniform
43 comprehensive assessment instrument or protocol, to determine
44 the juvenile's mental and physical condition, maturity and
45 education level, home and family environment, rehabilitative
46 needs and recommended service plan. Upon completion of the
47 assessment, the treatment team shall prepare and implement a
48 comprehensive, individualized service plan for the juvenile,
49 which will be provided in writing to the court and team

50 members. In cases where the juvenile is committed as a
51 post-sentence disposition to the custody of the Division of
52 Juvenile Services, the plan shall be reviewed quarterly by the
53 multidisciplinary treatment team. Where a juvenile has been
54 detained in a facility operated by the Division of Juvenile
55 Services without an active service plan for more than sixty days,
56 the director of the facility may call a multidisciplinary team
57 meeting to review the case and discuss the status of the service
58 plan.

59 (d)(1) The rules of juvenile procedure govern the procedure
60 for obtaining an assessment of a juvenile, preparing an
61 individualized service plan and submitting the plan and
62 assessment to the court.

63 (2) In juvenile proceedings conducted pursuant to part seven
64 of this article, the treatment team consists of:

65 (A) The juvenile;

66 (B) The juvenile's case manager in the Department of Health
67 and Human Resources or the Division of Juvenile Services;

68 (C) The juvenile's parent or parents, guardian or guardians
69 or custodial relatives;

70 (D) The juvenile's attorney;

71 (E) Any attorney representing a member of the treatment
72 team;

73 (F) The prosecuting attorney or his or her designee;

74 (G) An appropriate school official; and

75 (H) Any other person or agency representative who may
76 assist in providing recommendations for the particular needs of
77 the juvenile and family, including domestic violence service

78 providers. In delinquency proceedings, the probation officer
79 shall be a member of a treatment team. When appropriate, the
80 juvenile case manager in the Department of Health and Human
81 Resources and the Division of Juvenile Services shall cooperate
82 in conducting multidisciplinary treatment team meetings when
83 it is in the juvenile's best interest.

84 (3) Prior to disposition, in each case in which a treatment
85 planning team has been convened, the team shall advise the court
86 as to the types of services the team has determined are needed
87 and type of placement, if any, which will best serve the needs of
88 the child. If the team determines that an out-of-home placement
89 will best serve the needs of the child, the team shall first
90 consider placement at facilities or programs located within the
91 state. The team may only recommend placement in an
92 out-of-state facility if it concludes, after considering the best
93 interests and overall needs of the child, that there are no
94 available and suitable in-state facilities which can satisfactorily
95 meet the specific needs of the child.

96 (4) The multidisciplinary treatment team shall submit written
97 reports to the court as required by applicable law or by the court,
98 shall meet with the court at least every three months, as long as
99 the juvenile remains in the legal or physical custody of the state,
100 and shall be available for status conferences and hearings as
101 required by the court.

102 (5) In any case in which a juvenile has been placed out of his
103 or her home except for a temporary placement in a shelter or
104 detention center, the multidisciplinary treatment team shall
105 cooperate with the state agency in whose custody the juvenile is
106 placed to develop an after-care plan. The rules of juvenile
107 procedure and section four hundred nine of this article govern
108 the development of an after-care plan for a juvenile, the
109 submission of the plan to the court and any objection to the
110 after-care plan.

111 (6) If a juvenile respondent admits the underlying allegations
112 of the case initiated pursuant to part VII of this article, in the
113 multidisciplinary treatment planning process, his or her
114 statements may not be used in any juvenile or criminal
115 proceedings against the juvenile, except for perjury or false
116 swearing.

§49-4-407. Team directors; records; case logs.

1 All persons directing any team created pursuant to this
2 article shall maintain records of each meeting indicating the
3 name and position of persons attending each meeting and the
4 number of cases discussed at the meeting, including a
5 designation of whether or not that case was previously discussed
6 by any multidisciplinary team. Further, all investigative teams
7 shall maintain a log of all cases to indicate the number of
8 referrals to that team, whether or not a police report was filed
9 with the prosecuting attorney's office, whether or not a petition
10 was sought pursuant to part six of this article or whether or not
11 a criminal complaint was issued and a case was criminally
12 prosecuted. All treatment teams shall maintain a log of all cases
13 to indicate the basis for failure to review a case for a period in
14 excess of six months.

**§49-4-408. Unified child and family case plans; treatment teams;
programs; agency requirements.**

1 (a) The Department of Health and Human Resources shall
2 develop a unified child and family case plan for every family
3 wherein a person has been referred to the department after being
4 allowed an improvement period or where the child is placed in
5 foster care. The case plan must be filed within sixty days of the
6 child coming into foster care or within thirty days of the
7 inception of the improvement period, whichever occurs first. The
8 department may also prepare a case plan for any person who
9 voluntarily seeks child abuse and neglect services from the

10 department, or who is referred to the department by another
11 public agency or private organization. The case plan provisions
12 shall comply with federal law and the rules of procedure for
13 child abuse and neglect proceedings.

14 (b) The department shall convene a multidisciplinary
15 treatment team, which shall develop the case plan. Parents,
16 guardians or custodians shall participate fully in the development
17 of the case plan, and the child shall also fully participate if
18 sufficiently mature and the child's participation is otherwise
19 appropriate. The case plan may be modified from time to time to
20 allow for flexibility in goal development, and in each case the
21 modifications shall be submitted to the court in writing.
22 Reasonable efforts to place a child for adoption or with a legal
23 guardian may be made at the same time as reasonable efforts are
24 being made to prevent removal or to make it possible for a child
25 to return safely home. The court shall examine the proposed case
26 plan or any modification thereof, and upon a finding by the court
27 that the plan or modified plan can be easily communicated,
28 explained and discussed so as to make the participants
29 accountable and able to understand the reasons for any success
30 or failure under the plan, the court shall inform the participants
31 of the probable action of the court if goals are met or not met.

32 (c) In furtherance of the provisions of this article, the
33 department shall, within the limits of available funds, establish
34 programs and services for the following purposes:

35 (1) For the development and establishment of training
36 programs for professional and paraprofessional personnel in the
37 fields of medicine, law, education, social work and other
38 relevant fields who are engaged in, or intend to work in, the field
39 of the prevention, identification and treatment of child abuse and
40 neglect; and training programs for children, and for persons
41 responsible for the welfare of children, in methods of protecting
42 children from child abuse and neglect;

43 (2) For the establishment and maintenance of centers,
44 serving defined geographic areas, staffed by multidisciplinary
45 teams and community teams of personnel trained in the
46 prevention, identification and treatment of child abuse and
47 neglect cases, to provide a broad range of services related to
48 child abuse and neglect, including direct support as well as
49 providing advice and consultation to individuals, agencies and
50 organizations which request the services;

51 (3) For furnishing services of multidisciplinary teams and
52 community teams, trained in the prevention, identification and
53 treatment of child abuse and neglect cases, on a consulting basis
54 to small communities where the services are not available;

55 (4) For other innovative programs and projects that show
56 promise of successfully identifying, preventing or remedying the
57 causes of child abuse and neglect, including, but not limited to,
58 programs and services designed to improve and maintain
59 parenting skills, programs and projects for parent self help, and
60 for prevention and treatment of drug-related child abuse and
61 neglect; and

62 (5) Assisting public agencies or nonprofit private
63 organizations or combinations thereof in making applications for
64 grants from, or in entering into contracts with, the federal
65 Secretary of the Department of Health and Human Services for
66 demonstration programs and projects designed to identify,
67 prevent and treat child abuse and neglect.

68 (d) Agencies, organizations and programs funded to carry
69 out the purposes of this section shall be structured so as to
70 comply with any applicable federal law, any regulation of the
71 federal Department of Health and Human Services or its
72 secretary, and any final comprehensive plan of the federal
73 advisory board on child abuse and neglect. In funding
74 organizations, the department shall, to the extent feasible, ensure

75 that parental organizations combating child abuse and neglect
76 receive preferential treatment.

***§49-4-409. After care plans; contents; written comments;
contacts; objections; courts.**

1 (a) Prior to the discharge of a child from any institution or
2 facility to which the child was committed pursuant to this
3 chapter, the superintendent of the institution or facility shall call
4 a meeting of the multidisciplinary treatment team to which the
5 child has been referred or, if no referral has been made, convene
6 a multidisciplinary treatment team for any child for which a
7 multidisciplinary treatment plan is required by this article and
8 forward a copy of the child's proposed after-care plan to the
9 court which committed the child. A copy of the plan shall also
10 be sent to: (1) The child's parents or legal guardian; (2) the
11 child's lawyer; (3) the child's probation officer or community
12 mental health center professional; (4) the prosecuting attorney of
13 the county in which the original commitment proceedings were
14 held; and (5) the principal of the school which the child will
15 attend. The plan shall have a list of the names and addresses of
16 these persons attached to it.

17 (b) The after-care plan shall contain a detailed description of
18 the education, counseling and treatment which the child received
19 while at the institution or facility and it shall also propose a plan
20 for education, counseling and treatment for the child upon the
21 child's discharge. The plan shall also contain a description of
22 any problems the child has, including the source of those
23 problems, and it shall propose a manner for addressing those
24 problems upon discharge.

25 (c) Within twenty-one days of receiving the plan, the child's
26 probation officer or community mental health center

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.

27 professional shall submit written comments upon the plan to the
28 court which committed the child. Any other person who received
29 a copy of the plan pursuant to subsection (a) of this section may
30 submit written comments upon the plan to the court which
31 committed the child. Any person who submits comments upon
32 the plan shall send a copy of those comments to every other
33 person who received a copy of the plan.

34 (d) Within twenty-one days of receiving the plan, the child's
35 probation officer or community mental health center
36 professional shall contact all persons, organizations and agencies
37 which are to be involved in executing the plan to determine
38 whether they are capable of executing their responsibilities under
39 the plan and to further determine whether they are willing to
40 execute their responsibilities under the plan.

41 (e) If adverse comments or objections regarding the plan are
42 submitted to the circuit court, it shall, within forty-five days of
43 receiving the plan, hold a hearing to consider the plan and the
44 adverse comments or objections. Any person, organization or
45 agency which has responsibilities in executing the plan, or their
46 representatives, may be required to appear at the hearing unless
47 they are excused by the circuit court. Within five days of the
48 hearing, the circuit court shall issue an order which adopts the
49 plan as submitted or as modified in response to any comments or
50 objections.

51 (f) If no adverse comments or objections are submitted, a
52 hearing need not be held. In that case, the court shall consider
53 the plan as submitted and shall, within forty-five days of
54 receiving the plan, issue an order which adopts the plan as
55 submitted.

56 (g) Notwithstanding the provisions of subsections (e) and (f)
57 of this section, the plan which is adopted by the court shall be in

58 the best interests of the child and shall also be in conformity with
59 West Virginia's interest in youths as embodied in this chapter.

60 (h) The court which committed the child shall appoint the
61 child's probation officer or community mental health center
62 professional to act as supervisor of the plan. The supervisor shall
63 report the child's progress under the plan to the court every sixty
64 days or until the court determines that no report or no further
65 care is necessary.

§49-4-410. Other agencies of government required to cooperate.

1 State, county and local agencies shall provide the
2 multidisciplinary teams with any information requested in
3 writing by the team as allowable by law or upon receipt of a
4 certified copy of the circuit court's order directing the agencies
5 to release information in its possession relating to the child. The
6 team shall assure that all information received and developed in
7 connection with this article remain confidential. For purposes of
8 this section, the term "confidential" shall be construed in
9 accordance with article five of this chapter.

§49-4-411. Law enforcement; prosecution; interference with performance of duties.

1 No multidisciplinary team may take any action which, in the
2 determination of the prosecuting attorney or his or her assistant,
3 impairs the ability of the prosecuting attorney, his or her
4 assistant, or any law-enforcement officer to perform his or her
5 statutory duties.

§49-4-412. Exemption from multidisciplinary team review before emergency out-of-home placements.

1 Notwithstanding any provision of this article to the contrary,
2 a multidisciplinary team meeting may not be required before
3 temporary out-of-home placement of a child in an emergency
4 circumstance or for purposes of assessment as provided by this

5 article. As soon a practicable after the emergency circumstance,
6 the mutidisciplinary treatment team shall convene to explore
7 placement options.

PART V. DUTIES OF THE PROSECUTING ATTORNEY.

**§49-4-501. Prosecuting attorney representation of the Department
of Health and Human Resources; conflict resolution.**

1 (a) The prosecuting attorney shall render to the Department
2 of Health and Human Resources, without additional
3 compensation, the legal services as the department may require.
4 This section shall not be construed to prohibit the department
5 from developing plans for cooperation with courts, prosecuting
6 attorneys, and other law-enforcement officials in a manner as to
7 permit the state and its citizens to obtain maximum fiscal
8 benefits under federal laws, rules and regulations.

9 (b) Nothing in this code may be construed to limit the
10 authority of a prosecuting attorney to file an abuse or neglect
11 petition, including the duties and responsibilities owed to its
12 client the Department of Health and Human Resources, in his or
13 her fulfillment of the provisions of this article.

14 (c) Whenever, pursuant to this chapter, a prosecuting
15 attorney acts as counsel for the Department of Health and
16 Human Resources, and a dispute arises between the prosecuting
17 attorney and the department's representative because an action
18 proposed by the other is believed to place the child at imminent
19 risk of abuse or serious neglect, either the prosecuting attorney
20 or the department's representative may contact the secretary of
21 the department and the executive director of the West Virginia
22 Prosecuting Attorneys Institute for prompt mediation and
23 resolution. The secretary may designate either his or her general
24 counsel or the director of social services to act as his or her
25 designee and the executive director may designate an objective
26 prosecuting attorney as his or her designee.

§49-4-502. Prosecuting attorney to represent and cooperate with persons other than the department in child abuse and neglect matters; duties.

1 It is the duty of every prosecuting attorney to fully and
2 promptly cooperate with persons seeking to apply for relief,
3 including co-petitioners with the department, under this article
4 in all cases of suspected child abuse and neglect; to promptly
5 prepare applications and petitions for relief requested by those
6 persons, to investigate reported cases of suspected child abuse
7 and neglect for possible criminal activity; and to report at least
8 annually to the grand jury regarding the discharge of his or her
9 duties with respect thereto.

§49-4-503. Prosecuting attorney to represent petitioner in juvenile cases.

1 The prosecuting attorney shall represent the petitioner in all
2 proceedings under this article before the court judge or
3 magistrate having juvenile jurisdiction.

§49-4-504. Prosecuting attorney duty to establish multidisciplinary investigative teams.

1 The prosecuting attorney of each county shall establish a
2 multidisciplinary investigative team in that county, pursuant to
3 section four hundred two of this article, and section five, article
4 four of chapter seven.

PART VI. PROCEDURES IN CASES OF CHILD
NEGLECT OR ABUSE.

§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

1 (a) *Petitioner and venue.* — If the department or a reputable
2 person believes that a child is neglected or abused, the

3 department or the person may present a petition setting forth the
4 facts to the circuit court in the county in which the child resides,
5 or if the petition is being brought by the department, in the
6 county in which the custodial respondent or other named party
7 abuser resides, or in which the abuse or neglect occurred, or to
8 the judge of the court in vacation. Under no circumstance may
9 a party file a petition in more than one county based on the same
10 set of facts.

11 (b) *Contents of Petition.* — The petition shall be verified by
12 the oath of some credible person having knowledge of the facts.
13 The petition shall allege specific conduct including time and
14 place, how the conduct comes within the statutory definition of
15 neglect or abuse with references thereto, any supportive services
16 provided by the department to remedy the alleged circumstances
17 and the relief sought.

18 (c) *Court action upon filing of petition.* — Upon filing of the
19 petition, the court shall set a time and place for a hearing and
20 shall appoint counsel for the child. When there is an order for
21 temporary custody pursuant to this article, the preliminary
22 hearing shall be held within ten days of the order continuing or
23 transferring custody, unless a continuance for a reasonable time
24 is granted to a date certain, for good cause shown.

25 (d) *Department action upon filing of the petition.* — At the
26 time of the institution of any proceeding under this article, the
27 department shall provide supportive services in an effort to
28 remedy circumstances detrimental to a child.

29 (e) *Notice of hearing.* —

30 (1) The petition and notice of the hearing shall be served
31 upon both parents and any other custodian, giving to the parents
32 or custodian at least five days' actual notice of a preliminary
33 hearing and at least ten days' notice of any other hearing.

34 (2) Notice shall be given to the department, any foster or
35 preadoptive parent, and any relative providing care for the child.

36 (3) In cases where personal service within West Virginia
37 cannot be obtained after due diligence upon any parent or other
38 custodian, a copy of the petition and notice of the hearing shall
39 be mailed to the person by certified mail, addressee only, return
40 receipt requested, to the last known address of the person. If the
41 person signs the certificate, service shall be complete and the
42 certificate shall be filed as proof of the service with the clerk of
43 the circuit court.

44 (4) If service cannot be obtained by personal service or by
45 certified mail, notice shall be by publication as a Class II legal
46 advertisement in compliance with article three, chapter fifty-nine
47 of this code.

48 (5) A notice of hearing shall specify the time and place of
49 the hearing, the right to counsel of the child and parents or other
50 custodians at every stage of the proceedings and the fact that the
51 proceedings can result in the permanent termination of the
52 parental rights.

53 (6) Failure to object to defects in the petition and notice may
54 not be construed as a waiver.

55 (f) *Right to counsel.* —

56 (1) In any proceeding under this article, the child, his or her
57 parents and his or her legally established custodian or other
58 persons standing in *loco parentis* to him or her has the right to be
59 represented by counsel at every stage of the proceedings and
60 shall be informed by the court of their right to be so represented
61 and that if they cannot pay for the services of counsel, that
62 counsel will be appointed.

63 (2) Counsel shall be appointed in the initial order. For
64 parents, legal guardians, and other persons standing in *loco*

65 *parentis*, the representation may only continue after the first
66 appearance if the parent or other persons standing in *loco*
67 *parentis* cannot pay for the services of counsel.

68 (3) Counsel for other parties shall only be appointed upon
69 request for appointment of counsel. If the requesting parties have
70 not retained counsel and cannot pay for the services of counsel,
71 the court shall, by order entered of record, appoint an attorney or
72 attorneys to represent the other party or parties and so inform the
73 parties.

74 (4) Under no circumstances may the same attorney represent
75 both the child and the other party or parties, nor may the same
76 attorney represent both parents or custodians. However, one
77 attorney may represent both parents or custodians where both
78 parents or guardians consent to this representation after the
79 attorney fully discloses to the client the possible conflict and
80 where the attorney assures the court that she or he is able to
81 represent each client without impairing her or his professional
82 judgment; however, if more than one child from a family is
83 involved in the proceeding, one attorney may represent all the
84 children.

85 (5) A parent who is a copetitioner is entitled to his or her
86 own attorney. The court may allow to each attorney so appointed
87 a fee in the same amount which appointed counsel can receive in
88 felony cases.

89 (g) *Continuing education for counsel.* — Any attorney
90 representing a party under this article shall receive a minimum
91 of eight hours of continuing legal education training per
92 reporting period on child abuse and neglect procedure and
93 practice. In addition to this requirement, any attorney appointed
94 to represent a child must first complete training on
95 representation of children that is approved by the administrative
96 office of the Supreme Court of Appeals. The Supreme Court of

97 Appeals shall develop procedures for approval and certification
98 of training required under this section. Where no attorney has
99 completed the training required by this subsection, the court
100 shall appoint a competent attorney with demonstrated knowledge
101 of child welfare law to represent the parent or child. Any
102 attorney appointed pursuant to this section shall perform all
103 duties required of an attorney licensed to practice law in the
104 State of West Virginia.

105 (h) *Right to be heard.* — In any proceeding pursuant to this
106 article, the party or parties having custodial or other parental
107 rights or responsibilities to the child shall be afforded a
108 meaningful opportunity to be heard, including the opportunity to
109 testify and to present and cross-examine witnesses. Foster
110 parents, preadoptive parents, and relative caregivers shall also
111 have a meaningful opportunity to be heard.

112 (i) *Findings of the court.* — Where relevant, the court shall
113 consider the efforts of the department to remedy the alleged
114 circumstances. At the conclusion of the adjudicatory hearing, the
115 court shall make a determination based upon the evidence and
116 shall make findings of fact and conclusions of law as to whether
117 the child is abused or neglected and whether the respondent is
118 abusing, neglecting, or, if applicable, a battered parent, all of
119 which shall be incorporated into the order of the court. The
120 findings must be based upon conditions existing at the time of
121 the filing of the petition and proven by clear and convincing
122 evidence.

123 (j) *Priority of proceedings.* — Any petition filed and any
124 proceeding held under this article shall, to the extent practicable,
125 be given priority over any other civil action before the court,
126 except proceedings under section three hundred nine, article
127 twenty-seven, chapter forty-eight of this code and actions in
128 which trial is in progress. Any petition filed under this article
129 shall be docketed immediately upon filing. Any hearing to be

130 held at the end of an improvement period and any other hearing
131 to be held during any proceedings under this article shall be held
132 as nearly as practicable on successive days and, with respect to
133 the hearing to be held at the end of an improvement period, shall
134 be held as close in time as possible after the end of the
135 improvement period and shall be held within thirty days of the
136 termination of the improvement period.

137 (k) *Procedural safeguards.* — The petition may not be taken
138 as confessed. A transcript or recording shall be made of all
139 proceedings unless waived by all parties to the proceeding. The
140 rules of evidence shall apply. Following the court's
141 determination, it shall be inquired of the parents or custodians
142 whether or not appeal is desired and the response transcribed. A
143 negative response may not be construed as a waiver. The
144 evidence shall be transcribed and made available to the parties
145 or their counsel as soon as practicable, if the same is required for
146 purposes of further proceedings. If an indigent person intends to
147 pursue further proceedings, the court reporter shall furnish a
148 transcript of the hearing without cost to the indigent person if an
149 affidavit is filed stating that he or she cannot pay therefor.

**§49-4-602. Petition to court when child believed neglected or
abused; temporary care, custody, and control of
child at different stages of proceeding; temporary
care; orders; emergency removal; when reasonable
efforts to preserve family are unnecessary.**

1 (a) (1) *Temporary care, custody, and control upon filing of*
2 *the petition.* — Upon the filing of a petition, the court may order
3 that the child alleged to be an abused or neglected child be
4 delivered for not more than ten days into the care, custody, and
5 control of the department or a responsible person who is not the
6 custodial parent or guardian of the child, if it finds that:

7 (A) There exists imminent danger to the physical well-being
8 of the child; and

9 (B) There are no reasonably available alternatives to removal
10 of the child, including, but not limited to, the provision of
11 medical, psychiatric, psychological or homemaking services in
12 the child's present custody.

13 (2) Where the alleged abusing person, if known, is a member
14 of a household, the court shall not allow placement pursuant to
15 this section of the child or children in the home unless the
16 alleged abusing person is or has been precluded from visiting or
17 residing in the home by judicial order.

18 (3) In a case where there is more than one child in the home,
19 or in the temporary care, custody or control of the alleged
20 offending parent, the petition shall so state. Notwithstanding the
21 fact that the allegations of abuse or neglect may pertain to less
22 than all of those children, each child in the home for whom relief
23 is sought shall be made a party to the proceeding. Even though
24 the acts of abuse or neglect alleged in the petition were not
25 directed against a specific child who is named in the petition, the
26 court shall order the removal of the child, pending final
27 disposition, if it finds that there exists imminent danger to the
28 physical well-being of the child and a lack of reasonable
29 available alternatives to removal.

30 (4) The initial order directing custody shall contain an order
31 appointing counsel and scheduling the preliminary hearing, and
32 upon its service shall require the immediate transfer of care,
33 custody, and control of the child or children to the department or
34 a responsible relative, which may include any parent, guardian,
35 or other custodian. The court order shall state:

36 (A) That continuation in the home is contrary to the best
37 interests of the child and why; and

38 (B) Whether or not the department made reasonable efforts
39 to preserve the family and prevent the placement or that the
40 emergency situation made those efforts unreasonable or
41 impossible. The order may also direct any party or the
42 department to initiate or become involved in services to facilitate
43 reunification of the family.

44 (b) *Temporary care, custody and control at preliminary*
45 *hearing.* — Whether or not the court orders immediate transfer
46 of custody as provided in subsection (a) of this section, if the
47 facts alleged in the petition demonstrate to the court that there
48 exists imminent danger to the child, the court may schedule a
49 preliminary hearing giving the respondents at least five days'
50 actual notice. If the court finds at the preliminary hearing that
51 there are no alternatives less drastic than removal of the child
52 and that a hearing on the petition cannot be scheduled in the
53 interim period, the court may order that the child be delivered
54 into the temporary care, custody, and control of the department
55 or a responsible person or agency found by the court to be a fit
56 and proper person for the temporary care of the child for a period
57 not exceeding sixty days. The court order shall state:

58 (1) That continuation in the home is contrary to the best
59 interests of the child and set forth the reasons therefor;

60 (2) Whether or not the department made reasonable efforts
61 to preserve the family and to prevent the child's removal from
62 his or her home;

63 (3) Whether or not the department made reasonable efforts
64 to preserve the family and to prevent the placement or that the
65 emergency situation made those efforts unreasonable or
66 impossible;

67 (4) Whether or not the department made reasonable
68 accommodations in accordance with the Americans with
69 Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*, to parents

70 with disabilities in order to allow them meaningful access to
71 reunification and family preservation services; and

72 (5) What efforts should be made by the department, if any,
73 to facilitate the child's return home. If the court grants an
74 improvement period as provided in section six hundred ten of
75 this article, the sixty-day limit upon temporary custody is
76 waived.

77 (c) *Emergency removal by department during pendency of*
78 *case.* — Regardless of whether the court has previously granted
79 the department care and custody of a child, if the department
80 takes physical custody of a child during the pendency of a child
81 abuse and neglect case (also known as removing the child) due
82 to a change in circumstances and without a court order issued at
83 the time of the removal, the department must immediately notify
84 the court and a hearing shall take place within ten days to
85 determine if there is imminent danger to the physical well-being
86 of the child, and there is no reasonably available alternative to
87 removal of the child. The court findings and order shall be
88 consistent with subsections (a) and (b) of this section.

89 (d) *Situations when reasonable efforts to preserve the family*
90 *are not required.* — For purposes of the court's consideration of
91 temporary custody pursuant to subsection (a), (b), or (c) of this
92 section, the department is not required to make reasonable
93 efforts to preserve the family if the court determines:

94 (1) The parent has subjected the child, another child of the
95 parent or any other child residing in the same household or under
96 the temporary or permanent custody of the parent to aggravated
97 circumstances which include, but are not limited to,
98 abandonment, torture, chronic abuse and sexual abuse;

99 (2) The parent has:

100 (A) Committed murder of the child's other parent, guardian
101 or custodian, another child of the parent or any other child

102 residing in the same household or under the temporary or
103 permanent custody of the parent;

104 (B) Committed voluntary manslaughter of the child's other
105 parent, guardian or custodian, another child of the parent or any
106 other child residing in the same household or under the
107 temporary or permanent custody of the parent;

108 (C) Attempted or conspired to commit murder or voluntary
109 manslaughter or been an accessory before or after the fact to
110 either crime;

111 (D) Committed unlawful or malicious wounding that results
112 in serious bodily injury to the child, the child's other parent,
113 guardian or custodian, to another child of the parent or any other
114 child residing in the same household or under the temporary or
115 permanent custody of the parent;

116 (E) Committed sexual assault or sexual abuse of the child,
117 the child's other parent, guardian or custodian, another child of
118 the parent or any other child residing in the same household or
119 under the temporary or permanent custody of the parent; or

120 (F) Has been required by state or federal law to register with
121 a sex offender registry, and the court has determined in
122 consideration of the nature and circumstances surrounding the
123 prior charges against that parent, that the child's interests would
124 not be promoted by a preservation of the family; or

125 (3) The parental rights of the parent to another child have
126 been terminated involuntarily.

**§49-4-603. Medical and mental examinations; limitation of
evidence; probable cause; testimony; judge or
referee.**

1 (a)(1) At any time during proceedings under this article the
2 court may, upon its own motion or upon motion of the child or
3 other parties, order the child or other parties to be examined by

4 a physician, psychologist or psychiatrist, and may require
5 testimony from the expert, subject to cross-examination and the
6 rules of evidence.

7 (2) The court may not terminate parental or custodial rights
8 of a party solely because the party refuses to submit to the
9 examination, nor may the court hold a party in contempt for
10 refusing to submit to an examination.

11 (3) The physician, psychologist or psychiatrist shall be
12 allowed to testify as to the conclusions reached from hospital,
13 medical, psychological or laboratory records provided the same
14 are produced at the hearing.

15 (4) If the child, parent or custodian is indigent, the witnesses
16 shall be compensated out of the Treasury of the State, upon
17 certificate of the court wherein the case is pending.

18 (5) No evidence acquired as a result of an examination of the
19 parent or any other person having custody of the child may be
20 used against the person in any subsequent criminal proceedings
21 against the person.

22 (b) (1) If a person with authority to file a petition under this
23 article shall have probable cause to believe that evidence exists
24 that a child has been abused or neglected and that the evidence
25 may be found by a medical examination, the person may apply
26 to a judge or juvenile referee for an order to take the child into
27 custody for delivery to a physician or hospital for examination.

28 (2) The application may be on forms prescribed by the
29 Supreme Court of Appeals or prepared by the prosecuting
30 attorney or the applicant, and shall set forth facts from which it
31 may be determined that probable cause exists for the belief.

32 (3) Upon sworn testimony or other evidence as the judge or
33 referee deems sufficient, the judge or referee may order any

34 law-enforcement officer to take the child into custody and
35 deliver the child to a physician or hospital for examination.

36 (4) If a referee issues an order the referee shall by telephonic
37 communication have such order orally confirmed by a circuit
38 judge of the circuit or an adjoining circuit who shall, on the next
39 judicial day, enter an order of confirmation.

40 (5) Any child protection worker and the child's parents,
41 guardians or custodians may accompany the officer for
42 examination.

43 (6) After the examination the officer may return the child to
44 the custody of his or her parent, guardian or custodian, retain
45 custody of the child or deliver custody to the state department
46 until the end of the next judicial day, at which time the child
47 shall be returned to the custody of his or her parent, guardian or
48 custodian unless a petition has been filed and custody of the
49 child has been transferred to the department under section six
50 hundred two of this article.

**§49-4-604. Disposition of neglected or abused children; case plans;
dispositions; factors to be considered; reunification;
orders; alternative dispositions.**

1 (a) *Child and family case plans.* — Following a
2 determination pursuant to section six hundred two of this article
3 wherein the court finds a child to be abused or neglected, the
4 department shall file with the court a copy of the child's case
5 plan, including the permanency plan for the child. The term
6 "case plan" means a written document that includes, where
7 applicable, the requirements of the family case plan as provided
8 in section four hundred eight of this article and that also
9 includes, at a minimum, the following:

10 (1) A description of the type of home or institution in which
11 the child is to be placed, including a discussion of the

12 appropriateness of the placement and how the agency which is
13 responsible for the child plans to assure that the child receives
14 proper care and that services are provided to the parents, child,
15 and foster parents in order to improve the conditions that made
16 the child unsafe in the care of his or her parent(s), including any
17 reasonable accommodations in accordance with the Americans
18 with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, to
19 parents with disabilities in order to allow them meaningful
20 access to reunification and family preservation services;

21 (2) A plan to facilitate the return of the child to his or her
22 own home or the concurrent permanent placement of the child;
23 and address the needs of the child while in relative or foster care,
24 including a discussion of the appropriateness of the services that
25 have been provided to the child.

26 The term “permanency plan” refers to that part of the case
27 plan which is designed to achieve a permanent home for the
28 child in the least restrictive setting available. The plan must
29 document efforts to ensure that the child is returned home within
30 approximate time lines for reunification as set out in the plan.
31 Reasonable efforts to place a child for adoption or with a legal
32 guardian should be made at the same time, or concurrent with,
33 reasonable efforts to prevent removal or to make it possible for
34 a child to return to the care of his or her parent(s) safely. If
35 reunification is not the permanency plan for the child, the plan
36 must state why reunification is not appropriate and detail the
37 alternative, concurrent permanent placement plans for the child
38 to include approximate time lines for when the placement is
39 expected to become a permanent placement. This case plan shall
40 serve as the family case plan for parents of abused or neglected
41 children. Copies of the child’s case plan shall be sent to the
42 child’s attorney and parent, guardian or custodian or their
43 counsel at least five days prior to the dispositional hearing. The
44 court shall forthwith proceed to disposition giving both the
45 petitioner and respondents an opportunity to be heard.

46 (b) *Disposition decisions.* — The court shall give precedence
47 to dispositions in the following sequence:

48 (1) Dismiss the petition;

49 (2) Refer the child, the abusing parent, the battered parent or
50 other family members to a community agency for needed
51 assistance and dismiss the petition;

52 (3) Return the child to his or her own home under
53 supervision of the department;

54 (4) Order terms of supervision calculated to assist the child
55 and any abusing parent or battered parent or parents or custodian
56 which prescribe the manner of supervision and care of the child
57 and which are within the ability of any parent or parents or
58 custodian to perform;

59 (5) Upon a finding that the abusing parent or battered parent
60 or parents are presently unwilling or unable to provide
61 adequately for the child's needs, commit the child temporarily
62 to the care, custody, and control of the state department, a
63 licensed private child welfare agency, or a suitable person who
64 may be appointed guardian by the court. The court order shall
65 state:

66 (A) That continuation in the home is contrary to the best
67 interests of the child and why;

68 (B) Whether or not the department has made reasonable
69 efforts, with the child's health and safety being the paramount
70 concern, to preserve the family, or some portion thereof, and to
71 prevent or eliminate the need for removing the child from the
72 child's home and to make it possible for the child to safely return
73 home;

74 (C) Whether the department has made reasonable
75 accommodations in accordance with the Americans with

76 Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, to parents
77 with disabilities in order to allow them meaningful access to
78 reunification and family preservation services;

79 (D) What efforts were made or that the emergency situation
80 made those efforts unreasonable or impossible; and

81 (E) The specific circumstances of the situation which made
82 those efforts unreasonable if services were not offered by the
83 department. The court order shall also determine under what
84 circumstances the child's commitment to the department are to
85 continue. Considerations pertinent to the determination include
86 whether the child should:

87 (i) Be considered for legal guardianship;

88 (ii) Be considered for permanent placement with a fit and
89 willing relative; or

90 (iii) Be placed in another planned permanent living
91 arrangement, but only in cases where the child has attained 16
92 years of age and the department has documented to the circuit
93 court a compelling reason for determining that it would not be in
94 the best interests of the child to follow one of the options set
95 forth in subparagraphs (i) or (ii) of this paragraph. The court may
96 order services to meet the special needs of the child. Whenever
97 the court transfers custody of a youth to the department, an
98 appropriate order of financial support by the parents or guardians
99 shall be entered in accordance with part eight of this article; and

100 (6) Upon a finding that there is no reasonable likelihood that
101 the conditions of neglect or abuse can be substantially corrected
102 in the near future and, when necessary for the welfare of the
103 child, terminate the parental, custodial and guardianship rights
104 and responsibilities of the abusing parent and commit the child
105 to the permanent sole custody of the nonabusing parent, if there
106 be one, or, if not, to either the permanent guardianship of the

107 department or a licensed child welfare agency. The court may
108 award sole custody of the child to a nonabusing battered parent.
109 If the court shall so find, then in fixing its dispositional order the
110 court shall consider the following factors:

111 (A) The child's need for continuity of care and caretakers;

112 (B) The amount of time required for the child to be
113 integrated into a stable and permanent home environment; and

114 (C) Other factors as the court considers necessary and
115 proper. Notwithstanding any other provision of this article, the
116 court shall give consideration to the wishes of a child fourteen
117 years of age or older or otherwise of an age of discretion as
118 determined by the court regarding the permanent termination of
119 parental rights. No adoption of a child shall take place until all
120 proceedings for termination of parental rights under this article
121 and appeals thereof are final. In determining whether or not
122 parental rights should be terminated, the court shall consider the
123 efforts made by the department to provide remedial and
124 reunification services to the parent. The court order shall state:

125 (i) That continuation in the home is not in the best interest of
126 the child and why;

127 (ii) Why reunification is not in the best interests of the child;

128 (iii) Whether or not the department made reasonable efforts,
129 with the child's health and safety being the paramount concern,
130 to preserve the family, or some portion thereof, and to prevent
131 the placement or to eliminate the need for removing the child
132 from the child's home and to make it possible for the child to
133 safely return home, or that the emergency situation made those
134 efforts unreasonable or impossible; and

135 (iv) Whether or not the department made reasonable efforts
136 to preserve and reunify the family, or some portion thereof,

137 including a description of what efforts were made or that those
138 efforts were unreasonable due to specific circumstances.

139 (7) For purposes of the court's consideration of the
140 disposition custody of a child pursuant to this subsection, the
141 department is not required to make reasonable efforts to preserve
142 the family if the court determines:

143 (A) The parent has subjected the child, another child of the
144 parent or any other child residing in the same household or under
145 the temporary or permanent custody of the parent to aggravated
146 circumstances which include, but are not limited to,
147 abandonment, torture, chronic abuse and sexual abuse;

148 (B) The parent has:

149 (i) Committed murder of the child's other parent, guardian
150 or custodian, another child of the parent or any other child
151 residing in the same household or under the temporary or
152 permanent custody of the parent;

153 (ii) Committed voluntary manslaughter of the child's other
154 parent, guardian or custodian, another child of the parent or any
155 other child residing in the same household or under the
156 temporary or permanent custody of the parent;

157 (iii) Attempted or conspired to commit murder or voluntary
158 manslaughter or been an accessory before or after the fact to
159 either crime;

160 (iv) Committed a felonious assault that results in serious
161 bodily injury to the child, the child's other parent, guardian or
162 custodian, to another child of the parent or any other child
163 residing in the same household or under the temporary or
164 permanent custody of the parent; or

165 (v) Committed sexual assault or sexual abuse of the child,
166 the child's other parent, guardian or custodian, another child of

167 the parent or any other child residing in the same household or
168 under the temporary or permanent custody of the parent;

169 (C) The parental rights of the parent to another child have
170 been terminated involuntarily;

171 (D) A parent has been required by state or federal law to
172 register with a sex offender registry, and the court has
173 determined in consideration of the nature and circumstances
174 surrounding the prior charges against that parent, that the child's
175 interests would not be promoted by a preservation of the family.

176 (c) As used in this section, "no reasonable likelihood that
177 conditions of neglect or abuse can be substantially corrected"
178 means that, based upon the evidence before the court, the
179 abusing adult or adults have demonstrated an inadequate
180 capacity to solve the problems of abuse or neglect on their own
181 or with help. Those conditions exist in the following
182 circumstances, which are not exclusive:

183 (1) The abusing parent or parents have habitually abused or
184 are addicted to alcohol, controlled substances or drugs, to the
185 extent that proper parenting skills have been seriously impaired
186 and the person or persons have not responded to or followed
187 through the recommended and appropriate treatment which
188 could have improved the capacity for adequate parental
189 functioning;

190 (2) The abusing parent or parents have willfully refused or
191 are presently unwilling to cooperate in the development of a
192 reasonable family case plan designed to lead to the child's return
193 to their care, custody and control;

194 (3) The abusing parent or parents have not responded to or
195 followed through with a reasonable family case plan or other
196 rehabilitative efforts of social, medical, mental health or other
197 rehabilitative agencies designed to reduce or prevent the abuse
198 or neglect of the child, as evidenced by the continuation or

199 insubstantial diminution of conditions which threatened the
200 health, welfare or life of the child;

201 (4) The abusing parent or parents have abandoned the child;

202 (5) The abusing parent or parents have repeatedly or
203 seriously injured the child physically or emotionally, or have
204 sexually abused or sexually exploited the child, and the degree
205 of family stress and the potential for further abuse and neglect
206 are so great as to preclude the use of resources to mitigate or
207 resolve family problems or assist the abusing parent or parents
208 in fulfilling their responsibilities to the child;

209 (6) The battered parent's parenting skills have been seriously
210 impaired and the person has willfully refused or is presently
211 unwilling or unable to cooperate in the development of a
212 reasonable treatment plan or has not adequately responded to or
213 followed through with the recommended and appropriate
214 treatment plan.

215 (d) The court may, as an alternative disposition, allow the
216 parents or custodians an improvement period not to exceed six
217 months. During this period the court shall require the parent to
218 rectify the conditions upon which the determination was based.
219 The court may order the child to be placed with the parents, or
220 any person found to be a fit and proper person, for the temporary
221 care of the child during the period. At the end of the period, the
222 court shall hold a hearing to determine whether the conditions
223 have been adequately improved and at the conclusion of the
224 hearing shall make a further dispositional order in accordance
225 with this section.

**§49-4-605. When department efforts to terminate parental rights
are required.**

1 (a) Except as provided in subsection (b) of this section, the
2 department shall file or join in a petition or otherwise seek a
3 ruling in any pending proceeding to terminate parental rights:

4 (1) If a child has been in foster care for fifteen of the most
5 recent twenty-two months as determined by the earlier of the
6 date of the first judicial finding that the child is subjected to
7 abuse or neglect or the date which is sixty days after the child is
8 removed from the home;

9 (2) If a court has determined the child is abandoned,
10 tortured, sexually abused, or chronically abused; or

11 (3) If a court has determined the parent has committed
12 murder or voluntary manslaughter of another of his or her
13 children, another child in the household, or the other parent of
14 his or her children; has attempted or conspired to commit murder
15 or voluntary manslaughter or has been an accessory before or
16 after the fact of either crime; has committed unlawful or
17 malicious wounding resulting in serious bodily injury to the
18 child or to another of his or her children, another child in the
19 household, or to the other parent of his or her children; or the
20 parental rights of the parent to another child have been
21 terminated involuntarily.

22 (b) The department may determine not to file a petition to
23 terminate parental rights when:

24 (1) At the option of the department, the child has been
25 placed permanently with a relative by court order;

26 (2) The department has documented in the case plan made
27 available for court review a compelling reason, including, but
28 not limited to, the child's age and preference regarding
29 termination or the child's placement in custody of the
30 department based on any proceedings initiated under part seven
31 of this article, that filing the petition would not be in the best
32 interests of the child; or

33 (3) The department has not provided, when reasonable
34 efforts to return a child to the family are required, the services to

35 the child's family as the department deems necessary for the safe
36 return of the child to the home.

**§49-4-606. Modification of dispositional orders; hearings;
treatment team; unadopted children.**

1 (a) Upon motion of a child, a child's parent or custodian or
2 the department alleging a change of circumstances requiring a
3 different disposition, the court shall conduct a hearing pursuant
4 to section six hundred four of this article and may modify a
5 dispositional order if the court finds by clear and convincing
6 evidence a material change of circumstances and that the
7 modification is in the child's best interests. A dispositional order
8 may not be modified after the child has been adopted, except as
9 provided in subsections (b) and (c) of this section. Adequate and
10 timely notice of any motion for modification shall be given to
11 the child's counsel, counsel for the child's parent or custodian,
12 the department and any person entitled to notice and the right to
13 be heard. The circuit court of origin has exclusive jurisdiction
14 over placement of the child, and the placement may not be
15 disrupted or delayed by any administrative process of the
16 department.

17 (b) If the child is removed or relinquished from an adoptive
18 home or other permanent placement after the case has been
19 dismissed, any party with notice thereof and the receiving
20 agency shall promptly report the matter to the circuit court of
21 origin, the department and the child's counsel, and the court
22 shall schedule a permanency hearing within sixty days of the
23 report to the circuit court, with notice given to any appropriate
24 parties and persons entitled to notice and the right to be heard.
25 The department shall convene a multidisciplinary treatment team
26 meeting within thirty days of the receipt of notice of permanent
27 placement disruption.

28 (c) If a child has not been adopted, the child or department
29 may move the court to place the child with a parent or custodian

30 whose rights have been terminated and/or restore the parent's or
31 guardian's rights. Under these circumstances, the court may
32 order the placement and/or restoration of a parent's or guardian's
33 rights if it finds by clear and convincing evidence a material
34 change of circumstances and that the placement and/or
35 restoration is in the child's best interests.

§49-4-607. Consensual termination of parental rights.

1 An agreement of a natural parent in termination of parental
2 rights are valid if made by a duly acknowledged writing, and
3 entered into under circumstances free from duress and fraud.
4 Where during the pendency of an abuse and neglect proceeding,
5 a parent offers voluntarily relinquish of his or her parental rights,
6 and the relinquishment is accepted by the circuit court, the
7 relinquishment may, without further evidence, be used as the
8 basis of an order of adjudication of abuse and neglect by that
9 parent of his or her children.

**§49-4-608. Permanency hearing; frequency; transitional planning;
out-of-state placements; findings; notice; permanent
placement review.**

1 (a) *Permanency hearing when reasonable efforts are not*
2 *required.* — If the court finds, pursuant to this article, that the
3 department is not required to make reasonable efforts to preserve
4 the family, then, notwithstanding any other provision, a
5 permanency hearing must be held within thirty days following
6 the entry of the court order so finding, and a permanent
7 placement review hearing must be conducted at least once every
8 ninety days thereafter until a permanent placement is achieved.

9 (b) *Permanency hearing every twelve months until*
10 *permanency is achieved.* — If, twelve months after receipt by the
11 department or its authorized agent of physical care, custody, and
12 control of a child either by a court-ordered placement or by a

13 voluntary agreement, the department has not placed a child in an
14 adoptive home; placed the child with a natural parent, placed the
15 child in legal guardianship, or permanently placed the child with
16 a fit and willing relative, the court shall hold a permanency
17 hearing. The department shall file a progress report with the
18 court detailing the efforts that have been made to place the child
19 in a permanent home and copies of the child's case plan,
20 including the permanency plan as defined in section two hundred
21 one, article one, and section six hundred four, article four of this
22 chapter. Copies of the report shall be sent to the parties and all
23 persons entitled to notice and the right to be heard. The court
24 shall schedule a hearing, giving notice and the right to be present
25 to the child's attorney; the child; the child's parents; the child's
26 guardians; the child's foster parents; any preadoptive parent or
27 any relative providing care for the child; any person entitled to
28 notice and the right to be heard; and other persons as the court
29 may, in its discretion, direct. The child's presence may be
30 waived by the child's attorney at the request of the child or if the
31 child is younger than twelve years and would suffer emotional
32 harm. The purpose of the hearing is to review the child's case, to
33 determine whether and under what conditions the child's
34 commitment to the department shall continue, to determine what
35 efforts are necessary to provide the child with a permanent
36 home, and to determine if the department has made reasonable
37 efforts to finalize the permanency plan. The court shall conduct
38 another permanency hearing within twelve months thereafter for
39 each child who remains in the care, custody, and control of the
40 department until the child is placed in an adoptive home,
41 returned to his or her parents, placed in legal guardianship, or
42 permanently placed with a fit and willing relative.

43 (c) *Transitional planning for older children.* — In the case
44 of a child who has attained sixteen years of age, the court shall
45 determine the services needed to assist the child to make the
46 transition from foster care to independent living. The child's
47 case plan should specify services aimed at transitioning the child

48 into adulthood. When a child turns seventeen, or as soon as a
49 child aged seventeen comes into a case, the department must
50 immediately provide the child with assistance and support in
51 developing a transition plan that is personalized at the direction
52 of the child. The plan must include specific options on housing,
53 health insurance, education, local opportunities for mentors,
54 continuing support services, work force support, and
55 employment services, and the plan should be as detailed as the
56 child may elect. In addition to these requirements, when a child
57 with special needs turns seventeen, or as soon as a child aged
58 seventeen with special needs comes into a case, he or she is
59 entitled to the appointment of a department adult services worker
60 to the multidisciplinary treatment team and coordination
61 between the multidisciplinary treatment team and other
62 transition planning teams, such as special education
63 individualized education planning (IEP) teams.

64 (d) *Out-of-state placements.* – In any case in which the court
65 decides to order the child placed in an out-of-state facility or
66 program it shall set forth in the order directing the placement the
67 reasons why the child was not placed in an in-state facility or
68 program. If the child is to be placed with a relative or other
69 responsible person out of state, the court shall use judicial
70 leadership to help expedite the process under the Interstate
71 Compact for the Placement of Children provided in part one,
72 article seven of this chapter and the Uniform Child Custody
73 Jurisdiction and Enforcement Act provided in article twenty,
74 chapter forty-eight of this code.

75 (e) *Findings in order.* – At the conclusion of the hearing the
76 court shall, in accordance with the best interests of the child,
77 enter an order containing all the appropriate findings. The court
78 order shall state:

79 (1) Whether or not the department made reasonable efforts
80 to preserve the family and to prevent out-of-home placement or
81 that the specific situation made the effort unreasonable;

82 (2) Whether or not the department made reasonable efforts
83 to finalize the permanency plan and concurrent plan for the
84 child;

85 (3) The appropriateness of the child's current placement,
86 including its distance from the child's home and whether or not
87 it is the least restrictive one (most family-like one) available;

88 (4) The appropriateness of the current educational setting
89 and the proximity to the school in which the child is enrolled at
90 the time of placement;

91 (5) Services required to meet the child's needs and achieve
92 permanency; and

93 (6) In addition, in the case of any child for whom another
94 planned permanent living arrangement is the permanency plan,
95 the court shall (A) inquire of the child about the desired
96 permanency outcome for the child; (B) make a judicial
97 determination explaining why, as of the date of the hearing,
98 another planned permanent living arrangement is the best
99 permanency plan for the child; and, (C) provide in the court
100 order compelling reasons why it continues to not be in the best
101 interest of the child to (i) return home, (ii) be placed for
102 adoption, (iii) be placed with a legal guardian, or (iv) be placed
103 with a fit and willing relative.

104 (f) The department shall annually report to the court the
105 current status of the placements of children in the care, custody
106 and control of the state department who have not been adopted.

107 (g) The department shall file a report with the court in any
108 case where any child in the custody of the state receives more
109 than three placements in one year no later than thirty days after
110 the third placement. This report shall be provided to all parties
111 and persons entitled to notice and the right to be heard. Upon
112 motion by any party, the court shall review these placements and

113 determine what efforts are necessary to provide the child with a
114 permanent home. No report may be provided to any parent or
115 parent's attorney whose parental rights have been terminated
116 pursuant to this article.

117 (h) The department shall give actual notice, in writing, to the
118 court, the child, the child's attorney, the parents and the parents'
119 attorney at least forty-eight hours prior to the move if this is a
120 planned move, or within forty-eight hours of the next business
121 day after the move if the child is in imminent danger in the
122 child's current placement, except where the notification would
123 endanger the child or the foster family. A multidisciplinary
124 treatment team shall convene as soon as practicable after notice
125 to explore placement options. This requirement is not waived by
126 placement of the child in a home or other residence maintained
127 by a private provider. No notice may be provided pursuant to this
128 provision to any parent or parent's attorney whose parental rights
129 have been terminated pursuant to this article.

130 (i) Nothing in this article precludes any party from
131 petitioning the court for review of the child's case at any time.
132 The court shall grant the petition upon a showing that there is a
133 change in circumstance or needs of the child that warrants court
134 review.

135 (j) Any foster parent, preadoptive parent or relative
136 providing care for the child shall be given notice of and the right
137 to be heard at the permanency hearing provided in this section.

§49-4-609. Conviction for offenses against children.

1 In any case where a person is convicted of an offense against
2 a child described in section twelve, article eight, chapter
3 sixty-one of this code or articles eight-b or eight-d of that
4 chapter and the person has custodial, visitation or other parental
5 rights to the child who is the victim of the offense or to any child

6 who resides in the same household as the victim, the court shall,
7 at the time of sentencing, find that the person is an abusing
8 parent within the meaning of this chapter as to the child victim,
9 and may find that the person is an abusing parent as to any child
10 who resides in the same household as the victim, and the court
11 shall take further steps as are required by this article.

**§49-4-610. Improvement periods in cases of child neglect or abuse;
findings; orders; extensions; hearings; time limits.**

1 In any proceeding brought pursuant to this article, the court
2 may grant any respondent an improvement period in accord with
3 this article. During the period, the court may require temporary
4 custody with a responsible person which has been found to be a
5 fit and proper person for the temporary custody of the child or
6 children or the state department or other agency during the
7 improvement period. An order granting an improvement period
8 shall require the department to prepare and submit to the court
9 a family case plan in accordance with section four hundred eight,
10 of this article. The types of improvement periods are as follows:

11 (1) *Preadjudicatory improvement period.* — A court may
12 grant a respondent an improvement period of a period not to
13 exceed three months prior to making a finding that a child is
14 abused or neglected pursuant to section six hundred one of this
15 article only when:

16 (A) The respondent files a written motion requesting the
17 improvement period;

18 (B) The respondent demonstrates, by clear and convincing
19 evidence, that the respondent is likely to fully participate in the
20 improvement period and the court further makes a finding, on
21 the record, of the terms of the improvement period;

22 (C) In the order granting the improvement period, the court:

23 (i) Orders that a hearing be held to review the matter within
24 sixty days of the granting of the improvement period; or

25 (ii) Orders that a hearing be held to review the matter within
26 ninety days of the granting of the improvement period and that
27 the department submit a report as to the respondents progress in
28 the improvement period within sixty days of the order granting
29 the improvement period; and

30 (D) The order granting the improvement period requires the
31 department to prepare and submit to the court an individualized
32 family case plan in accordance with section four hundred eight
33 of this article;

34 (2) *Post-adjudicatory improvement period.* — After finding
35 that a child is an abused or neglected child pursuant to section
36 six hundred one of this article, a court may grant a respondent an
37 improvement period of a period not to exceed six months when:

38 (A) The respondent files a written motion requesting the
39 improvement period;

40 (B) The respondent demonstrates, by clear and convincing
41 evidence, that the respondent is likely to fully participate in the
42 improvement period and the court further makes a finding, on
43 the record, of the terms of the improvement period;

44 (C) In the order granting the improvement period, the court:

45 (i) Orders that a hearing be held to review the matter within
46 thirty days of the granting of the improvement period; or

47 (ii) Orders that a hearing be held to review the matter within
48 ninety days of the granting of the improvement period and that
49 the department submit a report as to the respondent's progress in
50 the improvement period within sixty days of the order granting
51 the improvement period;

52 (D) Since the initiation of the proceeding, the respondent has
53 not previously been granted any improvement period or the
54 respondent demonstrates that since the initial improvement
55 period, the respondent has experienced a substantial change in
56 circumstances. Further, the respondent shall demonstrate that
57 due to that change in circumstances the respondent is likely to
58 fully participate in a further improvement period; and

59 (E) The order granting the improvement period requires the
60 department to prepare and submit to the court an individualized
61 family case plan in accordance with section four hundred eight
62 of this article.

63 (3) *Post-dispositional improvement period.* – The court may
64 grant an improvement period not to exceed six months as a
65 disposition pursuant to section six hundred four of this article
66 when:

67 (A) The respondent moves in writing for the improvement
68 period;

69 (B) The respondent demonstrates, by clear and convincing
70 evidence, that the respondent is likely to fully participate in the
71 improvement period and the court further makes a finding, on
72 the record, of the terms of the improvement period;

73 (C) In the order granting the improvement period, the court:

74 (i) Orders that a hearing be held to review the matter within
75 sixty days of the granting of the improvement period; or

76 (ii) Orders that a hearing be held to review the matter within
77 ninety days of the granting of the improvement period and that
78 the department submit a report as to the respondent's progress in
79 the improvement period within sixty days of the order granting
80 the improvement period;

81 (D) Since the initiation of the proceeding, the respondent has
82 not previously been granted any improvement period or the
83 respondent demonstrates that since the initial improvement
84 period, the respondent has experienced a substantial change in
85 circumstances. Further, the respondent shall demonstrate that
86 due to that change in circumstances, the respondent is likely to
87 fully participate in the improvement period; and

88 (E) The order granting the improvement period shall require
89 the department to prepare and submit to the court an
90 individualized family case plan in accordance with section four
91 hundred eight of this article.

92 (4) *Responsibilities of the respondent receiving improvement*
93 *period.* —

94 (A) When any improvement period is granted to a
95 respondent pursuant to this section, the respondent shall be
96 responsible for the initiation and completion of all terms of the
97 improvement period. The court may order the state department
98 to pay expenses associated with the services provided during the
99 improvement period when the respondent has demonstrated that
100 he or she is unable to bear the expenses.

101 (B) When any improvement period is granted to a
102 respondent pursuant to this section, the respondent shall execute
103 a release of all medical information regarding that respondent,
104 including, but not limited to, information provided by mental
105 health and substance abuse professionals and facilities. The
106 release shall be accepted by a professional or facility regardless
107 of whether the release conforms to any standard required by that
108 facility.

109 (5) *Responsibilities of the department during improvement*
110 *period.* — When any respondent is granted an improvement
111 period pursuant to this article, the department shall monitor the

112 progress of the person in the improvement period. This section
113 may not be construed to prohibit a court from ordering a
114 respondent to participate in services designed to reunify a family
115 or to relieve the department of any duty to make reasonable
116 efforts to reunify a family required by state or federal law.

117 (6) *Extension of improvement period.* — A court may extend
118 any improvement period granted pursuant to subdivision (2) or
119 (3) of this section for a period not to exceed three months when
120 the court finds that the respondent has substantially complied
121 with the terms of the improvement period; that the continuation
122 of the improvement period will not substantially impair the
123 ability of the department to permanently place the child; and that
124 the extension is otherwise consistent with the best interest of the
125 child.

126 (7) *Termination of improvement period.* — Upon the motion
127 by any party, the court shall terminate any improvement period
128 granted pursuant to this section when the court finds that
129 respondent has failed to fully participate in the terms of the
130 improvement period or has satisfied the terms of the
131 improvement period to correct any behavior alleged in the
132 petition or amended petition to make his or her child unsafe.

133 (8) *Hearings on improvement period.* —

134 (A) Any hearing scheduled pursuant to this section may be
135 continued only for good cause upon a written motion properly
136 served on all parties. When a court grants a continuance, the
137 court shall enter an order granting the continuance specifying a
138 future date when the hearing will be held.

139 (B) Any hearing to be held at the end of an improvement
140 period shall be held as nearly as practicable on successive days
141 and shall be held as close in time as possible after the end of the
142 improvement period and shall be held no later than thirty days of
143 the termination of the improvement period.

144 (9) *Time limit for improvement periods.* — Notwithstanding
145 any other provision of this section, no combination of any
146 improvement periods or extensions thereto may cause a child to
147 be in foster care more than fifteen months of the most recent
148 twenty-two months, unless the court finds compelling
149 circumstances by clear and convincing evidence that it is in the
150 child's best interests to extend the time limits contained in this
151 paragraph.

PART VII. JUVENILE PROCEEDINGS.

§49-4-701. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; requirements; hearings; right to counsel; opportunity to be heard; evidence and transcripts.

1 (a) The circuit court has original jurisdiction of proceedings
2 brought under this article. A person under the age of eighteen
3 years who appears before the circuit court in proceedings under
4 this article is a ward of the court and protected accordingly.

5 (b) If during a criminal proceeding in any court it is
6 ascertained or appears that the defendant is under the age of
7 nineteen years and was under the age of eighteen years at the
8 time of the alleged offense, the matter shall be immediately
9 certified to the juvenile jurisdiction of the circuit court. The
10 circuit court shall assume jurisdiction of the case in the same
11 manner as cases which are originally instituted in the circuit
12 court by petition.

13 (c) Notwithstanding any other provision of this article,
14 magistrate courts have concurrent juvenile jurisdiction with the
15 circuit court for a violation of a traffic law of West Virginia, for
16 a violation of section nine, article six, chapter sixty, section three
17 or section four, article nine-a, chapter sixteen, or section
18 nineteen, article sixteen, chapter eleven of this code, or for any

19 violation of chapter twenty of this code. Juveniles are liable for
20 punishment for violations of these laws in the same manner as
21 adults except that magistrate courts have no jurisdiction to
22 impose a sentence of incarceration for the violation of these
23 laws.

24 (d) Notwithstanding any other provision of this article,
25 municipal courts have concurrent juvenile jurisdiction with the
26 circuit court for a violation of any municipal ordinance
27 regulating traffic, for any municipal curfew ordinance which is
28 enforceable or for any municipal ordinance regulating or
29 prohibiting public intoxication, drinking or possessing alcoholic
30 liquor or nonintoxicating beer in public places, any other act
31 prohibited by section nine, article six, chapter sixty or section
32 nineteen, article sixteen, chapter eleven of this code or underage
33 possession or use of tobacco or tobacco products, as provided in
34 article nine-a, chapter sixteen of this code. Municipal courts may
35 impose the same punishment for these violations as a circuit
36 court exercising its juvenile jurisdiction could properly impose,
37 except that municipal courts have no jurisdiction to impose a
38 sentence of incarceration for the violation of these laws.

39 (e) A juvenile may be brought before the circuit court for
40 proceedings under this article only by the following means:

41 (1) By a juvenile petition requesting that the juvenile be
42 adjudicated as a status offender or a juvenile delinquent; or

43 (2) By certification or transfer to the juvenile jurisdiction of
44 the circuit court from the criminal jurisdiction of the circuit
45 court, from any foreign court, or from any magistrate court or
46 municipal court in West Virginia.

47 (f)(1) If a juvenile commits an act which would be a crime
48 if committed by an adult, and the juvenile is adjudicated
49 delinquent for that act, the jurisdiction of the court which
50 adjudged the juvenile delinquent continues until the juvenile

51 becomes twenty-one years of age. The court has the same power
52 over that person that it had before he or she became an adult, and
53 has the power to sentence that person to a term of incarceration.
54 Any term of incarceration may not exceed six months. This
55 authority does not preclude the court from exercising criminal
56 jurisdiction over that person if he or she violates the law after
57 becoming an adult or if the proceedings have been transferred to
58 the court's criminal jurisdiction pursuant to section seven
59 hundred four of this article.

60 (2) If a juvenile is adjudicated as a status offender because
61 he or she is habitually absent from school without good cause,
62 the jurisdiction of the court which adjudged the juvenile a status
63 offender continues until either the juvenile becomes twenty-one
64 years of age, completes high school, completes a high school
65 equivalent or other education plan approved by the court, or the
66 court otherwise voluntarily relinquishes jurisdiction, whichever
67 occurs first. If the jurisdiction of the court is extended pursuant
68 to this subdivision, the court has the same power over that
69 person that it had before he or she became an adult. No person
70 so adjudicated who has attained the age of nineteen may be
71 ordered to attend school in a regular, nonalternative setting.

72 (g) A juvenile is entitled to be admitted to bail or
73 recognizance in the same manner as an adult and be afforded the
74 protection guaranteed by Article III of the West Virginia
75 Constitution.

76 (h) A juvenile has the right to be effectively represented by
77 counsel at all stages of proceedings under this article, including
78 participation in multidisciplinary team meetings, until the child
79 is no longer under the jurisdiction of the court. If the juvenile or
80 the juvenile's parent or custodian executes an affidavit showing
81 that the juvenile cannot afford an attorney, the court shall
82 appoint an attorney, who shall be paid in accordance with article
83 twenty-one, chapter twenty-nine of this code.

84 (i)(1) In all proceedings under this article, the juvenile will
85 be afforded a meaningful opportunity to be heard. This includes
86 the opportunity to testify and to present and cross-examine
87 witnesses. The general public shall be excluded from all
88 proceedings under this article except that persons whose
89 presence is requested by the parties and other persons whom the
90 circuit court determines have a legitimate interest in the
91 proceedings may attend.

92 (2) In cases in which a juvenile is accused of committing
93 what would be a felony if the juvenile were an adult, an alleged
94 victim or his or her representative may attend any related
95 juvenile proceedings, at the discretion of the presiding judicial
96 officer.

97 (3) In any case in which the alleged victim is a juvenile, he
98 or she may be accompanied by his or her parents or
99 representative, at the discretion of the presiding judicial officer.

100 (j) At all adjudicatory hearings held under this article, all
101 procedural rights afforded to adults in criminal proceedings shall
102 be afforded the juvenile unless specifically provided otherwise
103 in this chapter.

104 (k) At all adjudicatory hearings held under this article, the
105 rules of evidence applicable in criminal cases apply, including
106 the rule against written reports based upon hearsay.

107 (l) Except for res gestae, extrajudicial statements made by a
108 juvenile who has not attained fourteen years of age to
109 law-enforcement officials or while in custody are not admissible
110 unless those statements were made in the presence of the
111 juvenile's counsel. Except for res gestae, extrajudicial statements
112 made by a juvenile who has not attained sixteen years of age but
113 who is at least fourteen years of age to law-enforcement officers
114 or while in custody, are not admissible unless made in the
115 presence of the juvenile's counsel or made in the presence of,

116 and with the consent of, the juvenile's parent or custodian, and
117 the parent or custodian has been fully informed regarding the
118 juvenile's right to a prompt detention hearing, the juvenile's
119 right to counsel, including appointed counsel if the juvenile
120 cannot afford counsel, and the juvenile's privilege against
121 self-incrimination.

122 (m) A transcript or recording shall be made of all transfer,
123 adjudicatory and dispositional hearings held in circuit court. At
124 the conclusion of each of these hearings, the circuit court shall
125 make findings of fact and conclusions of law, both of which shall
126 appear on the record. The court reporter shall furnish a transcript
127 of the proceedings at no charge to any indigent juvenile who
128 seeks review of any proceeding under this article if an affidavit
129 is filed stating that neither the juvenile nor the juvenile's parents
130 or custodian have the ability to pay for the transcript.

***§49-4-702. Prepetition interventions; court referrals; probation officers; giving of counsel.**

1 (a) Before a juvenile petition is formally filed with the court,
2 the court may refer the matter to a state department worker or
3 probation officer for preliminary inquiry to determine whether
4 the matter can be resolved informally without the formal filing
5 of a petition with the court.

6 (b) The court at any time, or the department or other official
7 upon a request from a parent, guardian or custodian, may, before
8 proceedings under this article are formally instituted by the filing
9 of a petition with the court, refer a juvenile alleged to be
10 delinquent or a status offender to a counselor at the department
11 or a community mental health center, or other professional
12 counselor in the community. In the event the juvenile refuses to
13 respond to this referral, the department may serve a notice by
14 first class mail or personal service of process upon the juvenile,

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150) which passed subsequent to this Act.

15 setting forth the facts and stating that a noncustodial order will
16 be sought from the court directing the juvenile to submit to
17 counseling. The notice shall set forth the time and place for the
18 hearing on the matter. The court after a hearing may direct the
19 juvenile to participate in a noncustodial period of counseling that
20 may not exceed six months. Upon recommendation of the
21 department or request by the juvenile's parent, custodian or
22 guardian, the court may allow or require the parent, custodian or
23 guardian to participate in this noncustodial counseling. No
24 information obtained as the result of this counseling is
25 admissible in a subsequent proceeding under this article.

26 (c) Before a petition is formally filed with the court, the
27 probation officer or other officer of the court designated by it,
28 subject to its direction, may give counsel and advice to the
29 parties with a view to an informal adjustment period if it
30 appears:

31 (1) The admitted facts bring the case within the jurisdiction
32 of the court;

33 (2) Counsel and advice without an adjudication would be in
34 the best interest of the public and the juvenile; and

35 (3) The juvenile and his or her parents, guardian or other
36 custodian consent thereto with knowledge that consent is not
37 obligatory.

38 (d) The giving of counsel and advice pursuant to this section
39 may not continue longer than six months from the day it is
40 commenced unless extended by the court for an additional period
41 not to exceed six months.

§49-4-703. Juvenile drug courts; hearing officers.

1 Juvenile drug courts shall be designed and operated
2 consistent with the developmental and rehabilitative needs of
3 juveniles as defined in this article. The Supreme Court shall

4 provide uniform referral, procedure and order forms that shall be
5 used in juvenile drug courts. The Supreme Court is further
6 authorized to appoint appropriate hearing officers in those
7 jurisdictions which choose to operate a juvenile drug court.
8 Hearing officers for juvenile drug courts shall be limited to
9 current or senior status circuit court judges or family court
10 judges.

**§49-4-704. Institution of proceedings by petition; notice to juvenile
and parents; preliminary hearings; subpoena.**

1 (a)(1) A petition alleging that a juvenile is a status offender
2 or a juvenile delinquent may be filed by a person who has
3 knowledge of or information concerning the facts alleged. The
4 petition shall be verified by the petitioner, shall set forth the
5 name and address of the juvenile's parents, guardians or
6 custodians, if known to the petitioner, and shall be filed in the
7 circuit court in the county where the alleged status offense or act
8 of delinquency occurred. However, a proceeding under this
9 chapter may be removed, for good cause shown, in accordance
10 with section one, article nine, chapter fifty-six of this code. The
11 petition shall contain specific allegations of the conduct and
12 facts upon which the petition is based, including the approximate
13 time and place of the alleged conduct; a statement of the right to
14 have counsel appointed and consult with counsel at every stage
15 of the proceedings; and the relief sought.

16 (2) Upon the filing of the petition, the court shall set a time
17 and place for a preliminary hearing and may appoint counsel. A
18 copy of the petition and summons may be served upon the
19 respondent juvenile by first class mail or personal service of
20 process. If a juvenile does not appear in response to a summons
21 served by mail, no further proceeding may be held until the
22 juvenile is served a copy of the petition and summons by
23 personal service of process. If a juvenile fails to appear in
24 response to a summons served in person upon him or her, an
25 order of arrest may be issued by the court for that reason alone.

26 (b) The parents, guardians or custodians shall be named in
27 the petition as respondents and shall be served with notice of the
28 proceedings in the same manner as provided in subsection (a) of
29 this section for service upon the juvenile and required to appear
30 with the juvenile at the time and place set for the proceedings
31 unless the respondent cannot be found after diligent search. If a
32 respondent cannot be found after diligent search, the court may
33 proceed without further requirement of notice. However, the
34 court may order service by first class mail to the last known
35 address of the respondent. The respondent shall be afforded
36 fifteen days after the date of mailing to appear or answer.

37 (c) The court or referee may order the issuance of a
38 subpoena against the person having custody and control of the
39 juvenile ordering him or her to bring the juvenile before the
40 court.

41 (d) When any case of a juvenile charged with the
42 commission of a crime is certified or transferred to the circuit
43 court, the court shall forthwith cause the juvenile and his or her
44 parents, guardians or custodians to be served with a petition as
45 provided in subsections (a) and (b) of this section. In the event
46 the juvenile is in custody, the petition shall be served upon the
47 juvenile within ninety-six hours of the time custody began and
48 if the petition is not served within that time, the juvenile shall be
49 released forthwith.

50 (e) The clerk of the court shall notify, within two judicial
51 days, the local office of the Department of Health and Human
52 Resources of all proceedings under this article, which is
53 responsible for convening and directing the multidisciplinary
54 treatment planning process in accordance with section four
55 hundred six of this article. In status offense or delinquency cases
56 where a case manager has not been assigned, the juvenile
57 probation officer is responsible for notifying the local office of
58 the Department of Health and Human Services which will assign

59 a case manager who will initiate assessment and be responsible
60 for convening and directing the multidisciplinary treatment
61 planning process.

62 (f) Notwithstanding any other provision of this code to the
63 contrary, a petition filed pursuant to section four hundred three,
64 article twenty-seven, chapter forty-eight of this code in which
65 the petition for the emergency protective order is filed by or on
66 behalf of the juvenile's parent, guardian or custodian or other
67 person with whom the juvenile resides and that results in the
68 issuance of an emergency protective order naming a juvenile as
69 the respondent, shall be treated as a petition authorized by this
70 section, alleging the juvenile is a juvenile delinquent. However,
71 the magistrate court shall notify the prosecuting attorney in the
72 county where the emergency protective order is issued within
73 twenty-four hours of the issuance of the emergency protective
74 order and the prosecuting attorney may file an amended verified
75 petition to comply with subsection (a) of this section within two
76 judicial days.

§49-4-705. Taking a juvenile into custody; requirements; existing conditions; detention centers; medical aid.

1 (a) In proceedings formally instituted by the filing of a
2 juvenile petition, the circuit court or a magistrate may issue an
3 order directing that a juvenile be taken into custody before
4 adjudication only upon a showing of probable cause to believe
5 that one of the following conditions exists: (1) The petition
6 shows that grounds exist for the arrest of an adult in identical
7 circumstances; (2) the health, safety and welfare of the juvenile
8 demand custody; (3) the juvenile is a fugitive from a lawful
9 custody or commitment order of a juvenile court; or (4) the
10 juvenile is alleged to be a juvenile delinquent with a record of
11 willful failure to appear at juvenile proceedings and custody is
12 necessary to assure his or her presence before the court. A
13 detention hearing pursuant to section seven hundred six of this

14 article shall be held by the judge or magistrate authorized to
15 conduct the hearings without unnecessary delay and in no event
16 may any delay exceed the next day.

17 (b) Absent a court order, a juvenile may be taken into
18 custody by a law-enforcement official only if one of the
19 following conditions exists:

20 (1) Grounds exist for the arrest of an adult in identical
21 circumstances;

22 (2) Emergency conditions exist which, in the judgment of
23 the officer, pose imminent danger to the health, safety and
24 welfare of the juvenile;

25 (3) The official has reasonable grounds to believe that the
26 juvenile has left the care of his or her parents, guardian or
27 custodian without the consent of the person and the health, safety
28 and welfare of the juvenile is endangered;

29 (4) The juvenile is a fugitive from a lawful custody or
30 commitment order of a juvenile court;

31 (5) The official has reasonable grounds to believe the
32 juvenile to have been driving a motor vehicle with any amount
33 of alcohol in his or her blood; or

34 (6) The juvenile is the named respondent in an emergency
35 domestic violence protective order issued pursuant to section
36 four hundred three, article twenty-seven, chapter forty-eight of
37 this code and the individual filing the petition for the emergency
38 protective order is the juvenile's parent, guardian or custodian or
39 other person with whom the juvenile resides.

40 (c) Upon taking a juvenile into custody, with or without a
41 court order, the official shall:

42 (1) Immediately notify the juvenile's parent, guardian,
43 custodian or, if the parent, guardian or custodian cannot be
44 located, a close relative;

45 (2) Release the juvenile into the custody of his or her parent,
46 guardian or custodian unless:

47 (A) Circumstances present an immediate threat of serious
48 bodily harm to the juvenile if released;

49 (B) No responsible adult can be found into whose custody
50 the juvenile can be delivered. Each day the juvenile is detained,
51 a written record must be made of all attempts to locate a
52 responsible adult; or

53 (C) The juvenile has been taken into custody for an alleged
54 act of delinquency for which secure detention is permissible.

55 (3) If the juvenile is an alleged status offender or has been
56 taken into custody pursuant to subdivision (6), subsection (b) of
57 this section, immediately notify the Department of Health and
58 Human Resources and, if the circumstances of either paragraph
59 (A) or (B), subdivision (2) of this subsection exist and the
60 requirements therein are met, the official may detain the
61 juvenile, but only in a nonsecure or staff-secure facility;

62 (4) Take the juvenile without unnecessary delay before a
63 judge of the circuit court for a detention hearing pursuant to
64 section seven hundred six of this article. If a circuit court judge
65 is not available in the county, the official shall take the juvenile
66 without unnecessary delay before any magistrate available in the
67 county for the sole purpose of conducting the detention hearing.
68 In no event may any delay in presenting the juvenile for a
69 detention hearing exceed the next day after he or she is taken
70 into custody.

71 (d) In the event that a juvenile is delivered into the custody
72 of a sheriff or director of a detention facility, the sheriff or

73 director shall immediately notify the sheriff or director shall
74 immediately provide to every juvenile who is delivered into his
75 or her custody a written statement explaining the juvenile's right
76 to a prompt detention hearing, his or her right to counsel,
77 including appointed counsel if he or she cannot afford counsel,
78 and his or her privilege against self-incrimination. In all cases
79 when a juvenile is delivered into a sheriff's or detention center
80 director's custody, that official shall release the juvenile to his or
81 her parent, guardian or custodian by the end of the next day
82 unless the juvenile has been placed in detention after a hearing
83 conducted pursuant to section seven hundred six of this article.

84 (e) The law-enforcement agency that takes a juvenile into
85 custody or places a juvenile under arrest is responsible for the
86 juvenile's initial transportation to a juvenile detention center or
87 other Division of Juvenile Services' residential facility.

88 (f) Notwithstanding any other provision of this code, a
89 juvenile detention center, or other Division of Juvenile Services'
90 residential facility, is not required to accept a juvenile if the
91 juvenile appears to be in need of medical attention of a degree
92 necessitating treatment by a physician. If a juvenile is refused
93 pursuant to this subsection, the juvenile detention center, or other
94 Division of Juvenile Services' residential facility, may not
95 subsequently accept the juvenile for detention until the arresting
96 or transporting officer provides the juvenile detention center, or
97 other Division of Juvenile Services' residential facility, with a
98 written clearance from a licensed physician reflecting that the
99 juvenile has been examined and, if necessary, treated and which
100 states that in the physician's medical opinion the juvenile can be
101 safely confined in the juvenile detention center or other Division
102 of Juvenile Services' residential facility.

**§49-4-706. Detention hearing; rights of juvenile; notification;
counsel; hearings.**

1 (a) The circuit court judge or magistrate shall inform the
2 juvenile of his or her right to remain silent, that any statement

3 may be used against him or her and of his or her right to counsel,
4 and no interrogation may be made without the presence of a
5 parent or counsel. If the juvenile or his or her parent, guardian or
6 custodian has not retained counsel, counsel shall be appointed as
7 soon as practicable. The circuit court judge or magistrate shall
8 hear testimony concerning the circumstances for taking the
9 juvenile into custody and the possible need for detention. The
10 sole mandatory issue at the detention hearing is whether the
11 juvenile should be detained pending further court proceedings.
12 The court shall, if the health, safety and welfare of the juvenile
13 will not be endangered thereby, release the juvenile on
14 recognizance to his or her parents, custodians or an appropriate
15 agency; however, if warranted, the court may require bail, except
16 that bail may be denied in any case where bail could be denied
17 if the accused were an adult. The court shall:

18 (1) Immediately notify the juvenile's parent, guardian or
19 custodian or, if the parent, guardian or custodian cannot be
20 located, a close relative;

21 (2) Release the juvenile into the custody of his or her parent,
22 guardian or custodian unless:

23 (A) Circumstances present an immediate threat of serious
24 bodily harm to the juvenile if released;

25 (B) No responsible adult can be found into whose custody
26 the juvenile can be delivered. However, each day the juvenile is
27 detained, a written record must be made of all attempts to locate
28 a responsible adult; or

29 (C) The juvenile is charged with an act of delinquency for
30 which secure detention is permissible; and

31 (3) If the juvenile is an alleged status offender, immediately
32 notify the Department of Health and Human Resources, and, if
33 the circumstances of either paragraph (A) or (B), subdivision (2)

34 of this subsection exist and the requirements therein are met, the
35 court may order the juvenile detained, but only in a nonsecure or
36 staff-secure facility. Any juvenile detained pursuant to this
37 subdivision shall be placed in the legal custody of the
38 Department of Health and Human Resources pending further
39 proceedings by the court.

40 (b) The circuit court judge or magistrate may, in conjunction
41 with the detention hearing, conduct a preliminary hearing
42 pursuant to section seven hundred and four of this article if all
43 the parties are prepared to proceed and the juvenile has counsel
44 during the hearing.

§49-4-707. Review of order following detention hearing.

1 Upon the application of any person in interest or on his or
2 her own motion, a circuit court judge may modify or vacate any
3 order entered in his or her court after a detention hearing and
4 enter the order as to detention, or release from detention, as he
5 or she deems just and proper.

§49-4-708. Preliminary hearing; counsel; custody; court requirements; preadjudicatory community supervision period.

1 (a) Following the filing of a juvenile petition, unless a
2 preliminary hearing has previously been held in conjunction with
3 a detention hearing with respect to the same charge contained in
4 the petition, the circuit court judge or magistrate shall hold a
5 preliminary hearing. In the event that the juvenile is being
6 detained, the hearing shall be held within ten days of the time the
7 juvenile is placed in detention unless good cause is shown for a
8 continuance. If no preliminary hearing is held within ten days of
9 the time the juvenile is placed in detention, the juvenile shall be
10 released on recognizance unless the hearing has been continued
11 for good cause. If the judge is in another county in the circuit,

12 the hearing may be conducted in that other county or by video
13 conferencing. Written notice shall be provided to all parties of
14 the availability to participate by videoconferencing. The
15 preliminary hearing may be waived by the juvenile, upon advice
16 of counsel. At the hearing, the circuit court judge or magistrate
17 shall:

18 (1) If the juvenile is not represented by counsel, inform the
19 juvenile and his or her parents, guardian or custodian or any
20 other person standing in loco parentis to him or her of the
21 juvenile's right to be represented at all stages of proceedings
22 under this article and the right to have counsel appointed;

23 (2) Appoint counsel by order entered of record, if counsel
24 has not already been retained, or appointed. Counsel must
25 represent the child until he or she is no longer under the
26 jurisdiction of the court;

27 (3) Determine after hearing if there is probable cause to
28 believe that the juvenile is a status offender or a juvenile
29 delinquent. If probable cause is not found, the juvenile, if in
30 detention, shall be released and the proceedings dismissed. If
31 probable cause is found, the case shall proceed to adjudication.
32 At this hearing or as soon thereafter as is practicable, the date for
33 the adjudicatory hearing shall be set to give the juvenile and the
34 juvenile's parents and attorney at least ten days' notice unless
35 notice is waived by all parties;

36 (4) In lieu of placing the juvenile in a detention facility, the
37 court may place the juvenile in the temporary legal and/or
38 physical custody of the department. If the juvenile is detained,
39 the detention may not continue longer than thirty days without
40 commencement of the adjudicatory hearing unless good cause
41 for a continuance is shown by either party or, if a jury trial is
42 demanded, no longer than the next regular term of the court. A
43 juvenile who is alleged to be a status offender may not be placed
44 in a secure detention facility; and

45 (5) Inform the juvenile of the right to demand a jury trial.

46 (b) The juvenile may move to be allowed a preadjudicatory
47 community supervision period not to exceed one year. If the
48 court is satisfied that the best interest of the juvenile is likely to
49 be served by a preadjudicatory community supervision period,
50 the court may delay the adjudicatory hearing and allow a
51 preadjudicatory community supervision period upon terms
52 calculated to serve the rehabilitative needs of the juvenile. At the
53 conclusion of the preadjudicatory community supervision period,
54 the court shall dismiss the proceeding if the terms have been
55 fulfilled; otherwise, the court shall proceed to the adjudicatory
56 stage. A motion for a pre-adjudicatory community supervision
57 period, may not be construed as an admission or be used as
58 evidence. Preadjudicatory community supervision periods
59 authorized by this subsection may be, in the court's discretion,
60 either custodial or noncustodial.

§49-4-709. Right to jury trial for juveniles; inapplicability.

1 (a) In a proceeding under this article, the juvenile, the
2 juvenile's counsel or the juvenile's parent or guardian may
3 demand, or the judge on his or her own motion may order a jury
4 trial on any question of fact, in which the juvenile is accused of
5 any act or acts of delinquency which, if committed by an adult
6 would expose the adult to incarceration.

7 (b) A juvenile who is charged with a status offense or other
8 offense where incarceration is not a possibility due either to the
9 statutory penalty or where the court rules pretrial that a sentence
10 of incarceration will not be imposed upon adjudication is not
11 entitled to a trial by jury.

12 (c) This section is inapplicable to proceedings held pursuant
13 to section one hundred seventeen of this article.

14 (d) Juries consist of twelve members.

§49-4-710. Waiver and transfer of jurisdiction.

1 (a) Upon written motion of the prosecuting attorney filed at
2 least eight days prior to the adjudicatory hearing and with
3 reasonable notice to the juvenile, his or her counsel, and his or
4 her parents, guardians or custodians, the court shall conduct a
5 hearing to determine if juvenile jurisdiction should or must be
6 waived and the proceeding transferred to the criminal
7 jurisdiction of the court. Any motion filed in accordance with
8 this section is to state, with particularity, the grounds for the
9 requested transfer, including the grounds relied upon as set forth
10 in subsection (d), (e), (f) or (g) of this section, and the burden is
11 upon the state to establish the grounds by clear and convincing
12 evidence. Any hearing held under this section is to be held
13 within seven days of the filing of the motion for transfer unless
14 it is continued for good cause.

15 (b) No inquiry relative to admission or denial of the
16 allegations of the charge or the demand for jury trial may be
17 made by or before the court until the court has determined
18 whether the proceeding is to be transferred to criminal
19 jurisdiction.

20 (c) The court shall transfer a juvenile proceeding to criminal
21 jurisdiction if a juvenile who has attained the age of fourteen
22 years makes a demand on the record to be transferred to the
23 criminal jurisdiction of the court. The case may then be referred
24 to magistrate or circuit court for further proceedings, subject to
25 the court's jurisdiction.

26 (d) The court shall transfer a juvenile proceeding to criminal
27 jurisdiction if there is probable cause to believe that:

28 (1) The juvenile is at least fourteen years of age and has
29 committed the crime of treason under section one, article one,
30 chapter sixty-one of this code; the crime of murder under

31 sections one, two and three, article two of that chapter; the crime
32 of robbery involving the use or presenting of firearms or other
33 deadly weapons under section twelve, article two of that chapter;
34 the crime of kidnapping under section fourteen-a of article two
35 of that chapter; the crime of first degree arson under section one,
36 article three of that chapter; or the crime of sexual assault in the
37 first degree under section three, article eight-b of that chapter;

38 (2) The juvenile is at least fourteen years of age and has
39 committed an offense of violence to the person which would be
40 a felony if the juvenile was an adult. However, the juvenile has
41 been previously adjudged delinquent for the commission of an
42 offense of violence to the person which would be a felony if the
43 juvenile was an adult; or

44 (3) The juvenile is at least fourteen years of age and has
45 committed an offense which would be a felony if the juvenile
46 was an adult. However, the juvenile has been twice previously
47 adjudged delinquent for the commission of an offense which
48 would be a felony if the juvenile was an adult.

49 (e) The court may transfer a juvenile proceeding to criminal
50 jurisdiction if there is probable cause to believe that the juvenile
51 would otherwise satisfy the provisions of subdivision (1),
52 subsection (d) of this section, but who is younger than fourteen
53 years of age.

54 (f) The court may, upon consideration of the juvenile's
55 mental and physical condition, maturity, emotional attitude,
56 home or family environment, school experience and similar
57 personal factors, transfer a juvenile proceeding to criminal
58 jurisdiction if there is probable cause to believe that the juvenile
59 would otherwise satisfy the provisions of subdivision (2) or (3),
60 subsection (d) of this section, but who is younger than fourteen
61 years of age.

62 (g) The court may, upon consideration of the juvenile's
63 mental and physical condition, maturity, emotional attitude,
64 home or family environment, school experience and similar
65 personal factors, transfer a juvenile proceeding to criminal
66 jurisdiction if there is probable cause to believe that:

67 (1) The juvenile, who is at least fourteen years of age, has
68 committed an offense of violence to a person which would be a
69 felony if the juvenile was an adult;

70 (2) The juvenile, who is at least fourteen years of age, has
71 committed an offense which would be a felony if the juvenile
72 was an adult. However, the juvenile has been previously
73 adjudged delinquent for the commission of a crime which would
74 be a felony if the juvenile was an adult;

75 (3) The juvenile, who is at least fourteen years of age, used
76 or presented a firearm or other deadly weapon during the
77 commission of a felony; or

78 (4) The juvenile has committed a violation of section four
79 hundred one, article four, chapter sixty-a of this code which
80 would be a felony if the juvenile was an adult involving the
81 manufacture, delivery or possession with the intent to deliver a
82 narcotic drug. For purposes of this subdivision, the term narcotic
83 drug has the same definition as that set forth in section one
84 hundred one, article one of that chapter;

85 (5) The juvenile has committed the crime of second degree
86 arson as defined in section two, article three, chapter sixty-one
87 of this code involving setting fire to or burning a public building
88 or church. For purposes of this subdivision, the term public
89 building means a building or structure of any nature owned,
90 leased or occupied by this state, a political subdivision of this
91 state or a county board of education and used at the time of the
92 alleged offense for public purposes. For purposes of this

93 subdivision, the term church means a building or structure of any
94 nature owned, leased or occupied by a church, religious sect,
95 society or denomination and used at the time of the alleged
96 offense for religious worship or other religious or benevolent
97 purpose, or as a residence of a minister or other member of
98 clergy.

99 (h) For purposes of this section, the term offense of violence
100 means an offense which involves the use or threatened use of
101 physical force against a person.

102 (i) If, after a hearing, the court directs the transfer of any
103 juvenile proceeding to criminal jurisdiction, it shall state on the
104 record the findings of fact and conclusions of law upon which its
105 decision is based or shall incorporate findings of fact and
106 conclusions of law in its order directing transfer.

107 (j) A juvenile who has been transferred to criminal
108 jurisdiction pursuant to subsection (e), (f) or (g) of this section,
109 by an order of transfer, has the right to either directly appeal an
110 order of transfer to the supreme court of appeals or to appeal the
111 order of transfer following a conviction of the offense of
112 transfer. If the juvenile exercises the right to a direct appeal from
113 an order of transfer, the notice of intent to appeal and a request
114 for transcript is to be filed within ten days from the date of the
115 entry of any order of transfer, and the petition for appeal is to be
116 presented to the Supreme Court of Appeals within forty-five
117 days from the entry of the order of transfer. Article five, chapter
118 fifty-eight of this code pertaining to the appeals of judgments in
119 civil actions applies to appeals under this chapter except as
120 modified in this section. The court may, within forty-five days
121 of the entry of the order of transfer, by appropriate order, extend
122 and reextend the period in which to file the petition for appeal
123 for additional time, not to exceed a total extension of sixty days,
124 as in the court's opinion may be necessary for preparation of the
125 transcript. However, the request for a transcript was made by the

126 party seeking appeal within ten days of entry of the order of
127 transfer. In the event any notice of intent to appeal and request
128 for transcript be timely filed, proceedings in criminal court are
129 to be stayed upon motion of the defendant pending final action
130 of the Supreme Court of Appeals.

***§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders; court orders.**

1 At the outset of an adjudicatory hearing, the court shall
2 inquire of the juvenile whether he or she wishes to admit or deny
3 the allegations in the petition. The juvenile may elect to stand
4 mute, in which event the court shall enter a general denial of all
5 allegations in the petition.

6 (1) If the respondent juvenile admits the allegations of the
7 petition, the court shall consider the admission to be proof of the
8 allegations if the court finds: (1) The respondent fully
9 understands all of his or her rights under this article; (2) the
10 respondent voluntarily, intelligently and knowingly admits all
11 facts requisite for an adjudication; and (3) the respondent in his
12 or her admission has not set forth facts which constitute a
13 defense to the allegations.

14 (2) If the respondent juvenile denies the allegations, the
15 court shall dispose of all pretrial motions and the court or jury
16 shall proceed to hear evidence.

17 (3) If the allegations in a petition alleging that the juvenile
18 is delinquent are admitted or are sustained by proof beyond a
19 reasonable doubt, the court shall schedule the matter for
20 disposition pursuant to section seven hundred four of this article.

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150) which passed subsequent to this Act.

21 (4) If the allegations in a petition alleging that the juvenile
22 is a status offender are admitted or sustained by clear and
23 convincing proof, the court shall refer the juvenile to the
24 Department of Health and Human Resources for services,
25 pursuant to section seven hundred twelve of this article and order
26 the department to report back to the court with regard to the
27 juvenile's progress at least every ninety days or until the court,
28 upon motion or sua sponte, orders further disposition under
29 section seven hundred four of this article or dismisses the case
30 from its docket. In a judicial circuit operating its own truancy
31 program, a circuit judge may in lieu of referring truant juveniles
32 to the department, order that the juveniles be supervised by his
33 or her probation office.

34 (5) If the allegations in a petition are not sustained by proof
35 as provided in subsections (3) and (4) of this section, the petition
36 shall be dismissed and the juvenile shall be discharged if he or
37 she is in custody.

38 (6) Findings of fact and conclusions of law addressed to all
39 allegations in the petition shall be stated on the record or reduced
40 to writing and filed with the record or incorporated into the order
41 of the court.

***§49-4-712. Intervention and services by the department pursuant to initial disposition for status offenders; service plan; enforcement; further disposition; detention; out-of-home placement; department custody; least restrictive alternative; appeal.**

1 (a) The services provided by the department for juveniles
2 adjudicated as status offenders shall be consistent with part ten,
3 article two of this chapter and shall be designed to develop skills
4 and supports within families and to resolve problems related to

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150) which passed subsequent to this Act.

5 the juveniles or conflicts within their families. Services may
6 include, but are not limited to, referral of juveniles and parents,
7 guardians or custodians and other family members to services for
8 psychiatric or other medical care, or psychological, welfare,
9 legal, educational or other social services, as appropriate to the
10 needs of the juvenile and his or her family.

11 (b) If the child or family of the child fails to comply with the
12 service plan, the department may petition the circuit court:

13 (1) For a valid court order, as defined in section two hundred
14 seven, article one of this chapter, to enforce compliance with a
15 service plan or to restrain actions that interfere with or defeat a
16 service plan; or

17 (2) For a valid court order to place a juvenile out of home in
18 a nonsecure or staff-secure setting, and/or to place a juvenile in
19 custody of the department.

20 (c) In ordering any further disposition under this section, the
21 court is not limited to the relief sought in the department's
22 petition and reasonable efforts made to prevent removal of the
23 juvenile from his or her home or as an alternative to place the
24 juvenile in community-based facilities which are the least
25 restrictive alternatives appropriate to the needs of the juvenile
26 and the community.

27 (d) The disposition of the juvenile may not be affected by the
28 fact that the juvenile demanded a trial by jury or made a plea of
29 denial. Any order providing disposition other than mandatory
30 referral to the department for services is subject to appeal to the
31 Supreme Court of Appeals.

32 (e) Following any further disposition by the court, the court
33 shall inquire of the juvenile whether or not appeal is desired and
34 the response shall be transcribed; a negative response may not be
35 construed as a waiver. The evidence shall be transcribed as soon

36 as practicable and made available to the juvenile or his or her
37 counsel, if it is requested for purposes of further proceedings. A
38 judge may grant a stay of execution pending further proceedings.

**§49-4-713. Graduated penalties for juvenile alcohol consumption;
fines; community service; revocation of driver's
license.**

1 (a) Notwithstanding any provision of this article to the
2 contrary, in addition to any other penalty available to the court,
3 any child who is adjudicated to have consumed alcoholic liquor
4 or nonintoxicating beer as defined in section five, article one,
5 chapter sixty of this code, shall:

6 (1) Upon a first adjudication, he or she shall be ordered to
7 perform community service for not more than eight hours or
8 fined not more than \$25, or both performing community service
9 and fined.

10 (2) Upon a second adjudication, he or she shall be ordered to
11 perform community service for not more than sixteen hours or
12 fined not more than \$50, or both performing community service
13 and fined.

14 (3) Upon a third or subsequent adjudication, he or she shall
15 be ordered to perform not more than twenty-four hours of
16 community service or fined not more than \$100, or both
17 performing community service and fined.

18 (b) In addition to the penalties set forth in subsection (a) of
19 this section and notwithstanding the provisions of subdivision
20 (4), subsection (a), section seven hundred fifteen of this article,
21 any child adjudicated a second time for consumption of alcoholic
22 liquor or nonintoxicating beer shall have his or her license to
23 operate a motor vehicle suspended for a definite term of not less
24 than five nor more than ninety days. Any child adjudicated a
25 third or subsequent time for consumption of an alcoholic liquor

26 or nonintoxicating beer shall have his or her license to operate a
27 motor vehicle suspended until he or she attains the age of
28 eighteen years.

***§49-4-714. Disposition of juvenile delinquents; investigation;
proceedings; court discretion; orders; appeal.**

1 (a) In aid of disposition of juvenile delinquents, the juvenile
2 probation officer assigned to the court shall, upon request of the
3 court, make an investigation of the environment of the juvenile
4 and the alternative dispositions possible. The court, upon its own
5 motion, or upon request of counsel, may order a psychological
6 examination of the juvenile. The report of an examination and
7 other investigative and social reports are not to be made
8 available to the court until after the adjudicatory hearing. Unless
9 waived, copies of the report shall be provided to counsel for the
10 petitioner and counsel for the juvenile no later than seventy-two
11 hours prior to the dispositional hearing.

12 (b) Following the adjudication, the court shall conduct the
13 dispositional proceeding, giving all parties an opportunity to be
14 heard. In disposition the court shall not be limited to the relief
15 sought in the petition and shall, in electing from the following
16 alternatives, consider the best interests of the juvenile and the
17 welfare of the public:

18 (1) Dismiss the petition;

19 (2) Refer the juvenile and the juvenile's parent or custodian
20 to a community agency for needed assistance and dismiss the
21 petition;

22 (3) Upon a finding that the juvenile is in need of
23 extra-parental supervision: (A) Place the juvenile under the

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.

24 supervision of a probation officer of the court or of the court of
25 the county where the juvenile has his or her usual place of abode
26 or other person while leaving the juvenile in custody of his or
27 her parent or custodian; and (B) prescribe a program of treatment
28 or therapy or limit the juvenile's activities under terms which are
29 reasonable and within the child's ability to perform, including
30 participation in the litter control program established pursuant to
31 section three, article fifteen-a, chapter twenty-two of this code or
32 other appropriate programs of community service;

33 (4) Upon a finding that a parent or custodian is not willing
34 or able to take custody of the juvenile, that a juvenile is not
35 willing to reside in the custody of his or her parent or custodian
36 or that a parent or custodian cannot provide the necessary
37 supervision and care of the juvenile, the court may place the
38 juvenile in temporary foster care or temporarily commit the
39 juvenile to the department or a child welfare agency. The court
40 order shall state that continuation in the home is contrary to the
41 best interest of the juvenile and why; and whether or not the
42 department made a reasonable effort to prevent the placement or
43 that the emergency situation made those efforts unreasonable or
44 impossible. Whenever the court transfers custody of a youth to
45 the department, an appropriate order of financial support by the
46 parents or guardians shall be entered in accordance with part
47 eight, article four of this chapter and guidelines promulgated by
48 the Supreme Court of Appeals;

49 (5)(A) Upon a finding that the best interests of the juvenile
50 or the welfare of the public require it, and upon an adjudication
51 of delinquency the court may commit the juvenile to the custody
52 of the Director of the Division of Juvenile Services for
53 placement in a juvenile services facility for the treatment,
54 instruction and rehabilitation of juveniles. The court maintains
55 discretion to consider alternative sentencing arrangements.

56 (B) Notwithstanding any provision of this code to the
57 contrary, in the event that the court determines that it is in the
58 juvenile's best interests or required by the public welfare to
59 place the juvenile in the custody of the Division of Juvenile
60 Services, the court shall provide the Division of Juvenile
61 Services with access to all relevant court orders and records
62 involving the underlying offense or offenses for which the
63 juvenile was adjudicated delinquent, including sentencing and
64 presentencing reports and evaluations, and provide the division
65 with access to school records, psychological reports and
66 evaluations, medical reports and evaluations or any other records
67 as may be in the court's possession as would enable the Division
68 of Juvenile Services to better assess and determine the
69 appropriate counseling, education and placement needs for the
70 juvenile offender.

71 (C) Commitments may not exceed the maximum term for
72 which an adult could have been sentenced for the same offense
73 and any maximum allowable sentence to be served in a juvenile
74 correctional facility may take into account any time served by
75 the juvenile in a detention center pending adjudication,
76 disposition or transfer. The order shall state that continuation in
77 the home is contrary to the best interests of the juvenile and why;
78 and whether or not the state department made a reasonable effort
79 to prevent the placement or that the emergency situation made
80 those efforts unreasonable or impossible; or

81 (6) After a hearing conducted under the procedures set out
82 in subsections (c) and (d), section four, article five, chapter
83 twenty-seven of this code, commit the juvenile to a mental health
84 facility in accordance with the juvenile's treatment plan; the
85 director of the mental health facility may release a juvenile and
86 return him or her to the court for further disposition. The order
87 shall state that continuation in the home is contrary to the best
88 interests of the juvenile and why; and whether or not the state
89 department made a reasonable effort to prevent the placement or

90 that the emergency situation made those efforts unreasonable or
91 impossible.

92 (c) In any case in which the court decides to order the
93 juvenile placed in an out-of-state facility or program, it shall set
94 forth in the order directing the placement the reasons the juvenile
95 was not placed in an in-state facility or program.

96 (d) The disposition of the juvenile may not be affected by the
97 fact that the juvenile demanded a trial by jury or made a plea of
98 denial. Any dispositional order is subject to appeal to the
99 Supreme Court of Appeals.

100 (e) Following disposition, the court shall inquire whether the
101 juvenile wishes to appeal and the response shall be transcribed;
102 a negative response may not be construed as a waiver. The
103 evidence shall be transcribed as soon as practicable and made
104 available to the juvenile or his or her counsel, if the same is
105 requested for purposes of further proceedings. A judge may grant
106 a stay of execution pending further proceedings.

107 (f) Notwithstanding any other provision of this code to the
108 contrary, if a juvenile charged with delinquency under this
109 chapter is transferred to adult jurisdiction and there tried and
110 convicted, the court may make its disposition in accordance with
111 this section in lieu of sentencing the person as an adult.

**§49-4-715. Authority of the courts to impose additional penalties;
public service projects; ineligible to operate a motor
vehicle; restitution.**

1 (a) In addition to the methods of disposition provided in
2 section seven hundred fourteen of this article, the court may
3 enter an order imposing one or more of the following penalties,
4 conditions and limitations:

5 (1) Impose a fine not to exceed \$100 upon the child;

6 (2) Require the child to make restitution or reparation to the
7 aggrieved party or parties for actual damages or loss caused by
8 the offense for which the child was found to be delinquent, or if
9 the child does not make full restitution, require the custodial
10 parent or parents, as defined in section two, article seven-a,
11 chapter fifty-five, of the child to make partial or full restitution
12 to the victim to the extent the child fails to make full restitution;

13 (3) Require the child to participate in a public service project
14 under the conditions as the court prescribes, including
15 participation in the litter control program established pursuant to
16 the authority of section three, article fifteen-a, chapter
17 twenty-two of this code; and

18 (4) When the child is fifteen years of age or younger and has
19 been adjudged delinquent, the court may order that the child is
20 not eligible to be issued a junior probationary operator's license
21 or when the child is between the ages of sixteen and eighteen
22 years and has been adjudged delinquent, the court may order that
23 the child is not eligible to operate a motor vehicle in this state,
24 and any junior or probationary operator's license shall be
25 surrendered to the court. The child's driving privileges shall be
26 suspended for a period not to exceed two years, and the clerk of
27 the court shall notify the Commissioner of the Division of Motor
28 Vehicles of the order.

29 (b) Nothing may limit the discretion of the court in disposing
30 of a juvenile case. The juvenile may not be denied probation or
31 any other disposition pursuant to this article because the juvenile
32 is financially unable to pay a fine or make restitution or
33 reparation. All penalties, conditions and limitations imposed
34 under this section shall be based upon a consideration by the
35 court of the seriousness of the offense, the child's ability to pay
36 and a program of rehabilitation consistent with the best interests
37 of the child.

38 (c) Notwithstanding any other provisions of this code to the
39 contrary, in the event a child charged with delinquency under
40 this chapter is transferred to adult jurisdiction and there
41 convicted, the court may nevertheless, in lieu of sentencing the
42 person as an adult, make its disposition in accordance with this
43 section.

**§49-4-716. Teen court program; alternative; suitability;
unsuccessful cooperation; requirements; fees.**

1 (a) Notwithstanding any provision of this article to the
2 contrary, any county or municipality may choose to institute a
3 teen court program in accordance with this section.

4 (b) An juvenile may be given the option of proceeding in a
5 teen court program as an alternative to the filing of a formal
6 proceeding pursuant to section seven hundred four or section
7 seven hundred fourteen of this article if:

8 (1) The juvenile is alleged to have committed a status
9 offense or an act of delinquency that would be a misdemeanor if
10 committed by an adult;

11 (2) The juvenile is alleged to have violated a municipal
12 ordinance over which municipal court and state court have
13 concurrent jurisdiction; or

14 (3) The juvenile is otherwise subject to the provisions of this
15 article.

16 (c) If the circuit court or municipal court finds that the
17 offender is a suitable candidate for the teen court program, it
18 may extend the option to enter the program as an alternative
19 procedure. A juvenile may not enter the teen court program
20 unless he or she and his or her parent or guardian consent to
21 participating in the program.

22 (d) Any juvenile who does not successfully cooperate in, and
23 complete, the teen court program and any disposition imposed
24 during the juvenile's participation shall be returned to the circuit
25 court for further disposition as provided by section seven
26 hundred and twelve or seven hundred fourteen of this article, as
27 the case may be or returned to the municipal court for further
28 disposition for cases originating in municipal court consistent
29 with any applicable ordinance.

30 (e) The following provisions apply to all teen court
31 programs:

32 (1) The judge for each teen court proceeding shall be an
33 acting or retired circuit court judge or an active member of the
34 West Virginia State Bar, who serves on a voluntary basis.

35 (2) Any juvenile who selects the teen court program as an
36 alternative disposition shall agree to serve thereafter on at least
37 two occasions as a teen court juror.

38 (3) Volunteer students from grades seven through twelve of
39 the schools within the county shall be selected to serve as
40 defense attorney, prosecuting attorney, court clerk, bailiff and
41 jurors for each proceeding.

42 (4) Disposition in a teen court proceeding shall consist of
43 requiring the juvenile to perform sixteen to forty hours of
44 community service, the duration and type of which shall be
45 determined by the teen court jury from a standard list of
46 available community service programs provided by the county
47 juvenile probation system and a standard list of alternative
48 consequences that are consistent with the purposes of this article.
49 The performance of the juvenile shall be monitored by the
50 county juvenile probation system for cases originating in the
51 circuit court's jurisdiction, or municipal teen court coordinator
52 or other designee for cases originating in the municipal court's

53 jurisdiction. The juvenile shall also perform at least two sessions
54 of teen court jury service and, if considered appropriate by the
55 circuit court judge or teen court judge, participate in an
56 education program. Nothing in this section may be construed so
57 as to deny availability of the services provided under section
58 seven hundred and twelve of this article to juveniles who are
59 otherwise eligible for the service.

60 (f) The rules for administration, procedure and admission of
61 evidence shall be determined by the chief circuit judge or teen
62 court judge, but in no case may the court require a juvenile to
63 admit the allegation against him or her as a prerequisite to
64 participation in the teen court program. A copy of these rules
65 shall be provided to every teen court participant.

66 (g) Each county or municipality that operates, or wishes to
67 operate, a teen court program as provided in this section is
68 hereby authorized to adopt a mandatory fee of up to \$5 to be
69 assessed as provided in this subsection. Municipal courts may
70 assess a fee pursuant to this section upon authorization by the
71 city council of the municipality. Assessments collected by the
72 clerk of the court pursuant to this subsection shall be deposited
73 into an account specifically for the operation and administration
74 of a teen court program. The clerk of the court of conviction
75 shall collect the fees established in this subsection and shall
76 remit the fees to the teen court program.

77 (h) Any mandatory fee established by a county commission
78 or city council in accordance with this subsection shall be paid
79 by the defendant on a judgment of guilty or a plea of nolo
80 contendere for each violation committed in the county or
81 municipality of any felony, misdemeanor or any local ordinance,
82 including traffic violations and moving violations but excluding
83 municipal parking ordinances. Municipalities operating teen
84 courts are authorized to use fees assessed in municipal court
85 pursuant to this subsection for operation of a teen court in their
86 municipality

§49-4-717. Sexting educational diversion program; requirements.

1 (a) Before a juvenile petition is filed for activity proscribed
2 by article eight-a or eight-c, chapter sixty-one of this code, or
3 after probable cause has been found to believe a juvenile has
4 committed a violation thereof, but before an adjudicatory hearing
5 on the petition, the court or a prosecuting attorney may direct or
6 allow a minor who engaged in the activity to participate in an
7 educational diversion program which meets the requirements of
8 subsection (b) of this section. The prosecutor or court may refer
9 the minor to the educational diversion program, as part of a
10 prepetition intervention pursuant to section seven hundred two
11 of this article.

12 (b) The West Virginia Supreme Court of Appeals may
13 develop an educational diversion program for minors who are
14 accused of activity proscribed by article eight-a or eight-c,
15 chapter sixty-one of this code. As a part of any specialized
16 educational diversion program so developed, the following
17 issues and topics should be included:

18 (1) The legal consequences of and penalties for sharing
19 sexually suggestive or explicit materials, including applicable
20 federal and state statutes;

21 (2) The nonlegal consequences of sharing sexually
22 suggestive or explicit materials including, but not limited to, the
23 effect on relationships, loss of educational and employment
24 opportunities, and being barred or removed from school
25 programs and extracurricular activities;

26 (3) How the unique characteristics of cyberspace and the
27 Internet, including searchability, replicability and an infinite
28 audience, can produce long-term and unforeseen consequences
29 for sharing sexually suggestive or explicit materials; and

30 (4) The connection between bullying and cyber-bullying and
31 minors sharing sexually suggestive or explicit materials.

32 (c) Once a specialized educational diversion program is
33 established by the West Virginia Supreme Court of Appeals
34 consistent with this section, the minor's successful completion
35 of the educational diversion program shall be duly considered by
36 the prosecutor or the court in their respective decisions to either
37 abstain from filing the juvenile petition or to dismiss the juvenile
38 petition, as follows:

39 (1) If the minor has not previously been judicially
40 determined to be delinquent, and the minor's activities represent
41 a first offense for a violation of section three-b, article eight-c,
42 chapter sixty-one of this code, the minor is not subject to the
43 requirements of that section, as long as he or she successfully
44 completes the educational diversion program; and

45 (2) If the minor commits a second or subsequent violation of
46 article eight-a or eight-c, chapter sixty-one of this code, the
47 minor's successful completion of the educational diversion
48 program may be considered as a factor to be considered by the
49 prosecutor and court in deciding to not file a petition or to
50 dismiss a petition, upon successful completion of an
51 improvement plan established by the court.

***§49-4-718. Modification of dispositional orders; motions;
hearings.**

1 (a) A dispositional order of the court may be modified:

2 (1) Upon the motion of the probation officer, a department
3 official, the director of the division of juvenile services or
4 prosecuting attorney; or

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.

5 (2) Upon the request of the child or a child's parent or
6 custodian who alleges a change of circumstances relating to
7 disposition of the child.

8 (b) Upon a motion or request, the court shall conduct a
9 review proceeding, except that if the last dispositional order was
10 within the previous six months the court may deny a request for
11 review. Notice in writing of a review proceeding shall be given
12 to the child, the child's parent or custodian and all counsel not
13 less than seventy-two hours prior to the proceeding. The court
14 shall review the performance of the child, the child's parent or
15 custodian, the child's social worker and other persons providing
16 assistance to the child or child's family. If the motion or request
17 for review of disposition is based upon an alleged violation of a
18 court order, the court may modify the dispositional order to a
19 more restrictive alternative if it finds clear and convincing proof
20 of substantial violation. In the absence of proof, the court may
21 decline to modify the dispositional order or may modify the
22 order to one of the less restrictive alternatives set forth in section
23 seven hundred twelve of this article. A juvenile may not be
24 required to seek a modification order as provided in this section
25 in order to exercise his or her right to seek release by habeas
26 corpus.

27 (c) In a hearing for modification of a dispositional order, or
28 in any other dispositional hearing, the court shall consider the
29 best interests of the child and the welfare of the public.

***§49-4-719. Juvenile probation officers; appointment; salary;
facilities; expenses; duties; powers.**

1 (a)(1) Each circuit court, subject to the approval of the
2 Supreme Court of Appeals and in accordance with the rules of
3 the Supreme Court of Appeals, shall appoint one or more
4 juvenile probation officers and clerical assistants for the circuit.

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.

5 A probation officer or clerical assistant may not be related by
6 blood or marriage to the appointing judge.

7 (2) The salary for juvenile probation officers and clerical
8 assistants shall be determined and fixed by the Supreme Court of
9 Appeals. All expenses and costs incurred by the juvenile
10 probation officers and their staff shall be paid by the Supreme
11 Court of Appeals in accordance with its rules. The county
12 commission of each county shall provide adequate office
13 facilities for juvenile probation officers and their staff. All
14 equipment and supplies required by juvenile probation officers
15 and their staff shall be provided by the Supreme Court of
16 Appeals.

17 (3) A juvenile probation officer may not be considered a
18 law-enforcement official under this chapter.

19 (b) The clerk of a court shall notify, if practicable, the chief
20 probation officer of the county, or his or her designee, when a
21 juvenile is brought before the court or judge for proceedings
22 under this article. When notified, or if the probation officer
23 otherwise obtains knowledge of fact, he or she or one of his or
24 her assistants shall:

25 (1) Make investigation of the case; and

26 (2) Furnish information and assistance that the court or judge
27 may require.

**§49-4-720. Prohibition on committing juveniles to adult facilities;
copy provided to juvenile.**

1 (a) No juvenile, including one who has been transferred to
2 criminal jurisdiction of the court, shall be detained or confined
3 in any institution in which he or she has contact with or comes
4 within sight or sound of any adult persons incarcerated because
5 they have been convicted of a crime or are awaiting trial on

6 criminal charges or with the security staff (including
7 management) or direct-care staff of a jail or locked facility for
8 adults.

9 (b) No child who has been convicted of an offense under the
10 adult jurisdiction of the circuit court shall be held in custody in
11 a correctional facility of this state. The Division of Juvenile
12 Services shall be responsible for notifying the sentencing court
13 within forty-five days of the child's eighteenth birthday that the
14 child will be turning eighteen years of age. Within ten days of
15 the child's eighteenth birthday, the court shall transfer the
16 offender to an adult correctional facility or to any other
17 disposition the court deems appropriate for adult offenders.
18 Notwithstanding any other provision of this code to the contrary,
19 prior to the transfer the child shall be returned to the sentencing
20 court for the purpose of reconsideration and modification of the
21 imposed sentence, which shall be based upon a review of all
22 records and relevant information relating to the child's
23 rehabilitation since his or her conviction under the adult
24 jurisdiction of the court.

§49-4-721. Rules governing juvenile facilities; rights of juveniles.

1 (a) The Director of the Division of Juvenile Services within
2 the Department of Military Affairs and Public Safety shall
3 propose legislative rules for promulgation in accordance with
4 article three, chapter twenty-nine-a of this code, outlining
5 policies and procedures governing the operation of those
6 correctional, detention, predispositional detention centers and
7 other facilities wherein juveniles may be housed. These policies
8 and procedures shall include, but are not limited to, standards of
9 cleanliness, temperature and lighting; availability of medical and
10 dental care; provision of food, furnishings, clothing and toilet
11 articles; supervision; procedures for enforcing rules of conduct
12 consistent with due process of law; and visitation privileges. A
13 juvenile in custody or detention has, at a minimum, the
14 following rights, and the policies prescribed ensuring that:

15 (1) A juvenile may not be punished by physical force,
16 deprivation of nutritious meals, deprivation of family visits or
17 imposition of solitary confinement;

18 (2) A juvenile shall be afforded an opportunity to participate
19 in physical exercise each day;

20 (3) Except for sleeping hours, a juvenile in a state facility
21 may not be locked alone in a room unless that juvenile is not
22 amenable to reasonable direction and control;

23 (4) A juvenile shall be provided with his or her own clothing
24 or individualized clothing which is clean and supplied by the
25 facility, and shall also be afforded daily access to showers;

26 (5) A juvenile shall be afforded constant access to writing
27 materials and may send mail without limitation, censorship or
28 prior reading, and may receive mail without prior reading, except
29 that mail may be opened in the juvenile's presence, without
30 being read, to inspect for contraband;

31 (6) A juvenile may make and receive regular local phone
32 calls without charge and long distance calls to his or her family
33 without charge at least once a week, and receive visitors daily
34 and on a regular basis;

35 (7) A juvenile shall be afforded immediate access to medical
36 care as needed;

37 (8) A juvenile in a juvenile detention facility or juvenile
38 corrections facility shall be provided access to education,
39 including teaching, educational materials and books;

40 (9) A juvenile shall be afforded reasonable access to an
41 attorney upon request; and

42 (10) A juvenile shall be afforded a grievance procedure,
43 including an appeal mechanism.

44 (b) Upon admission to a detention facility or juvenile
45 corrections facility, a juvenile shall be furnished with a copy of
46 the rights provided him or her by virtue of this section and as
47 further prescribed by rules proposed and promulgated pursuant
48 to this section.

§49-4-722. Conviction for offense while in custody.

1 (a) Notwithstanding any other provision of law to the
2 contrary, any person who is eighteen years of age or older who
3 is convicted as an adult of an offense that he or she committed
4 while in the custody of the Division of Juvenile Services and
5 who is therefor sentenced to a regional jail or state correctional
6 facility for the offense may not be returned to the custody of the
7 division upon the completion of his or her adult sentence until a
8 hearing is held before the court which committed the person to
9 the custody of the Division of Juvenile Services at which hearing
10 the division may present any objections it may have to return the
11 person to its custody. If the division does object and the court
12 overrules the division's objections, it shall make specific written
13 findings as to its rationale for overruling the objections.

14 (b) No person who is eighteen years of age or older who is
15 convicted as an adult of a felony crime of violence against the
16 person while in the custody of the Division of Juvenile Services
17 be returned to the custody of the Division of Juvenile Services
18 upon completion of his or her adult sentence.

§49-4-723. Discrimination prohibited; penalties; damages.

1 (a) No individual, firm, corporation or other entity may
2 discriminate against any person in any manner due to that
3 person's prior involvement in a proceeding under this article if
4 that person's records have been expunged pursuant to this
5 article. This includes, but is not limited to, discrimination
6 relating to employment, housing, education, obtaining credit, and
7 contractual rights.

8 (b) Any person who willfully violates this section is guilty
9 of a misdemeanor and, upon conviction, shall be fined not more
10 than \$1,000, or confined in jail for not more than six months, or
11 both fined and confined. Additionally, a person who violates this
12 section is liable to the person who has been discriminated against
13 for damages in the amount of \$300 or the actual amount of
14 damages, whichever is greater.

PART VIII. SUPPORT AND SUPPORT ORDERS.

§49-4-801. Support of a child removed from home pursuant to this chapter; order requirements.

1 (a) It is the intent of the Legislature that to the extent
2 practicable, this article should encourage and require a child's
3 parents to meet the obligation of providing that child with
4 adequate food, shelter, clothing, education, and health and child
5 care.

6 (b) This article shall be construed to be consistent with
7 articles one, eleven, twelve, thirteen, fourteen, fifteen, sixteen,
8 eighteen, nineteen and twenty four of chapter forty-eight of this
9 code, and those articles apply to actions pursuant to this chapter
10 unless expressly stated otherwise.

11 (c) When a child is removed from his or her home pursuant
12 to this chapter, the court shall issue a support order payable by
13 the child's mother. If the child's legal father has been
14 determined, the court shall issue a child support order payable by
15 the legal father. If no legal father has been determined, the court
16 shall issue an order establishing paternity prior to or
17 simultaneously with establishing a support order payable by the
18 child's legal father. Copies of the orders shall be provided to the
19 Department of Health and Human Resources, Bureau of Child
20 Support Enforcement.

21 (d) The order establishing a child support obligation must
22 use the Guidelines for Child Support Awards that are set forth in
23 article thirteen, chapter forty-eight of this code.

24 (e) In addition to the reasons for deviation listed in section
25 seven hundred two, article thirteen, chapter forty-eight of this
26 code, deviation from the child support guidelines is appropriate
27 when the court finds that:

28 (1) It may assist the parent in successful completion of an
29 improvement period;

30 (2) It may be in the best interest of the minor child to issue
31 a zero child support order; and/or

32 (3) The parent temporarily or permanently has no gross
33 income as defined in section two hundred twenty eight, article
34 one, chapter forty-eight of this code.

§49-4-802. General provisions for support orders; contempt.

1 (a) Any pre-existing support order from any other court or
2 administrative agency with authority to issue a support order
3 shall remain in full force and effect until a superseding order is
4 issued.

5 (b) If a child is returned to the physical custody of a parent,
6 that parent is not responsible for paying child support for the
7 duration of time that parent has physical custody of the child
8 without the necessity of entry of another court order terminating
9 that parent's child support obligation.

10 (c) If the action is dismissed for failure to prove the
11 allegations of abuse or neglect, any support provision issued
12 pursuant to this chapter are void ab initio. Any adjudication of
13 paternity shall remain in full force and effect.

14 (d) The support obligation shall automatically continue
15 beyond the termination of the payor's parental rights, unless the
16 support obligation is explicitly ended in an order.

§49-4-803. Enforcement of support orders.

1 (a) Support orders may be enforced through any manner
2 provided in chapters thirty-eight and forty-eight of this code.

3 (b) An action for contempt for nonpayment of support may
4 be brought by the Department of Health and Human Resources,
5 Bureau for Children and Families or Bureau for Child Support
6 Enforcement; the child's physical custodian; the child's guardian
7 ad litem; or the prosecuting attorney.

PART IX. CONTRIBUTING TO THE
DELINQUENCY OF A CHILD.

**§49-4-901. Contributing to delinquency or neglect of a child;
penalties; payment of medical costs; proof; court
discretion; other payments; suspended sentence;
maintenance and care; temporary custody.**

1 (a) A person who by any act or omission contributes to,
2 encourages or tends to cause the delinquency or neglect of any
3 child, including, but not limited to, aiding or encouraging the
4 child to habitually or continually refuse to respond, without just
5 cause, to the lawful supervision of the child's parents, guardian
6 or custodian or to be habitually absent from school without just
7 cause, is guilty of a misdemeanor and, upon conviction thereof,
8 shall be fined not less than \$50 nor more than \$500, or confined
9 in jail for a period not exceeding one year, or both fined and
10 confined.

11 (b) In addition to any penalty provided under this section and
12 any restitution which may be ordered by the court under article
13 eleven-a, chapter sixty-one of this code, the court may order any

14 person convicted under this section to pay all or any portion of
15 the cost of medical, psychological or psychiatric treatment of the
16 child resulting from the act or acts for which the person is
17 convicted, whether or not the child is considered to have
18 sustained bodily injury.

19 (c) This section does not apply to any parent, guardian or
20 custodian who fails or refuses, or allows another person to fail or
21 refuse, to supply a child under the care, custody or control of the
22 parent, guardian or custodian with necessary medical care, when
23 medical care conflicts with the tenets and practices of a
24 recognized religious denomination or order of which parent,
25 guardian or custodian is an adherent or member.

26 (d) In finding a person guilty of contributing to the
27 delinquency of a child, it is not necessary to prove that the child
28 has actually become delinquent, if it appears from the evidence
29 that the accused is guilty of conduct or of an act of neglect or
30 omission of duty on his or her part toward the child which would
31 tend to bring about or to encourage the delinquency.

32 (e) A court or judge, upon convictions as are imposed in
33 accordance with this chapter, may:

34 (1) Suspend the sentence of a person found guilty of
35 contributing to the delinquency of a child;

36 (2) Stay or postpone the enforcement of execution of
37 sentence; or

38 (3) Release the person from custody.

39 (f) If the sentence of the person found guilty is suspended,
40 the court or judge may make it a condition of suspending
41 sentence that the person pay for whatever treatment and care
42 may be required for the welfare of the child, and for its support
43 and maintenance while in the custody of the department, person,

44 or institution, and any other expense that may have resulted
45 from, or be necessary because of, the act or acts of the person
46 found guilty.

47 (g) The conditions upon which the sentence of a person
48 found guilty of contributing to the delinquency, or to the neglect
49 of any child, may be suspended, may include the furnishing of a
50 good and sufficient bond to the State of West Virginia in the
51 penal sum as the court shall determine, not exceeding \$1,000,
52 conditioned upon:

53 (1) Furnishing whatever treatment and care may be required
54 for the welfare of the child;

55 (2) Doing whatever may be calculated to secure obedience
56 to the law or to remove the cause of delinquency, or neglect; and

57 (3) Payment of the amount as the court may order, not
58 exceeding \$20 per month, for the support, care, and maintenance
59 of the child to whose delinquency the person contributed. The
60 sum shall be expended under the order of the court or judge for
61 the purposes enumerated.

62 (h)(1) The penalty of a bond given upon suspension of
63 sentence which becomes forfeited is recoverable without
64 separate suit. The court or judge may cause citation or summons
65 to issue to the principal and surety, requiring that they appear at
66 a time named by the court or judge, not less than ten nor more
67 than twenty days from the issuance of the summons, and show
68 cause why judgment should not be entered for the penalty of the
69 bond and execution issued against the property of the principal
70 and of the surety. Upon failure to appear, or failure to show
71 sufficient cause, the court shall enter judgment in behalf of the
72 State of West Virginia against the principal and surety in an
73 amount not to exceed the penalty of the bond plus costs.

74 (2) Any money collected or paid upon an execution, or upon
75 the bond, shall be deposited with the clerk of the court in which

76 the bond was given. The money shall be applied first to the
77 payment of all court costs and then to the treatment, care, or
78 maintenance of the child for whose delinquency conviction was
79 had. If any money so collected is not required for these purposes,
80 it shall be paid within one year into the State Treasury.

81 (i) If it appear to the satisfaction of the court or judge at any
82 time while a suspension of sentence or stay of execution remains
83 in effect, that the sentence ought to be enforced, the court or
84 judge may enforce the sentence. A jail sentence shall commence
85 from the date upon which the sentence is so ordered to be
86 enforced.

87 (j) If the conditions of suspension are complied with, the
88 sentence shall remain suspended, subject to enforcement upon
89 the violation of any of the conditions imposed. Upon a failure to
90 comply with any of the conditions imposed, the sentence shall be
91 enforced and any bond given to insure the performance of the
92 conditions shall be forfeited.

93 (k) A sentence may not be suspended, or final judgment or
94 execution stayed, for a period exceeding two years. At the end of
95 two years from the time of imposition of sentence or sooner in
96 the discretion of the court or judge, the defendant shall be finally
97 released and discharged.

98 (l) Where a person is found guilty of contributing to the
99 delinquency of a child, the court or judge may place the child in
100 the temporary custody of the department or of some responsible
101 person or approved institution.

§49-4-902. Custody of child by convicted person.

1 If the guilty person had custody of the child prior to
2 conviction, the court or judge may, on suspending sentence,
3 permit the child to remain in the custody of the person, and make
4 it a condition of suspending sentence that the person provides

5 whatever treatment and care may be required for the welfare of
6 the child, and shall do whatever may be calculated to secure
7 obedience to the law or to remove the cause of the delinquency.

§49-4-903. Interference with disposition of child punishable as contempt of court.

1 A person who interferes with the direction of disposition of
2 a child in accordance with an order of the court or judge made in
3 pursuance of this chapter, or with the department, or a probation
4 or other officer of the court in carrying out the directions of the
5 court or judge under an order, is subject to punishment as for
6 contempt of court.

§49-4-904. Enticing child from custody; penalties.

1 A person who personally or by agent entices or forcibly
2 removes a child from a custody in which the child was placed
3 under this chapter is guilty of a misdemeanor and, upon
4 conviction shall be fined not more than \$100, or confined in jail
5 not more than six months, or fined and confined.

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-101. Confidentiality of records; nonrelease of records; exceptions; penalties.

1 (a) Except as otherwise provided in this chapter or by order
2 of the court, all records and information concerning a child or
3 juvenile which are maintained by the Division of Juvenile
4 Services, the Department of Health and Human Resources, a
5 child agency or facility, court or law-enforcement agency is
6 confidential and shall not be released or disclosed to anyone,
7 including any federal or state agency.

8 (b) Notwithstanding the provisions of subsection (a) of this
9 section or any other provision of this code to the contrary,

10 records concerning a child or juvenile, except adoption records
11 and records disclosing the identity of a person making a
12 complaint of child abuse or neglect may be made available:

13 (1) Where otherwise authorized by this chapter;

14 (2) To:

15 (A) The child;

16 (B) A parent whose parental rights have not been terminated;

17 or

18 (C) The attorney of the child or parent;

19 (3) With the written consent of the child or of someone
20 authorized to act on the child's behalf; or

21 (4) Pursuant to an order of a court of record. However, the
22 court shall review the record or records for relevancy and
23 materiality to the issues in the proceeding and safety, and may
24 issue an order to limit the examination and use of the records or
25 any part thereof.

26 (c) In addition to those persons or entities to whom
27 information may be disclosed under subsection (b) of this
28 section, information related to child abuse or neglect
29 proceedings, except information relating to the identity of the
30 person reporting or making a complaint of child abuse or
31 neglect, shall be made available, upon request, to:

32 (1) Federal, state or local government entities, or any agent
33 of those entities, including law-enforcement agencies and
34 prosecuting attorneys, having a need for that information in
35 order to carry out its responsibilities under law to protect
36 children from abuse and neglect;

37 (2) The child fatality review team;

38 (3) Child abuse citizen review panels;

39 (4) Multidisciplinary investigative and treatment teams; or

40 (5) A grand jury, circuit court or family court, upon a finding
41 that information in the records is necessary for the determination
42 of an issue before the grand jury, circuit court or family court.

43 (d) In the event of a child fatality or near fatality due to child
44 abuse and neglect, information relating to a fatality or near
45 fatality shall be made public by the Department of Health and
46 Human Resources and to the entities described in subsection (c)
47 of this section, all under the circumstances described in that
48 subsection. However, information released by the Department of
49 Health and Human Resources pursuant to this subsection may
50 not include the identity of a person reporting or making a
51 complaint of child abuse or neglect. For purposes of this
52 subsection, “near fatality” means any medical condition of the
53 child which is certified by the attending physician to be life
54 threatening.

55 (e) Except in juvenile proceedings which are transferred to
56 criminal proceedings, law-enforcement records and files
57 concerning a child or juvenile shall be kept separate from the
58 records and files of adults and not included within the court files.
59 Law-enforcement records and files concerning a child or
60 juvenile shall only be open to inspection pursuant to section one
61 hundred three of this article.

62 (f) Any person who willfully violates this section is guilty of
63 a misdemeanor and, upon conviction, shall be fined not more
64 than \$1,000, or confined in jail for not more than six months, or
65 both fined and confined. A person convicted of violating this
66 section is also liable for damages in the amount of \$300 or actual
67 damages, whichever is greater.

68 (g) Notwithstanding the provisions of this section, or any
69 other provision of this code to the contrary, the name and
70 identity of any juvenile adjudicated or convicted of a violent or
71 felonious crime shall be made available to the public;

72 (h)(1) Notwithstanding the provisions of this section, or any
73 other provision of this code to the contrary, the Division of
74 Juvenile Services may provide access to and the confidential use
75 of a treatment plan, court records or other records of a juvenile
76 to an agency in another state which:

77 (A) Performs the same functions in that state that are
78 performed by the Division of Juvenile Services in this state;

79 (B) Has a reciprocal agreement with this state; and

80 (C) Has legal custody of the juvenile.

81 (2) A record which is shared under this subsection may only
82 provide information which is relevant to the supervision, care,
83 custody and treatment of the juvenile.

84 (3) The Division of Juvenile Services is authorized to enter
85 into reciprocal agreements with other states and to propose rules
86 for legislative approval in accordance with article three, chapter
87 twenty-nine-a of this code to implement this subsection.

88 (4) Other than the authorization explicitly given in this
89 subsection, this subsection may not be construed to enlarge or
90 restrict access to juvenile records as provided elsewhere in this
91 code.

§49-5-102. Preservation of records.

1 The proceedings, records, reports, case histories, and all
2 other papers or documents of or received by the state department
3 in the administration of this chapter shall be filed of record and
4 preserved.

***§49-5-103. Confidentiality of juvenile records; permissible disclosures; conditions; penalties; damages.**

1 (a) Any findings or orders of the court in a juvenile
2 proceeding shall be known as the “juvenile record” and shall be
3 maintained by the clerk of the court.

4 (b) Records of a juvenile proceeding conducted under this
5 chapter are not public records and shall not be disclosed to
6 anyone unless disclosure is otherwise authorized by this section.

7 (c) Notwithstanding the provisions of subsection (a) of this
8 section, a copy of a juvenile’s records shall automatically be
9 disclosed to certain school officials, subject to the following
10 terms and conditions:

11 (1) Only the records of certain juveniles shall be disclosed.
12 These include, and are limited to, cases in which:

13 (A) The juvenile has been charged with an offense which:

14 (i) Involves violence against another person;

15 (ii) Involves possession of a dangerous or deadly weapon; or

16 (iii) Involves possession or delivery of a controlled
17 substance as that term is defined in section one hundred one,
18 article one, chapter sixty-a of this code; and

19 (B) The juvenile’s case has proceeded to a point where one
20 or more of the following has occurred:

21 (i) A circuit court judge or magistrate has determined that
22 there is probable cause to believe that the juvenile committed the
23 offense as charged;

* **NOTE:** This section was also amended by S. B. 393 (Chapter 150) which passed subsequent to this Act.

24 (ii) A circuit court judge or magistrate has placed the
25 juvenile on probation for the offense;

26 (iii) A circuit court judge or magistrate has placed the
27 juvenile into an pre-adjudicatory community supervision period
28 in accordance with section seven hundred eight, article four of
29 this chapter; or

30 (iv) Some other type of disposition has been made of the
31 case other than dismissal.

32 (2) The circuit court for each judicial circuit in West
33 Virginia shall designate one person to supervise the disclosure
34 of juvenile records to certain school officials;

35 (3) If the juvenile attends a West Virginia public school, the
36 person designated by the circuit court shall automatically
37 disclose all records of the juvenile's case to the county
38 superintendent of schools in the county in which the juvenile
39 attends school and to the principal of the school which the
40 juvenile attends, subject to the following:

41 (A) At a minimum, the records shall disclose the following
42 information:

43 (i) Copies of the arrest report;

44 (ii) Copies of all investigations;

45 (iii) Copies of any psychological test results and any mental
46 health records;

47 (iv) Copies of any evaluation reports for probation or facility
48 placement; and

49 (v) Any other material that would alert the school to
50 potential danger that the juvenile may pose to himself, herself or
51 others;

52 (B) The disclosure of the juvenile's psychological test results
53 and any mental health records may only be made in accordance
54 with subdivision (14) of this subsection;

55 (C) If the disclosure of any record to be automatically
56 disclosed under this section is restricted in its disclosure by the
57 Health Insurance Portability and Accountability Act of 1996, PL
58 104-191, and any amendments and regulations under the act, the
59 person designated by the circuit court shall provide the
60 superintendent and principal any notice of the existence of the
61 record that is permissible under the act and, if applicable, any
62 action that is required to obtain the record; and

63 (D) When multiple disclosures are required by this
64 subsection, the person designated by the circuit court is required
65 to disclose only material in the juvenile record that had not
66 previously been disclosed to the county superintendent and the
67 principal of the school which the juvenile attends.

68 (4) If the juvenile attends a private school in West Virginia,
69 the person designated by the circuit court shall determine the
70 identity of the highest ranking person at that school and shall
71 automatically disclose all records of a juvenile's case to that
72 person.

73 (5) If the juvenile does not attend school at the time the
74 juvenile's case is pending, the person designated by the circuit
75 court may not transmit the juvenile's records to any school.
76 However, the person designated by the circuit court shall
77 transmit the juvenile's records to any school in West Virginia
78 which the juvenile subsequently attends.

79 (6) The person designated by the circuit court may not
80 automatically transmit juvenile records to a school which is not
81 located in West Virginia. Instead, the person designated by the
82 circuit court shall contact the out-of-state school, inform it that

83 juvenile records exist and make an inquiry regarding whether the
84 laws of that state permit the disclosure of juvenile records. If so,
85 the person designated by the circuit court shall consult with the
86 circuit judge who presided over the case to determine whether
87 the juvenile records should be disclosed to the out-of-state
88 school. The circuit judge has discretion in determining whether
89 to disclose the juvenile records and shall consider whether the
90 other state's law regarding disclosure provides for sufficient
91 confidentiality of juvenile records, using this section as a guide.
92 If the circuit judge orders the juvenile records to be disclosed,
93 they shall be disclosed in accordance with subdivision (7) of this
94 subsection.

95 (7) The person designated by the circuit court shall transmit
96 the juvenile's records to the appropriate school official under
97 cover of a letter emphasizing the confidentiality of those records
98 and directing the official to consult this section of the code. A
99 copy of this section of the code shall be transmitted with the
100 juvenile's records and cover letter.

101 (8) Juvenile records are absolutely confidential by the school
102 official to whom they are transmitted, and nothing contained
103 within the juvenile's records may be noted on the juvenile's
104 permanent educational record. The juvenile records are to be
105 maintained in a secure location and are not to be copied under
106 any circumstances. However, the principal of a school to whom
107 the records are transmitted shall have the duty to disclose the
108 contents of those records to any teacher who teaches a class in
109 which the subject juvenile is enrolled and to the regular driver of
110 a school bus in which the subject juvenile is regularly
111 transported to or from school, except that the disclosure of the
112 juvenile's psychological test results and any mental health
113 records may only be made in accordance with subdivision (14)
114 of this subsection. Furthermore, any school official to whom the
115 juvenile's records are transmitted may disclose the contents of
116 those records to any adult within the school system who, in the

117 discretion of the school official, has the need to be aware of the
118 contents of those records.

119 (9) If for any reason a juvenile ceases to attend a school
120 which possesses that juvenile's records, the appropriate official
121 at that school shall seal the records and return them to the circuit
122 court which sent them to that school. If the juvenile has changed
123 schools for any reason, the former school shall inform the circuit
124 court of the name and location of the new school which the
125 juvenile attends or will be attending. If the new school is located
126 within West Virginia, the person designated by the circuit court
127 shall forward the juvenile's records to the juvenile's new school
128 in the same manner as provided in subdivision (7) of this
129 subsection. If the new school is not located within West
130 Virginia, the person designated by the circuit court shall handle
131 the juvenile records in accordance with subdivision (6) of this
132 subsection.

133 If the juvenile has been found not guilty of an offense for
134 which records were previously forwarded to the juvenile's
135 school on the basis of a finding of probable cause, the circuit
136 court may not forward those records to the juvenile's new
137 school. However, this does not affect records related to other
138 prior or future offenses. If the juvenile has graduated or quit
139 school or will otherwise not be attending another school, the
140 circuit court shall retain the juvenile's records and handle them
141 as otherwise provided in this article.

142 (10) Under no circumstances may one school transmit a
143 juvenile's records to another school.

144 (11) Under no circumstances may juvenile records be
145 automatically transmitted to a college, university or other
146 post-secondary school.

147 (12) No one may suffer any penalty, civil or criminal, for
148 accidentally or negligently attributing certain juvenile records to

149 the wrong person. However, that person has the affirmative duty
150 to promptly correct any mistake that he or she has made in
151 disclosing juvenile records when the mistake is brought to his or
152 her attention. A person who intentionally attributes false
153 information to a certain person shall be subjected to both
154 criminal and civil penalties in accordance with subsection (e) of
155 this section.

156 (13) If a circuit court judge or magistrate has determined that
157 there is probable cause to believe that a juvenile has committed
158 an offense but there has been no final adjudication of the charge,
159 the records which are transmitted by the circuit court shall be
160 accompanied by a notice which clearly states in bold print that
161 there has been no determination of delinquency and that our
162 legal system requires a presumption of innocence.

163 (14) The county superintendent shall designate the school
164 psychologist or psychologists to receive the juvenile's
165 psychological test results and any mental health records. The
166 psychologist designated shall review the juvenile's
167 psychological test results and any mental health records and, in
168 the psychologist's professional judgment, may disclose to the
169 principal of the school that the juvenile attends and other school
170 employees who would have a need to know the psychological
171 test results, mental health records and any behavior that may
172 trigger violence or other disruptive behavior by the juvenile.
173 Other school employees include, but are not limited to, any
174 teacher who teaches a class in which the subject juvenile is
175 enrolled and the regular driver of a school bus in which the
176 subject juvenile is regularly transported to or from school.

177 (c) Notwithstanding the provisions of subsection (a) of this
178 section, juvenile records may be disclosed, subject to the
179 following terms and conditions:

180 (1) If a juvenile case is transferred to the criminal
181 jurisdiction of the circuit court pursuant to subsection (c) or (d),

182 section seven hundred ten, article four of this chapter, the
183 juvenile records are open to public inspection.

184 (2) If a juvenile case is transferred to the criminal
185 jurisdiction of the circuit court pursuant to subsection (e), (f) or
186 (g), section seven hundred ten, article four of this chapter, the
187 juvenile records are open to public inspection only if the juvenile
188 fails to file a timely appeal of the transfer order, or the Supreme
189 Court of Appeals refuses to hear or denies an appeal which has
190 been timely filed.

191 (3) If a juvenile is fourteen years of age or older and a court
192 has determined there is a probable cause to believe the juvenile
193 committed an offense set forth in subsection (g), section seven
194 hundred ten of article four of this chapter, but the case is not
195 transferred to criminal jurisdiction, the juvenile records are open
196 to public inspection pending trial only if the juvenile is released
197 on bond and no longer detained or adjudicated delinquent of the
198 offense.

199 (4) If a juvenile is younger than fourteen years of age and a
200 court has determined there is probable cause to believe that the
201 juvenile committed the crime of murder under section one, two
202 or three, article two, chapter sixty-one of this code, or the crime
203 of sexual assault in the first degree under section three, article
204 eight-b of chapter sixty-one, but the case is not transferred to
205 criminal jurisdiction, the juvenile records are open to public
206 inspection pending trial only if the juvenile is released on bond
207 and no longer detained or adjudicated delinquent of the offense.

208 (5) Upon a written petition and pursuant to a written order,
209 the circuit court may permit disclosure of juvenile records to:

210 (A) A court, in this state or another state, which has juvenile
211 jurisdiction and has the juvenile before it in a juvenile
212 proceeding;

213 (B) A court, in this state or another state, exercising criminal
214 jurisdiction over the juvenile which requests records for the
215 purpose of a presentence report or disposition proceeding;

216 (C) The juvenile, the juvenile's parents or legal guardian, or
217 the juvenile's counsel;

218 (D) The officials of a public institution to which the juvenile
219 is committed if they require those records for transfer, parole or
220 discharge; or

221 (E) A person who is conducting research. However, juvenile
222 records may be disclosed for research purposes only upon the
223 condition that information which would identify the subject
224 juvenile or the juvenile's family may not be disclosed.

225 (6) Notwithstanding any other provision of this code,
226 juvenile records shall be disclosed, or copies made available, to
227 a probation officer upon his or her request. Any probation officer
228 may access relevant juvenile case information contained in any
229 electronic database maintained by or for the Supreme Court of
230 Appeals and share it with any other probation officer.

231 (7) Notwithstanding any other provision of this code,
232 juvenile records shall be disclosed, or copies made available, in
233 response to any lawfully issued subpoena from a federal court or
234 federal agency.

235 (d) Any records open to public inspection pursuant to this
236 section are subject to the same requirements governing the
237 disclosure of adult criminal records.

238 (e) Any person who willfully violates this section is guilty
239 of a misdemeanor and, upon conviction, shall be fined not more
240 than \$1,000, or confined in jail for not more than six months, or
241 both fined and confined. A person who violates this section is
242 also liable for damages in the amount of \$300 or actual damages,
243 whichever is greater.

§49-5-104. Confidentiality of juvenile records for children who become of age while a ward of the state or who have been transferred to adult criminal jurisdiction; separate and secure location; penalties; damages.

1 (a) One year after the juvenile's eighteenth birthday, or one
2 year after personal or juvenile jurisdiction has terminated,
3 whichever is later, the records of a juvenile proceeding
4 conducted under this chapter, including, but not limited to,
5 law-enforcement files and records, may be kept in a separate
6 secure confidential place and the records may not be inspected
7 except by order of the circuit court.

8 (b) The records of a juvenile proceeding in which a juvenile
9 was transferred to criminal jurisdiction pursuant to section seven
10 hundred ten, article four of this chapter shall be kept in a
11 separate secure confidential place and the records may not be
12 inspected except by order of the circuit court if the juvenile is
13 subsequently acquitted or found guilty only of an offense other
14 than an offense upon which the waiver or order of transfer was
15 based, or if the offense upon which the waiver or order of
16 transfer was based is subsequently dismissed.

17 (c) To keep the confidentiality of juvenile records, they shall
18 be returned to the circuit court in which the case was pending
19 and be kept in a separate confidential file. The records shall be
20 physically marked to show that they are to remain confidential
21 and shall be securely kept and filed in a manner so that no one
22 can have access to determine the identity of the juvenile, except
23 upon order of the circuit court.

24 (d) Marking the juvenile records to show they are to remain
25 confidential has the legal effect of extinguishing the offense as
26 if it never occurred.

27 (e) The records of a juvenile convicted under the criminal
28 jurisdiction of the circuit court pursuant to subdivision (1),

29 subsection (d), section seven hundred ten, article four of this
30 chapter may not be marked and kept as confidential.

31 (f) Any person who willfully violates this section is guilty of
32 a misdemeanor and, upon conviction thereof, shall be fined not
33 more than \$1,000, or confined in jail for not more than six
34 months, or both so fined and confined, and is liable for damages
35 in the amount of \$300 or actual damages, whichever is greater.

§49-5-105. Juvenile justice database; individual records confidential.

1 The West Virginia Supreme Court of Appeals is responsible
2 for collecting, compiling and disseminating information in the
3 juvenile justice database. Notwithstanding any other provision
4 of this code to the contrary, the court shall grant the Division of
5 Justice and Community Services access to confidential juvenile
6 records for the limited purpose of the collection and analysis of
7 statistical data. However, the division shall keep the records
8 confidential and not publish any information that would identify
9 any individual juvenile.

ARTICLE 6. MISSING CHILDREN INFORMATION ACT.

§49-6-101. Clearinghouse function; State Police requirements; rule-making.

1 (a) The Missing Children Information Clearinghouse is
2 established under the West Virginia State Police. The State
3 Police:

4 (1) Shall provide for the administration of the clearinghouse;
5 and

6 (2) May promulgate rules in accordance with article three,
7 chapter twenty-nine-a of this code to carry out the provisions of
8 this article.

9 (b) The clearinghouse is a central repository of information
10 on missing children and shall be used by all law-enforcement
11 agencies in this state.

12 (c) The clearinghouse shall:

13 (1) Establish a system of intrastate communication of
14 information relating to missing children;

15 (2) Provide a centralized file for the exchange of information
16 on missing children and unidentified bodies of children within
17 the state;

18 (3) Communicate with the National Crime Information
19 Center for the exchange of information on missing children
20 suspected of interstate travel;

21 (4) Collect, process, maintain and disseminate accurate and
22 complete information on missing children;

23 (5) Provide a statewide toll-free telephone line for the
24 reporting of missing children and for receiving information on
25 missing children;

26 (6) Disseminate to custodians, law-enforcement agencies,
27 the state Department of Education, the Bureau for Children and
28 Families and the general public information that explains how to
29 prevent child abduction and what to do if a child becomes
30 missing;

31 (7) Compile statistics relating to the incidence of missing
32 children within the state;

33 (8) Provide training materials and technical assistance to
34 law-enforcement agencies and social services agencies
35 pertaining to missing children; and

36 (9) Establish a media protocol for disseminating information
37 pertaining to missing children.

38 (d) The clearinghouse shall print and distribute posters,
39 flyers and other forms of information containing descriptions of
40 missing children.

41 (e) The State Police may accept public or private grants,
42 gifts and donations to assist in carrying out the provisions of this
43 article.

**§49-6-102. State Department of Education; missing children
program; rule making.**

1 (a) The State Department of Education shall develop and
2 administer a program for the location of missing children who
3 may be enrolled in the West Virginia school system, including
4 private schools, and for the reporting of children who may be
5 missing or who may be unlawfully removed from schools.

6 (b) The program shall include the use of information
7 received from the clearinghouse and shall be coordinated with
8 the operations of the clearinghouse.

9 (c) The State Board of Education may promulgate rules in
10 accordance with article three, chapter twenty-nine-a of this code
11 for the operation of the program and shall require the
12 participation of all school districts and state-accredited private
13 schools in this state.

§49-6-103. Information to clearinghouse.

1 Every law-enforcement agency in West Virginia shall
2 provide to the clearinghouse any information the
3 law-enforcement agency has that would assist in locating or
4 identifying a missing child.

§49-6-104. Custodian request for information.

1 (a) Upon written request made to a law-enforcement agency
2 by the custodian of a missing child, the law-enforcement agency
3 shall request from the clearinghouse information concerning the
4 child that may aid the custodian in locating or identifying the
5 child.

6 (b) A law-enforcement agency to which a request has been
7 made pursuant to subsection (a) of this section shall report to the
8 custodian on the results of its inquiry within fourteen calendar
9 days after the day the written request is received by the
10 law-enforcement agency.

§49-6-105. Missing child report forms; where filed.

1 (a) The clearinghouse shall distribute missing child report
2 forms to law-enforcement agencies in the state.

3 (b) A missing child report may be made to a
4 law-enforcement agency in person or by telephone or other
5 indirect method of communication and the person taking the
6 report may enter the information on the form for the reporter. A
7 missing child report form may be completed by the reporter and
8 delivered to a law-enforcement office.

9 (c) A copy of the missing child report form shall be filed
10 with the clearinghouse.

§49-6-106. Missing child reports; law-enforcement agency requirements; unidentified bodies.

1 (a) A law-enforcement agency, upon receiving a missing
2 child report, shall:

3 (1) Immediately start an investigation to determine the
4 present location of the child if it determines that the child is in
5 danger; and

6 (2) Enter the name of the missing child into the
7 clearinghouse and the national crime information center missing
8 person file if the child meets the center's criteria, with all
9 available identifying features, including dental records,
10 fingerprints, other physical characteristics and a description of
11 the clothing worn when the missing child was last seen.

12 (b) Information not immediately available shall be obtained
13 as soon as possible by the law-enforcement agency and entered
14 into the clearinghouse and the national crime information center
15 file as a supplement to the original entry.

16 (c) All West Virginia law-enforcement agencies shall enter
17 information about all unidentified bodies of children found in
18 their jurisdiction into the clearinghouse and the national crime
19 information center unidentified person file, including all
20 available identifying features of the body and a description of the
21 clothing found on the body. If an information entry into the
22 national crime information center file results in an automatic
23 entry of the information into the clearinghouse, the
24 law-enforcement agency is not required to make a direct entry of
25 that information into the clearinghouse.

§49-6-107. Release of dental records; cause shown; immunity.

1 (a) At the time a missing child report is made, the
2 law-enforcement agency to which the missing child report is
3 given may, when feasible and appropriate, provide a dental
4 record release form to the parent, custodian, health care
5 surrogate or other legal entity authorized to release the dental
6 records of the missing child. The law-enforcement agency shall
7 endorse the dental record release form with a notation that a
8 missing child report has been made in compliance with this
9 article. When the dental record release form is properly
10 completed by the parent, custodian, health care surrogate or
11 other legal entity authorized to release the dental records of the

12 missing child and contains the endorsement, the form is
13 sufficient to permit a dentist or physician in this state to release
14 dental records relating to the missing child to the
15 law-enforcement agency.

16 (b) A circuit court judge may for good cause shown
17 authorize the release of dental records of a missing child to a
18 law-enforcement agency.

19 (c) A law-enforcement agency which receives dental records
20 under subsection (a) or (b) of this section shall send the dental
21 records to the clearinghouse.

22 (d) A dentist or physician who releases dental records to a
23 person presenting a proper release executed or ordered pursuant
24 to this section is immune from civil liability or criminal
25 prosecution for the release of the dental records.

§49-6-108. Cross-checking and matching.

1 (a) The clearinghouse shall, in accordance with national
2 crime information center policies and procedures, cross-check
3 and attempt to match unidentified bodies with descriptions of
4 missing children. When the clearinghouse discovers a possible
5 match between an unidentified body and a missing child
6 description, the clearinghouse shall notify the appropriate
7 law-enforcement agencies.

8 (b) A law-enforcement agency that receives notice of a
9 possible match shall make arrangements for positive
10 identification. If a positive identification is made, the
11 law-enforcement agency shall complete and close the
12 investigation with notification to the clearinghouse.

§49-6-109. Interagency cooperation.

1 (a) State agencies and public and private schools shall
2 cooperate with a law-enforcement agency that is investigating a

3 missing child report and shall furnish any information, including
4 confidential information, that will assist the law-enforcement
5 agency in completing the investigation.

6 (b) Information provided by a state agency or a public or
7 private school may not be released to any person outside the
8 law-enforcement agency or the clearinghouse, except as
9 provided by rules of the West Virginia State Police.

§49-6-110. Confidentiality of records; rule making; requirements.

1 (a) The State Police shall promulgate rules according to
2 article three, chapter twenty-nine-a of this code to provide for the
3 classification of information and records as confidential that:

4 (1) Are otherwise confidential under state or federal law or
5 rules promulgated pursuant to state or federal law;

6 (2) Are related to the investigation by a law-enforcement
7 agency of a missing child or an unidentified body, if the State
8 Police, in consultation with the law-enforcement agency,
9 determines that release of the information would be deleterious
10 to the investigation;

11 (3) Are records or notations that the clearinghouse maintains
12 for internal use in matters relating to missing children and
13 unidentified bodies and the State Police determines that release
14 of the internal documents might interfere with an investigation
15 by a law-enforcement agency in West Virginia or any other
16 jurisdiction; or

17 (4) Are records or information that the State Police
18 determines might interfere with an investigation or otherwise
19 harm a child or custodian.

20 (b) The rules may provide for the sharing of confidential
21 information with the custodian of the missing child.

§49-6-111. Attorney general to require compliance.

1 The Attorney General shall require each law-enforcement
2 agency to comply with the provisions of the Missing Children
3 Information Act and may seek writs of mandamus or other
4 appropriate remedies to enforce this article.

§49-6-112. Agencies to receive report; law-enforcement agency requirements.

1 (a) Upon completion of the missing child report the
2 law-enforcement agency shall immediately forward the contents
3 of the report to the missing children information clearinghouse
4 and the national crime information center's missing person file.
5 However, if an information entry into the national crime
6 information center file results in an automatic entry of the
7 information into the clearinghouse, the law-enforcement agency
8 is not required to make a direct entry of that information into the
9 clearinghouse.

10 (b) Within fifteen days after completion of the report, if the
11 child is less than thirteen years of age the law-enforcement
12 agency may, when appropriate, forward the contents of the
13 report to the last:

14 (1) Child care center or child care home in which the child
15 was enrolled; or

16 (2) School the child attended in West Virginia, if any.

17 (c) A law-enforcement agency involved in the investigation
18 of a missing child shall:

19 (1) Update the initial report filed by the agency that received
20 notification of the missing child upon the discovery of new
21 information concerning the investigation;

22 (2) Forward the updated report to the appropriate agencies
23 and organizations;

24 (3) Search the national crime information center's wanted
25 person file for reports of arrest warrants issued for persons who
26 allegedly abducted or unlawfully retained children and compare
27 these reports to the missing child's national crime information
28 center's missing person file; and

29 (4) Notify all law-enforcement agencies involved in the
30 investigation, the missing children information clearinghouse,
31 and the national crime information center when the missing child
32 is located.

§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses; appointment, duties and compensation of director; annual reports.

1 (a) The Clearinghouse Advisory Council is continued as a
2 body corporate and politic, constituting a public corporation and
3 government instrumentality. The council shall consist of eleven
4 members, who are knowledgeable about and interested in issues
5 relating to missing or exploited children, as follows:

6 (1) Six members to be appointed by the Governor, with the
7 advice and consent of the Senate, with not more than four
8 belonging to the same political party, three being from different
9 congressional districts of the state and, as nearly as possible,
10 providing broad state geographical distribution of members of
11 the council, and at least one representing a nonprofit
12 organization involved with preventing the abduction, runaway or
13 exploitation of children or locating missing children;

14 (2) The Secretary of the Department of Health and Human
15 Resources or his or her designee;

16 (3) The Superintendent of the West Virginia State Police or
17 his or her designee;

18 (4) The State Superintendent of Schools or his or her
19 designee;

20 (5) The Director of the Criminal Justice and Highway Safety
21 Division or his or her designee; and

22 (6) The Commissioner of the Bureau for Children and
23 Families or his or her designee.

24 (b) The Governor shall appoint the six council members for
25 staggered terms. The terms of the members first taking office on
26 or after the effective date of this legislation shall expire as
27 designated by the Governor. Each subsequent appointment shall
28 be for a full three-year term. Any appointed member whose term
29 is expired shall serve until a successor has been duly appointed
30 and qualified. Any person appointed to fill a vacancy may serve
31 only for the unexpired term. A member is eligible for only one
32 successive reappointment. A vacancy shall be filled by the
33 Governor in the same manner as the original appointment was
34 made.

35 (c) Members of the council are not entitled to compensation
36 for services performed as members but are entitled to
37 reimbursement for all reasonable and necessary expenses
38 actually incurred in the performance of their duties in a manner
39 consistent with the guidelines of the Travel Management Office
40 of the Department of Administration.

41 (d) A majority of serving members constitutes a quorum for
42 the purpose of conducting business. The chair of the council
43 shall be designated by the Governor from among the appointed
44 council members who represent nonprofit organizations involved
45 with preventing the abduction, runaway or exploitation of
46 children or locating missing children. The term of the chair shall
47 run concurrently with his or her term of office as a member of
48 the council. The council shall conduct all meetings in accordance

49 with the open governmental meetings law pursuant to article
50 nine-a, chapter six of this code.

51 (e) The employee of the West Virginia State Police who is
52 primarily responsible for the clearinghouse established by
53 section one hundred and one of this article shall serve as the
54 executive director of the council. He or she shall receive no
55 additional compensation for service as the executive director of
56 the council but shall be reimbursed for any reasonable and
57 necessary expenses actually incurred in the performance of his
58 or her duties as executive director in a manner consistent with
59 the guidelines of the travel management office of the Department
60 of Administration.

61 (f) The expenses of council members and the executive
62 director shall be reimbursed from funds provided by foundation
63 grants, in-kind contributions or funds obtained pursuant to
64 subsection (b), section one hundred fifteen of this article.

65 (g) The executive director shall provide or obtain
66 information necessary to support the administrative work of the
67 council and, to that end, may contract with one or more nonprofit
68 organizations or state agencies for research and administrative
69 support.

70 (h) The executive director of the council shall be available
71 to the Governor and to the Speaker of the House of Delegates
72 and the President of the Senate to analyze and comment upon
73 proposed legislation and rules which relate to or materially affect
74 missing or exploited children.

75 (i) The council shall prepare and publish an annual report of
76 its activities and accomplishments and submit it to the Governor
77 and to the Joint Committee on Government and Finance on or
78 before December 15 of each year.

§49-6-114. Powers and duties of clearinghouse advisory council; comprehensive strategic plan required to be provided to the Legislature.

1 The council shall prepare a comprehensive strategic plan and
2 recommendation of programs in furtherance thereof that will
3 support efforts to prevent the abduction, runaway and
4 exploitation, or any thereof, of children to locate missing
5 children; advise the West Virginia State Police regarding
6 operation of the clearinghouse and its other responsibilities
7 under this article; and cooperate with and coordinate the efforts
8 of state agencies and private organizations involved with issues
9 relating to missing or exploited children. The council may seek
10 public and private grants, contracts, matching funds and
11 procurement arrangements from the state and federal
12 government, private industry and other agencies in furtherance
13 of its mission and programs. An initial comprehensive strategic
14 plan that will support and foster efforts to prevent the abduction,
15 runaway and exploitation of children and to locate missing
16 children shall be developed and provided to the Governor, the
17 Speaker of the House of Delegates and the President of the
18 Senate no later than July 1, 2015, and shall include, but not be
19 limited to, the following:

20 (1) Findings and determinations regarding the extent of the
21 problem in this state related to: (A) Abducted children; (B)
22 runaway children; and (C) exploited children;

23 (2) Findings and determinations identifying the systems,
24 both public and private, existing in the state to prevent the
25 abduction, runaway or exploitation of children and to locate
26 missing children and assessing the strengths and weaknesses of
27 those systems and the clearinghouse;

28 (3) The inclusion of exploited children within the functions
29 of the clearinghouse. For purposes of this article, an exploited

30 child is a person under the age of eighteen years who has been:
31 (A) Used in the production of pornography; (B) subjected to
32 sexual exploitation or sexual offenses under article eight-b,
33 chapter sixty-one of this code; or (C) employed or exhibited in
34 any injurious, immoral or dangerous business or occupation in
35 violation of sections five through eight, article eight, chapter
36 sixty-one of this code;

37 (4) Recommendations of legislative changes required to
38 improve the effectiveness of the clearinghouse and other efforts
39 to prevent abduction, runaway or exploitation of children and to
40 locate missing children. Those recommendations shall consider
41 the following:

42 (A) Interaction of the clearinghouse with child custody
43 proceedings;

44 (B) Involvement of hospitals, child care centers and other
45 private agencies in efforts to prevent child abduction, runaway
46 or exploitation and to locate missing children;

47 (C) Publication of a directory of and periodic reports
48 regarding missing children;

49 (D) Required reporting by public and private agencies and
50 penalties for failure to report and false reporting;

51 (E) Removal of names from the list of missing children;

52 (F) Creating of an advocate for missing and exploited
53 children;

54 (G) State funding for the clearinghouse and efforts to prevent
55 the abduction, runaway and exploitation of children and to locate
56 missing children;

57 (H) Mandated involvement of state agencies, such as
58 publication of information regarding missing children in existing

59 state publications and coordination with the state registrar of
60 vital statistics under section twelve, article five, chapter sixteen
61 of this code; and

62 (I) Expanded requirement for boards of education to notify
63 the clearinghouse in addition to local law-enforcement agencies
64 under section five-c, article two, chapter eighteen of this code or
65 if a birth certificate or school record received appears to be
66 inaccurate or fraudulent and to receive clearinghouse approval
67 before releasing records;

68 (5) Methods that will coordinate and engender collaborative
69 efforts among organizations throughout the state, whether public
70 or private, involved with missing or exploited children;

71 (6) Plans for the use of technology in the clearinghouse and
72 other efforts related to missing or exploited children;

73 (7) Compliance of the clearinghouse, state law and all rules
74 promulgated pursuant thereto with applicable federal law so as
75 to enhance opportunities for receiving federal grants;

76 (8) Consultation with the State Board of Education and other
77 agencies responsible for promulgating rules under this article;

78 (9) Possible methods for identifying missing children prior
79 to enrollment in a public or nonpublic school;

80 (10) The feasibility and effectiveness of utilizing the federal
81 parent locator service in locating missing children; and

82 (11) Programs for voluntary fingerprinting.

§49-6-115. Public-private partnerships; funding.

1 (a) In furtherance of its mission, the clearinghouse council
2 is authorized to enter into contracts or joint venture agreements

3 with federal and state agencies; with nonprofit corporations
4 organized pursuant to the corporate laws of this state or other
5 jurisdictions that are qualified under Section 501(c)(3) of the
6 Internal Revenue Code; and with other organizations that
7 conduct research, make grants, improve educational programs
8 and work for the prevention of missing or exploited children and
9 to locate missing children. All contracts and joint venture
10 agreements must be approved by a majority vote of the council.
11 The council may also enter into contractual agreements for
12 consideration or recompense to it even though the entities are
13 funded from sources other than the state. Members of the council
14 are not prohibited from sitting on the boards of directors of any
15 contracting private nonprofit corporation, foundation or firm.
16 However, members of the council are not exempt from chapter
17 six-b of this code.

18 (b) The council shall solicit and is authorized to receive and
19 accept gifts or grants from private foundations, corporations,
20 individuals, devises and bequests or from other lawful sources.
21 The funds shall be paid into a special account in the State
22 Treasury for the use and benefit of the council.

ARTICLE 7. INTERSTATE COOPERATION.

PART I. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN.

§49-7-101. Adoption of compact.

1 The interstate compact on the placement of children is
2 hereby enacted into law and entered into with all other
3 jurisdictions legally joining therein in form substantially as
4 follows:

5 INTERSTATE COMPACT ON THE PLACEMENT OF
6 CHILDREN

ARTICLE I. PURPOSE AND POLICY.

1 It is the purpose and policy of the party states to cooperate
2 with each other in the interstate placement of children to the end
3 that:

4 (a) Each child requiring placement shall receive the
5 maximum opportunity to be placed in a suitable environment and
6 with persons or institutions having appropriate qualifications and
7 facilities to provide a necessary and desirable degree and type of
8 care.

9 (b) The appropriate authorities in a state where a child is to
10 be placed may have full opportunity to ascertain the
11 circumstances of the proposed placement, thereby promoting full
12 compliance with applicable requirements for the protection of
13 the child.

14 (c) The proper authorities of the state from which the
15 placement is made may obtain the most complete information on
16 the basis of which to evaluate a projected placement before it is
17 made.

18 (d) Appropriate jurisdictional arrangements for the care of
19 children will be promoted.

ARTICLE II. DEFINITIONS.

1 As used in this compact:

2 (a) "Child" means a person who, by reason of minority is
3 legally subject to parental, guardianship or similar control.

4 (b) "Sending agency" means a party state, officer or
5 employee thereof; a subdivision of a party state, or officer or
6 employee thereof; a court of a party state; a person, corporation,
7 association, charitable agency or other entity which sends,

8 brings, or causes to be sent or brought any child to another party
9 state.

10 (c) "Receiving state" means the state to which a child is sent,
11 brought, or caused to be sent or brought, whether by public
12 authorities or private persons or agencies, and whether for
13 placement with state or local public authorities or for placement
14 with private agencies or persons.

15 (d) "Placement" means the arrangement for the care of a
16 child in a family free home or boarding home or in a child-caring
17 agency or institution but does not include any institution caring
18 for the mentally ill, mentally defective or epileptic or any
19 institution primarily educational in character, and any hospital or
20 other medical facility.

ARTICLE III. CONDITIONS FOR REPLACEMENT.

1 (a) No sending agency shall send, bring, or cause to be sent
2 or brought into any other party state any child for placement in
3 foster care or as a preliminary to a possible adoption unless the
4 sending agency shall comply with each and every requirement
5 set forth in this article and with the applicable laws of the
6 receiving state governing the placement of children therein.

7 (b) Prior to sending, bringing or causing any child to be sent
8 or brought into a receiving state for placement in foster care or
9 as a preliminary to a possible adoption, the sending agency shall
10 furnish the appropriate public authorities in the receiving state
11 written notice of the intention to send, bring, or place the child
12 in the receiving state. The notice shall contain:

13 (1) The name, date and place of birth of the child.

14 (2) The identity and address or addresses of the parents or
15 legal guardian.

16 (3) The name and address of the person, agency or institution
17 to or with which the sending agency proposes to send, bring, or
18 place the child.

19 (4) A full statement of the reasons for the proposed action
20 and evidence of the authority pursuant to which the placement is
21 proposed to be made.

22 (c) Any public officer or agency in a receiving state which
23 is in receipt of a notice pursuant to paragraph (b) of this article
24 may request of the sending agency, or any other appropriate
25 officer or agency of or in the sending agency's state, and shall be
26 entitled to receive therefrom, the supporting or additional
27 information as it may deem necessary under the circumstances
28 to carry out the purpose and policy of this compact.

29 (d) The child shall not be sent, brought, or caused to be sent
30 or brought into the receiving state until the appropriate public
31 authorities in the receiving state shall notify the sending agency,
32 in writing, to the effect that the proposed placement does not
33 appear to be contrary to the interests of the child.

ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT.

1 The sending, bringing, or causing to be sent or brought into
2 any receiving state of a child in violation of the terms of this
3 compact shall constitute a violation of the laws respecting the
4 placement of children of both the state in which the sending
5 agency is located or from which it sends or brings the child and
6 of the receiving state. A violation may be punished or subjected
7 to penalty in either jurisdiction in accordance with its laws. In
8 addition to liability for any punishment or penalty, a violation
9 shall constitute full and sufficient grounds for the suspension or
10 revocation of any license, permit, or other legal authorization
11 held by the sending agency which empowers or allows it to
12 place, or care for children.

ARTICLE V. RETENTION OF JURISDICTION.

1 (a) The sending agency shall retain jurisdiction over the
2 child sufficient to determine all matters in relation to the
3 custody, supervision, care, treatment and disposition of the child
4 which it would have had if the child had remained in the sending
5 agency's state, until the child is adopted, reaches majority,
6 becomes self-supporting or is discharged with the concurrence
7 of the appropriate authority in the receiving state. The
8 jurisdiction shall also include the power to effect or cause the
9 return of the child or its transfer to another location and custody
10 pursuant to law. The sending agency shall continue to have
11 financial responsibility for support and maintenance of the child
12 during the period of the placement. Nothing contained herein
13 shall defeat a claim of jurisdiction by a receiving state sufficient
14 to deal with an act of delinquency or crime committed therein.

15 (b) When the sending agency is a public agency, it may enter
16 into an agreement with an authorized public or private agency in
17 the receiving state providing for the performance of one or more
18 services in respect of the case by the latter as agent for the
19 sending agency.

20 (c) Nothing in this compact shall be construed to prevent a
21 private charitable agency authorized to place children in the
22 receiving state from performing services or acting as agent in
23 that state for a private charitable agency of the sending state; nor
24 to prevent the agency in the receiving state from discharging
25 financial responsibility for the support and maintenance of a
26 child who has been placed on behalf of the sending agency
27 without relieving the responsibility set forth in paragraph (a)
28 hereof.

ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN.

1 A child adjudicated delinquent may be placed in an
2 institution in another party jurisdiction pursuant to this compact

3 but no placement shall be made unless the child is given a court
4 hearing on notice to the parent or guardian with opportunity to
5 be heard, prior to his or her being sent to the other party
6 jurisdiction for institutional care and the court finds that:

7 1. Equivalent facilities for the child are not available in the
8 sending agency's jurisdiction; and

9 2. Institutional care in the other jurisdiction is in the best
10 interest of the child and will not produce undue hardship.

ARTICLE VII. COMPACT ADMINISTRATOR.

1 The executive head of each jurisdiction party to this compact
2 shall designate an officer who shall be general coordinator of
3 activities under this compact in his or her jurisdiction and who,
4 acting jointly with like officers of other party jurisdictions, shall
5 have power to promulgate rules and regulations to carry out
6 more effectively the terms and provisions of this compact.

ARTICLE VIII. LIMITATIONS.

1 This compact shall not apply to:

2 (a) The sending or bringing of a child into a receiving state
3 by his or her parent, stepparent, grandparent, adult brother or
4 sister, adult uncle or aunt, or his or her guardian and leaving the
5 child with a relative or nonagency guardian in the receiving
6 state.

7 (b) Any placement, sending or bringing of a child into a
8 receiving state pursuant to any other interstate compact to which
9 both the state from which the child is sent or brought and the
10 receiving state are party, or to any other agreement between the
11 states which has the force of law.

ARTICLE IX. ENACTMENT AND WITHDRAWAL.

1 This compact shall be open to joinder by any state, territory
2 or possession of the United States, the District of Columbia, the

3 Commonwealth of Puerto Rico, and, with the consent of
4 Congress, the government of Canada or any province thereof. It
5 shall become effective with respect to those jurisdictions when
6 that other jurisdiction has enacted the same into law. Withdrawal
7 from this compact shall be by the enactment of a statute
8 repealing the same, but shall not take effect until two years after
9 the effective date of the statute and until written notice of the
10 withdrawal has been given by the withdrawing state to the
11 Governor of each other party jurisdiction. Withdrawal of a party
12 state shall not affect the rights, duties and obligations under this
13 compact of any sending agency therein with respect to a
14 placement made prior to the effective date of withdrawal.

ARTICLE X. CONSTRUCTION.

1 The provisions of this compact shall be liberally construed
2 to effectuate the purposes thereof. The provisions of this
3 compact shall be severable and if any phrase, clause, sentence or
4 provision of this compact is declared to be contrary to the
5 Constitution of any party state or of the United States or the
6 applicability thereof to any government, agency, person or
7 circumstance is held invalid, the validity of the remainder of this
8 compact and the applicability thereof to any government,
9 agency, person or circumstance shall not be affected thereby. If
10 this compact shall be held contrary to the Constitution of any
11 state party thereto, the compact shall remain in full force and
12 effect as to the remaining states and in full force and effect as to
13 the state affected as to all severable matters.

§49-7-102. Definitions; implementation.

1 (a) Financial responsibility for any child placed pursuant to
2 the provisions of the Interstate Compact on the Placement of
3 Children shall be determined in accordance with the provisions
4 of Article V thereof in the first instance. However, in the event
5 of partial or complete default of performance thereunder, section
6 one hundred one, article two of this chapter may be invoked.

7 (b) The “appropriate public authorities” as used in Article III
8 of the Interstate Compact on the Placement of Children shall,
9 with reference to this state, mean the Department of Health and
10 Human Resources and the agency shall receive and act with
11 reference to notices required by Article III.

12 (c) As used in paragraph (a) of Article V of the Interstate
13 Compact on the Placement of Children, the phrase “appropriate
14 authority in the receiving state” with reference to this state shall
15 mean the Department of Health and Human Resources.

16 (d) The officers and agencies of this state and its
17 subdivisions having authority to place children are hereby
18 empowered to enter into agreements with appropriate officers or
19 agencies of or in other party states pursuant to paragraph (b) of
20 Article V of the Interstate Compact on the Placement of
21 Children. An agreement which contains a financial commitment
22 or imposes a financial obligation on this state or subdivision or
23 agency thereof is not binding unless it has the approval in
24 writing of the Auditor in the case of the state and of the chief
25 local fiscal officer in the case of a subdivision of the state.

26 (e) Any requirements for visitation, inspection or supervision
27 of children, homes, institutions or other agencies in another party
28 state which may apply under sections one hundred eight and one
29 hundred eleven, article two of this chapter shall be deemed to be
30 met if performed pursuant to an agreement entered into by
31 appropriate officers or agencies of this state or a subdivision
32 thereof as contemplated by paragraph (b) of Article V of the
33 Interstate Compact on the Placement of Children.

34 (f) Section one hundred nine, article two of this chapter does
35 not apply to placements made pursuant to the Interstate Compact
36 on the Placement of Children.

37 (g) Any court having jurisdiction to place delinquent
38 children may place a child in an institution of or in another state

39 pursuant to Article VI of the Interstate Compact on the
40 Placement of Children and shall retain jurisdiction as provided
41 in Article V thereof.

42 (h) As used in Article VII of the interstate compact on the
43 placement of children, the term “executive head” means the
44 Governor. The Governor is hereby authorized to appoint a
45 compact administrator in accordance with the terms of that
46 Article VII.

PART II. INTERSTATE ADOPTION ASSISTANCE COMPACT.

§49-7-201. Interstate adoption assistance compact; findings and purpose.

1 (a) The Legislature finds that:

2 (1) Finding adoptive families for children, for whom state
3 assistance is desirable pursuant to section one hundred twelve,
4 article four, of this chapter and assuring the protection of the
5 interests of the children affected during the entire assistance
6 period, require special measures when the adoptive parents move
7 to other states or are residents of another state; and

8 (2) Provision of medical and other necessary services for
9 children, with state assistance, encounters special difficulties
10 when the provision of services takes place in other states.

11 (b) The purposes of sections two hundred one through two
12 hundred four of this article are to:

13 (1) Authorize the Department of Health and Human
14 Resources to enter into interstate agreements with agencies of
15 other states for the protection of children on behalf of whom
16 adoption assistance is being provided by the Department of
17 Health and Human Resources; and

- 18 (2) Provide procedures for interstate children's adoption
19 assistance payments, including medical payments.

**§49-7-202. Interstate adoption assistance compacts authorized;
definitions.**

1 (a) The Department of Health and Human Resources is
2 authorized to develop, participate in the development of,
3 negotiate and enter into one or more interstate compacts on
4 behalf of this state with other states to implement one or more of
5 the purposes set forth in sections two hundred one through two
6 hundred four of this article. When so entered into, and for so
7 long as it shall remain in force, the compact shall have the force
8 and effect of law.

9 (b) For the purposes of sections two hundred one through
10 two hundred four of this article, the term "state" means a state of
11 the United States, the District of Columbia, the Commonwealth
12 of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of
13 the Northern Mariana Islands, or a Territory or Possession of or
14 administered by the United States.

15 (c) For the purposes of sections two hundred one through
16 two hundred four of this article, the term "adoption assistance
17 state" means the state that is signatory to an adoption assistance
18 agreement in a particular case.

19 (d) For the purposes of sections two hundred one through
20 two hundred four of this article, the term "residence state" means
21 the state of which the child is a resident by virtue of the
22 residence of the adoptive parents.

**§49-7-203. Interstate adoption assistance compact; contents of
compact.**

1 A compact entered into pursuant to the authority conferred
2 by sections two hundred one through two hundred four of this
3 article shall have the following content:

4 (1) A provision making it available to joinder by all states.

5 (2) A provision or provisions for withdrawal from the
6 compact upon written notice to the parties, but with a period of
7 one year between the date of the notice and the effective date of
8 the withdrawal.

9 (3) A requirement that the protections afforded by or
10 pursuant to the compact continue in force for the duration of the
11 adoption assistance and be applicable to all children and their
12 adoptive parents who on the effective date of the withdrawal are
13 receiving adoption assistance from a party state other than the
14 one in which they are resident and have their principal place of
15 abode.

16 (4) A requirement that each instance of adoption assistance
17 to which the compact applies be covered by an adoption
18 assistance agreement in writing between the adoptive parents
19 and the state department which undertakes to provide the
20 adoption assistance, and further, that the agreement be expressly
21 for the benefit of the adopted child and enforceable by the
22 adoptive parents, and the state agency providing the adoption
23 assistance.

24 (5) Other provisions as may be appropriate to implement the
25 proper administration of the compact.

§49-7-204. Medical assistance for children with special needs; rule-making; penalties.

1 (a) A child with special needs resident in this state who is the
2 subject of an adoption assistance agreement with another state
3 shall be entitled to receive a medical assistance identification
4 from this state upon the filing in the Division of Human Services
5 of a certified copy of the adoption assistance agreement obtained
6 from the adoption assistance state. In accordance with
7 regulations of the Department of Health and Human Resources

8 the adoptive parents shall be required at least annually to show
9 that the agreement is still in force or has been renewed.

10 (b) The Department of Health and Human Resources shall
11 consider the holder of a medical assistance identification
12 pursuant to this section as any other holder of a medical
13 assistance identification under the laws of this state and shall
14 process and make payment on claims on account of the holder in
15 the same manner and pursuant to the same conditions and
16 procedures as for other recipients of medical assistance.

17 (c) The Department of Health and Human Resources shall
18 provide coverage and benefits for a child who is in another state
19 and who is covered by an adoption assistance agreement made
20 by the Department of Health and Human Resources for the
21 coverage or benefits, if any, not provided by the residence state.
22 To this end, the adoptive parents acting for the child may submit
23 evidence of payment for services or benefit amounts not payable
24 in the residence state and shall be reimbursed therefor. However,
25 there may be no reimbursement for services or benefit amounts
26 covered under any insurance or other third party medical
27 contract or arrangement held by the child or the adoptive parents.
28 The Department of Health and Human Resources shall propose
29 rules in accordance with article three, chapter twenty-nine-a of
30 this code that are necessary to effectuate the requirements and
31 purposes of this section. The additional coverages and benefit
32 amounts provided pursuant to this section shall be for services to
33 the cost of which there is no federal contribution, or which, if
34 federally aided, are not provided by the residence state. Among
35 other things, the regulations shall include procedures to be
36 followed in obtaining prior approvals for services in those
37 instances where required for the assistance.

38 (d) Any person who submits a claim for payment or
39 reimbursement for services or benefits pursuant to this section or
40 the making of any statement in connection therewith, which

41 claim of statement the maker knows or should know to be false,
42 misleading or fraudulent is guilty of a felony and, upon
43 conviction, shall be fined not more than \$10,000, or incarcerated
44 in a correctional facility not more than two years, or both fined
45 and incarcerated.

46 (e) This section applies only to medical assistance for
47 children under adoption assistance agreements from states that
48 have entered into a compact with this state under which the other
49 state provides medical assistance to children with special needs
50 under adoption assistance agreements made by this state. All
51 other children entitled to medical assistance pursuant to adoption
52 assistance agreements entered into by this state shall be eligible
53 to receive it in accordance with the laws and procedures
54 applicable thereto.

PART III. INTERSTATE COMPACT FOR JUVENILES.

§49-7-301. Execution of interstate compact for juveniles.

1 The Governor of this state is authorized and directed to
2 execute a compact on behalf of the State of West Virginia with
3 any state or states of the United States legally joining therein,
4 and substantially as follows:

5 INTERSTATE COMPACT FOR JUVENILES

ARTICLE I. PURPOSE.

1 (a) The compacting states to this interstate compact
2 recognize that each state is responsible for the proper supervision
3 or return of juveniles, delinquents and status offenders who are
4 on probation or parole and who have absconded, escaped or run
5 away from supervision and control and in so doing have
6 endangered their own safety and the safety of others. The
7 compacting states also recognize that each state is responsible
8 for the safe return of juveniles who have run away from home

9 and in doing so have left their state of residence. The compacting
10 states also recognize that Congress, by enacting the Crime
11 Control Act, 4 U.S.C. Section 112 (1965), has authorized and
12 encouraged compacts for cooperative efforts and mutual
13 assistance in the prevention of crime.

14 (b) It is the purpose of this compact, through means of joint
15 and cooperative action among the compacting states:

16 (1) To ensure that the adjudicated juveniles and status
17 offenders subject to this compact are provided adequate
18 supervision and services in the receiving state as ordered by the
19 adjudicating judge or parole authority in the sending state;

20 (2) To ensure that the public safety interests of the citizens,
21 including the victims of juvenile offenders, in both the sending
22 and receiving states are adequately protected;

23 (3) To return juveniles who have run away, absconded or
24 escaped from supervision or control or have been accused of an
25 offense to the state requesting their return;

26 (4) To make contracts for the cooperative institutionalization
27 in public facilities in member states for delinquent youth needing
28 special services;

29 (5) To provide for the effective tracking and supervision of
30 juveniles;

31 (6) To equitably allocate the costs, benefits and obligations
32 of the compacting states;

33 (7) To establish procedures to manage the movement
34 between states of juvenile offenders released to the community
35 under the jurisdiction of courts, juvenile departments, or any
36 other criminal or juvenile justice agency which has jurisdiction
37 over juvenile offenders;

38 (8) To ensure immediate notice to jurisdictions where
39 defined offenders are authorized to travel or to relocate across
40 state lines;

41 (9) To establish procedures to resolve pending charges
42 (detainers) against juvenile offenders prior to transfer or release
43 to the community under the terms of this compact;

44 (10) To establish a system of uniform data collection on
45 information pertaining to juveniles subject to this compact that
46 allows access by authorized juvenile justice and criminal justice
47 officials, and regular reporting of compact activities to heads of
48 state executive, judicial, and legislative branches and juvenile
49 and criminal justice administrators;

50 (11) To monitor compliance with rules governing interstate
51 movement of juveniles and initiate interventions to address and
52 correct noncompliance;

53 (12) To coordinate training and education regarding the
54 regulation of interstate movement of juveniles for officials
55 involved in the activity; and

56 (13) To coordinate the implementation and operation of the
57 compact with the interstate compact for the placement of
58 children, the interstate compact for adult offender supervision
59 and other compacts affecting juveniles, particularly in those
60 cases where concurrent or overlapping supervision issues arise.

61 (c) It is the policy of the compacting states that the activities
62 conducted by the interstate commission created herein are the
63 formation of public policies and therefore are public business.
64 Furthermore, the compacting states shall cooperate and observe
65 their individual and collective duties and responsibilities for the
66 prompt return and acceptance of juveniles subject to the
67 provisions of this compact. The provisions of this compact shall

68 be reasonably and liberally construed to accomplish the purposes
69 and policies of the compact.

ARTICLE II. DEFINITIONS.

1 As used in this compact, unless the context clearly requires
2 a different construction:

3 (a) "Bylaws" means those bylaws established by the
4 interstate commission for its governance, or for directing or
5 controlling its actions or conduct.

6 (b) "Compact administrator" means the individual in each
7 compacting state appointed pursuant to the terms of this
8 compact, responsible for the administration and management of
9 the state's supervision and transfer of juveniles subject to the
10 terms of this compact, the rules adopted by the interstate
11 commission and policies adopted by the state council under this
12 compact.

13 (c) "Compacting state" means any state which has enacted
14 the enabling legislation for this compact.

15 (d) "Commissioner" means the voting representative of each
16 compacting state appointed pursuant to Article III of this
17 compact.

18 (e) "Court" means any court having jurisdiction over
19 delinquent, neglected, or dependent children.

20 (f) "Deputy compact administrator" means the individual, if
21 any, in each compacting state appointed to act on behalf of a
22 compact administrator pursuant to the terms of this compact
23 responsible for the administration and management of the state's
24 supervision and transfer of juveniles subject to the terms of this
25 compact, the rules adopted by the interstate commission and
26 policies adopted by the state council under this compact.

27 (g) “Interstate commission” means the interstate commission
28 for juveniles created by Article III of this compact.

29 (h) “Juvenile” means any person defined as a juvenile in any
30 member state or by the rules of the interstate commission,
31 including:

32 (1) Accused delinquent – a person charged with an offense
33 that, if committed by an adult, would be a criminal offense;

34 (2) Adjudicated delinquent – a person found to have
35 committed an offense that, if committed by an adult, would be
36 a criminal offense;

37 (3) Accused status offender – a person charged with an
38 offense that would not be a criminal offense if committed by an
39 adult;

40 (4) Adjudicated status offender - a person found to have
41 committed an offense that would not be a criminal offense if
42 committed by an adult; and

43 (i) Nonoffender – a person in need of supervision who has
44 not been accused or adjudicated a status offender or delinquent.

45 (j) “Noncompacting state” means any state which has not
46 enacted the enabling legislation for this compact.

47 (k) “Probation or parole” means any kind of supervision or
48 conditional release of juveniles authorized under the laws of the
49 compacting states.

50 (l) “Rule” means a written statement by the interstate
51 commission promulgated pursuant to Article VI of this compact
52 that is of general applicability, implements, interprets or
53 prescribes a policy or provision of the compact, or an
54 organizational, procedural, or practice requirement of the

55 commission, and has the force and effect of statutory law in a
56 compacting state, and includes the amendment, repeal, or
57 suspension of an existing rule.

58 (m) "State" means a state of the United States, the District
59 of Columbia (or its designee), the Commonwealth of Puerto
60 Rico, the U.S. Virgin Islands, Guam, American Samoa, and the
61 Northern Marianas Islands.

ARTICLE III. INTERSTATE COMMISSION FOR JUVENILES.

1 (a) The compacting states hereby create the "Interstate
2 Commission for Juveniles." The commission shall be a body
3 corporate and joint agency of the compacting states. The
4 commission shall have all the responsibilities, powers and duties
5 set forth herein, and the additional powers as may be conferred
6 upon it by subsequent action of the respective Legislatures of the
7 compacting states in accordance with the terms of this compact.

8 (b) The interstate commission shall consist of commissioners
9 appointed by the appropriate appointing authority in each state
10 pursuant to the rules and requirements of each compacting state
11 and in consultation with the state council for interstate juvenile
12 supervision created hereunder. The commissioner shall be the
13 compact administrator, deputy compact administrator or
14 designee from that state who shall serve on the interstate
15 commission in the capacity under or pursuant to the applicable
16 law of the compacting state.

17 (c) In addition to the commissioners who are the voting
18 representatives of each state, the interstate commission shall
19 include individuals who are not commissioners, but who are
20 members of interested organizations. The noncommissioner
21 members must include a member of the national organizations
22 of Governors, legislators, state chief justices, attorneys general,
23 interstate compact for adult offender supervision, interstate

24 compact for the placement of children, juvenile justice and
25 juvenile corrections officials, and crime victims. All
26 noncommissioner members of the interstate commission shall be
27 ex officio (nonvoting) members. The interstate commission may
28 provide in its bylaws for the additional ex officio (nonvoting)
29 members, including members of other national organizations, in
30 such numbers as shall be determined by the commission.

31 (d) Each compacting state represented at any meeting of the
32 commission is entitled to one vote. A majority of the compacting
33 states shall constitute a quorum for the transaction of business,
34 unless a larger quorum is required by the bylaws of the interstate
35 commission.

36 (e) The commission shall meet at least once each calendar
37 year. The chairperson may call additional meetings and, upon the
38 request of a simple majority of the compacting states, shall call
39 additional meetings. Public notice shall be given of all meetings
40 and meetings shall be open to the public.

41 (f) The interstate commission shall establish an executive
42 committee, which shall include commission officers, members,
43 and others as determined by the bylaws. The executive
44 committee shall have the power to act on behalf of the interstate
45 commission during periods when the interstate commission is
46 not in session, with the exception of rule making and/or
47 amendment to the compact. The executive committee shall
48 oversee the day-to-day activities of the administration of the
49 compact managed by an executive director and interstate
50 commission staff; administers enforcement and compliance with
51 the provisions of the compact, its bylaws and rules, and performs
52 other duties as directed by the interstate commission or set forth
53 in the bylaws.

54 (g) Each member of the interstate commission shall have the
55 right and power to cast a vote to which that compacting state is
56 entitled and to participate in the business and affairs of the

57 interstate commission. A member shall vote in person and shall
58 not delegate a vote to another compacting state. However, a
59 commissioner, in consultation with the state council, shall
60 appoint another authorized representative, in the absence of the
61 commissioner from that state, to cast a vote on behalf of the
62 compacting state at a specified meeting. The bylaws may
63 provide for members' participation in meetings by telephone or
64 other means of telecommunication or electronic communication.

65 (h) The interstate commission's bylaws shall establish
66 conditions and procedures under which the interstate
67 commission shall make its information and official records
68 available to the public for inspection or copying. The interstate
69 commission may exempt from disclosure any information or
70 official records to the extent they would adversely affect
71 personal privacy rights or proprietary interests.

72 (i) Public notice shall be given of all meetings and all
73 meetings shall be open to the public, except as set forth in the
74 rules or as otherwise provided in the compact. The interstate
75 commission and any of its committees may close a meeting to
76 the public where it determines by two-thirds vote that an open
77 meeting would be likely to:

78 (1) Relate solely to the interstate commission's internal
79 personnel practices and procedures;

80 (2) Disclose matters specifically exempted from disclosure
81 by statute;

82 (3) Disclose trade secrets or commercial or financial
83 information which is privileged or confidential;

84 (4) Involve accusing any person of a crime, or formally
85 censuring any person;

86 (5) Disclose information of a personal nature where
87 disclosure would constitute a clearly unwarranted invasion of
88 personal privacy;

89 (6) Disclose investigative records compiled for
90 law-enforcement purposes;

91 (7) Disclose information contained in or related to
92 examination, operating or condition reports prepared by, or on
93 behalf of or for the use of, the interstate commission with respect
94 to a regulated person or entity for the purpose of regulation or
95 supervision of the person or entity;

96 (8) Disclose information, the premature disclosure of which
97 would significantly endanger the stability of a regulated person
98 or entity; or

99 (9) Specifically relate to the interstate commission's
100 issuance of a subpoena, or its participation in a civil action or
101 other legal proceeding.

102 (j) For every meeting closed pursuant to subsection (i) of this
103 section, the interstate commission's legal counsel shall publicly
104 certify that, in the legal counsel's opinion, the meeting may be
105 closed to the public, and shall reference each relevant exemptive
106 provision. The interstate commission shall keep minutes which
107 shall fully and clearly describe all matters discussed in any
108 meeting and shall provide a full and accurate summary of any
109 actions taken, and the reasons therefore, including a description
110 of each of the views expressed on any item and the record of any
111 roll call vote (reflected in the vote of each member on the
112 question). All documents considered in connection with any
113 action shall be identified in the minutes.

114 (k) The interstate commission shall collect standardized data
115 concerning the interstate movement of juveniles as directed
116 through its rules which shall specify the data to be collected, the
117 means of collection and data exchange and reporting
118 requirements. The methods of data collection, exchange and
119 reporting shall insofar as is reasonably possible conform to

120 up-to-date technology and coordinate its information functions
121 with the appropriate repository of records.

**ARTICLE IV. POWERS AND DUTIES OF THE INTERSTATE
COMMISSION.**

1 The interstate commission shall have the following powers
2 and duties:

3 (a) To provide for dispute resolution among compacting
4 states.

5 (b) To promulgate rules to effect the purposes and
6 obligations as enumerated in this compact, which shall have the
7 force and effect of statutory law and shall be binding in the
8 compacting states to the extent and in the manner provided in
9 this compact.

10 (c) To oversee, supervise and coordinate the interstate
11 movement of juveniles subject to the terms of this compact and
12 any bylaws adopted and rules promulgated by the interstate
13 commission.

14 (d) To enforce compliance with the compact provisions, the
15 rules promulgated by the interstate commission, and the bylaws,
16 using all necessary and proper means, including, but not limited
17 to, the use of judicial process.

18 (e) To establish and maintain offices which shall be located
19 within one or more of the compacting states.

20 (f) To purchase and maintain insurance and bonds.

21 (g) To borrow, accept, hire or contract for services of
22 personnel.

23 (h) To establish and appoint committees and hire staff which
24 it deems necessary for the carrying out of its functions including,

25 but not limited to, an executive committee as required by Article
26 III which shall have the power to act on behalf of the interstate
27 commission in carrying out its powers and duties hereunder.

28 (i) To elect or appoint officers, attorneys, employees, agents,
29 or consultants, and to fix their compensation, define their duties
30 and determine their qualifications.

31 (j) To establish the interstate commission's personnel
32 policies and programs relating to, inter alia, conflicts of interest,
33 rates of compensation, and qualifications of personnel.

34 (k) To accept any and all donations and grants of money,
35 equipment, supplies, materials, and services, and to receive,
36 utilize, and dispose of it.

37 (l) To lease, purchase, accept contributions or donations of,
38 or otherwise to own, hold, improve or use any property, real,
39 personal, or mixed.

40 (m) To sell, convey, mortgage, pledge, lease, exchange,
41 abandon, or otherwise dispose of any property, real, personal or
42 mixed.

43 (n) To establish a budget and make expenditures and levy
44 dues as provided in Article VIII of this compact.

45 (o) To sue and be sued.

46 (p) To adopt a seal and bylaws governing the management
47 and operation of the interstate commission.

48 (q) To perform functions as may be necessary or appropriate
49 to achieve the purposes of this compact.

50 (r) To report annually to the Legislatures, Governors,
51 judiciary, and state councils of the compacting states concerning

52 the activities of the interstate commission during the preceding
53 year. Reports shall also include any recommendations that may
54 have been adopted by the interstate commission.

55 (s) To coordinate education, training and public awareness
56 regarding the interstate movement of juveniles for officials
57 involved in the activity.

58 (t) To establish uniform standards of the reporting, collecting
59 and exchanging of data.

60 (u) The interstate commission shall maintain its corporate
61 books and records in accordance with the bylaws.

ARTICLE V. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

Section A. Bylaws.

1 (a) The interstate commission shall, by a majority of the
2 members present and voting, within twelve months after the first
3 interstate commission meeting, adopt bylaws to govern its
4 conduct as may be necessary or appropriate to carry out the
5 purposes of the compact, including, but not limited to:

6 (1) Establishing the fiscal year of the interstate commission;

7 (2) Establish an executive committee and the other
8 committees as may be necessary to;

9 (3) Provide for the establishment of committees governing
10 any general or specific delegation of any authority or function of
11 the interstate commission;

12 (4) Provide reasonable procedures for calling and conducting
13 meetings of the interstate commission, and ensure reasonable
14 notice of each meeting;

15 (5) Establish the titles and responsibilities of the officers of
16 the interstate commission;

17 (6) Provide a mechanism for concluding the operations of
18 the interstate commission and the return of any surplus funds
19 that may exist upon the termination of the compact after the
20 payment and/or reserving of all of its debts and obligations.

21 (7) Providing “start-up” rules for initial administration of the
22 compact; and

23 (8) Establish standards and procedures for compliance and
24 technical assistance in carrying out the compact.

Section B. Officers and Staff.

1 (b) (1) The interstate commission shall, by a majority of the
2 members, elect annually from among its members a chairperson
3 and a vice chairperson, each of whom shall have the authority
4 and duties as may be specified in the bylaws. The chairperson or,
5 in the chairperson’s absence or disability, the vice-chairperson
6 shall preside at all meetings of the interstate commission. The
7 officers so elected shall serve without compensation or
8 remuneration from the interstate commission; provided that,
9 subject to the availability of budgeted funds, the officers shall be
10 reimbursed for any ordinary and necessary costs and expenses
11 incurred by them in the performance of their duties and
12 responsibilities as officers of the interstate commission.

13 (2) The interstate commission shall, through its executive
14 committee, appoint or retain an executive director for such
15 period, upon terms and conditions and compensation as the
16 interstate commission may deem appropriate. The executive
17 director shall serve as secretary to the interstate commission, but
18 shall not be a member and shall hire and supervise other staff as
19 may be authorized by the interstate commission.

Section C. Qualified Immunity, Defense and Indemnification.

1 (c)(1) The commission's executive director and employees
2 shall be immune from suit and liability, either personally or in
3 their official capacity, for any claim for damage to or loss of
4 property or personal injury or other civil liability caused or
5 arising out of or relating to any actual or alleged act, error, or
6 omission that occurred, or that such person had a reasonable
7 basis for believing occurred within the scope of commission
8 employment, duties, or responsibilities; provided, that any such
9 person shall not be protected from suit or liability for any
10 damage, loss, injury, or liability caused by the intentional or
11 willful and wanton misconduct of any such person.

12 (2) The liability of any commissioner, or the employee or
13 agent of a commissioner, acting within the scope of a person's
14 employment or duties for acts, errors, or omissions occurring
15 within such person's state may not exceed the limits of liability
16 set forth under the Constitution and laws of that state for state
17 officials, employees, and agents. Nothing in this subsection shall
18 be construed to protect a person from suit or liability for any
19 damage, loss, injury, or liability caused by the intentional or
20 willful and wanton misconduct of a person.

21 (3) The interstate commission shall defend the executive
22 director or the employees or representatives of the interstate
23 commission and, subject to the approval of the Attorney General
24 of the state represented by any commissioner of a compacting
25 state, shall defend the commissioner or the commissioner's
26 representatives or employees in any civil action seeking to
27 impose liability arising out of any actual or alleged act, error or
28 omission that occurred within the scope of interstate commission
29 employment, duties or responsibilities, or that the defendant had
30 a reasonable basis for believing occurred within the scope of
31 interstate commission employment, duties, or responsibilities,
32 provided that the actual or alleged act, error, or omission did not

33 result from intentional or willful and wanton misconduct on the
34 part of such person.

35 (4) The interstate commission shall indemnify and hold the
36 commissioner of a compacting state, or the commissioner's
37 representatives or employees, or the interstate commission's
38 representatives or employees, harmless in the amount of any
39 settlement or judgment obtained against such persons arising out
40 of any actual or alleged act, error, or omission that occurred
41 within the scope of interstate commission employment, duties,
42 or responsibilities, or that such persons had a reasonable basis
43 for believing occurred within the scope of interstate commission
44 employment, duties, or responsibilities, provided that the actual
45 or alleged act, error, or omission did not result from intentional
46 or willful and wanton misconduct on the part of such persons.

ARTICLE VI. RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

1 (a) The interstate commission shall promulgate and publish
2 rules in order to effectively and efficiently achieve the purposes
3 of the compact.

4 (b) Rule making shall occur pursuant to the criteria set forth
5 in this article and the bylaws and rules adopted pursuant thereto.
6 Such rule making shall substantially conform to the principles of
7 the "Model State Administrative Procedures Act," 1981 Act,
8 Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other
9 administrative procedures act, as the interstate commission
10 deems appropriate consistent with due process requirements
11 under the U.S. Constitution as now or hereafter interpreted by
12 the U.S. Supreme Court. All rules and amendments shall become
13 binding as of the date specified, as published with the final
14 version of the rule as approved by the commission.

15 (c) When promulgating a rule, the interstate commission
16 shall, at a minimum:

17 (1) Publish the proposed rule's entire text stating the
18 reason(s) for that proposed rule;

19 (2) Allow and invite any and all persons to submit written
20 data, facts, opinions and arguments, which information shall be
21 added to the record, and be made publicly available;

22 (3) Provide an opportunity for an informal hearing if
23 petitioned by ten (10) or more persons; and

24 (4) Promulgate a final rule and its effective date, if
25 appropriate, based on input from state or local officials, or
26 interested parties.

27 (d) Allow, not later than sixty days after a rule is
28 promulgated, any interested person to file a petition in the United
29 States District Court for the District of Columbia or in the
30 federal district court where the interstate commission's principal
31 office is located for judicial review of such rule. If the court
32 finds that the interstate commission's action is not supported by
33 substantial evidence in the rule-making record, the court shall
34 hold the rule unlawful and set it aside. For purposes of this
35 subsection, evidence is substantial if it would be considered
36 substantial evidence under the Model State Administrative
37 Procedures Act.

38 (e) If a majority of the Legislatures of the compacting states
39 rejects a rule, those states may, by enactment of a statute or
40 resolution in the same manner used to adopt the compact, cause
41 that such rule shall have no further force and effect in any
42 compacting state.

43 (f) The existing rules governing the operation of the
44 "Interstate Compact on Juveniles" superceded by this article
45 shall be null and void twelve months after the first meeting of
46 the interstate commission created hereunder.

47 (g) Upon determination by the interstate commission that a
48 state-of-emergency exists, it may promulgate an emergency rule
49 which shall become effective immediately upon adoption,
50 provided that the usual rule-making procedures provided
51 hereunder shall be retroactively applied to the rule as soon as
52 reasonably possible, but no later than ninety days after the
53 effective date of the emergency rule.

**ARTICLE VII. OVERSIGHT, ENFORCEMENT AND DISPUTE
SOLUTION BY THE INTERSTATE
COMMISSION.**

Section A. Oversight.

1 (a)(1) The interstate commission shall oversee the
2 administration and operations of the interstate movement of
3 juveniles subject to this compact in the compacting states and
4 shall monitor such activities being administered in
5 noncompacting states which may significantly affect compacting
6 states.

7 (2) The courts and executive agencies in each compacting
8 state shall enforce this compact and shall take all actions
9 necessary and appropriate to effectuate the compact's purposes
10 and intent.

11 (3) The provisions of this compact and the rules promulgated
12 hereunder shall be received by all the judges, public officers,
13 commissions, and departments of the state government as
14 evidence of the authorized statute and administrative rules. All
15 courts shall take judicial notice of the compact and the rules.

16 (4) In any judicial or administrative proceeding in a
17 compacting state pertaining to the subject matter of this compact
18 which may affect the powers, responsibilities or actions of the
19 interstate commission, it shall be entitled to receive all service

20 of process in any such proceeding, and shall have standing to
21 intervene in the proceeding for all purposes.

Section B. Dispute Resolution.

1 (b)(1) The compacting states shall report to the interstate
2 commission on all issues and activities necessary for the
3 administration of the compact as well as issues and activities
4 pertaining to compliance with the provisions of the compact and
5 its bylaws and rules.

6 (2) The interstate commission shall attempt, upon the request
7 of a compacting state, to resolve any disputes or other issues
8 which are subject to the compact and which may arise among
9 compacting states and between compacting and noncompacting
10 states. The commission shall promulgate a rule providing for
11 both mediation and binding dispute resolution for disputes
12 among the compacting states.

13 (3) The interstate commission, in the reasonable exercise of
14 its discretion, shall enforce the provisions and rules of this
15 compact using any or all means set forth in Article XI of this
16 compact.

ARTICLE VIII. FINANCE.

1 (a) The interstate commission shall pay or provide for the
2 payment of the reasonable expenses of its establishment,
3 organization and ongoing activities.

4 (b) The interstate commission shall levy on and collect an
5 annual assessment from each compacting state to cover the cost
6 of the internal operations and activities of the interstate
7 commission and its staff which must be in a total amount
8 sufficient to cover the interstate commission's annual budget as
9 approved each year. The aggregate annual assessment amount
10 shall be allocated based upon a formula to be determined by the
11 interstate commission, taking into consideration the population

12 of each compacting state and the volume of interstate movement
13 of juveniles in each compacting state and shall promulgate a rule
14 binding upon all compacting states which governs the
15 assessment.

16 (c) The interstate commission shall not incur any obligations
17 of any kind prior to securing the funds adequate to meet the
18 same; nor shall the interstate commission pledge the credit of
19 any of the compacting states, except by and with the authority of
20 the compacting state.

21 (d) The interstate commission shall keep accurate accounts
22 of all receipts and disbursements. The receipts and
23 disbursements of the interstate commission shall be subject to
24 the audit and accounting procedures established under its
25 bylaws. However, all receipts and disbursements of funds
26 handled by the interstate commission shall be audited yearly by
27 a certified or licensed public accountant and the report of the
28 audit shall be included in and become part of the annual report
29 of the interstate commission.

ARTICLE IX. THE STATE COUNCIL.

1 Each member state shall create a state council for interstate
2 juvenile supervision. While each state may determine the
3 membership of its own state council, its membership must
4 include at least one representative from the legislative, judicial,
5 and executive branches of government, victims groups, and the
6 compact administrator, deputy compact administrator or
7 designee. Each compacting state retains the right to determine
8 the qualifications of the compact administrator or deputy
9 compact administrator. Each state council will advise and may
10 exercise oversight and advocacy concerning that state's
11 participation in interstate commission activities and other duties
12 as may be determined by that state, including, but not limited to,
13 development of policy concerning operations and procedures of
14 the compact within that state.

**ARTICLE X. COMPACTING STATES, EFFECTIVE DATE
AND AMENDMENT.**

1 (a) Any state, the District of Columbia (or its designee), the
2 Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam,
3 American Samoa, and the Northern Marianas Islands as defined
4 in Article II of this compact is eligible to become a compacting
5 state.

6 (b) The compact shall become effective and binding upon
7 legislative enactment of the compact into law by no less than
8 thirty-five of the states. The initial effective date shall be the
9 later of July 1, 2004, or upon enactment into law by the
10 thirty-fifth jurisdiction. Thereafter it shall become effective and
11 binding as to any other compacting state upon enactment of the
12 compact into law by that state. The Governors of nonmember
13 states or their designees shall be invited to participate in the
14 activities of the interstate commission on a nonvoting basis prior
15 to adoption of the compact by all states and territories of the
16 United States.

17 (c) The interstate commission may propose amendments to
18 the compact for enactment by the compacting states. No
19 amendment shall become effective and binding upon the
20 interstate commission and the compacting states unless and until
21 it is enacted into law by unanimous consent of the compacting
22 states.

**ARTICLE XI. WITHDRAWAL, DEFAULT, TERMINATION
AND JUDICIAL ENFORCEMENT.**

Section A. Withdrawal.

1 (a)(1) Once effective, the compact shall continue in force and
2 remain binding upon each and every compacting state; provided
3 that a compacting state may withdraw from the compact by
4 specifically repealing the statute which enacted the compact into
5 law.

6 (2) The effective date of withdrawal is the effective date of
7 the repeal.

8 (3) The withdrawing state shall immediately notify the
9 chairperson of the interstate commission in writing upon the
10 introduction of legislation repealing this compact in the
11 withdrawing state. The interstate commission shall notify the
12 other compacting states of the withdrawing state's intent to
13 withdraw within sixty days of its receipt thereof.

14 (4) The withdrawing state is responsible for all assessments,
15 obligations and liabilities incurred through the effective date of
16 withdrawal, including any obligations, the performance of which
17 extend beyond the effective date of withdrawal.

18 (5) Reinstatement following withdrawal of any compacting
19 state shall occur upon the withdrawing state reenacting the
20 compact or upon such later date as determined by the interstate
21 commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default.

1 (b)(1) If the interstate commission determines that any
2 compacting state has at any time defaulted in the performance of
3 any of its obligations or responsibilities under this compact, or
4 the bylaws or duly promulgated rules, the interstate commission
5 may impose any or all of the following penalties:

6 (A) Remedial training and technical assistance as directed by
7 the interstate commission;

8 (B) Alternative dispute resolution;

9 (C) Fines, fees, and costs in such amounts as are deemed to
10 be reasonable as fixed by the interstate commission; and

11 (D) Suspension or termination of membership in the
12 compact shall be imposed only after all other reasonable means
13 of securing compliance under the bylaws and rules have been
14 exhausted and the interstate commission has therefore
15 determined that the offending state is in default. Immediate
16 notice of suspension shall be given by the interstate commission
17 to the Governor, the chief justice or the chief judicial officer of
18 the state, the majority and minority leaders of the defaulting
19 state's Legislature, and the state council.

20 (2) The grounds for default include, but are not limited to,
21 failure of a compacting state to perform such obligations or
22 responsibilities imposed upon it by this compact, the bylaws, or
23 duly promulgated rules and any other grounds designated in
24 commission bylaws and rules.

25 (3) The interstate commission shall immediately notify the
26 defaulting state in writing of the penalty imposed by the
27 interstate commission and of the default pending a cure of the
28 default.

29 (4) The commission shall stipulate the conditions and the
30 time period within which the defaulting state must cure its
31 default. If the defaulting state fails to cure the default within the
32 time period specified by the commission, the defaulting state
33 shall be terminated from the compact upon an affirmative vote
34 of a majority of the compacting states and all rights, privileges
35 and benefits conferred by this compact shall be terminated from
36 the effective date of termination.

37 (5) Within sixty days of the effective date of termination of
38 a defaulting state, the commission shall notify the Governor, the
39 chief justice or chief judicial officer, the majority and minority
40 leaders of the defaulting state's Legislature, and the state council
41 of such termination.

42 (6) The defaulting state is responsible for all assessments,
43 obligations and liabilities incurred through the effective date of
44 termination including any obligations, the performance of which
45 extends beyond the effective date of termination.

46 (7) The interstate commission shall not bear any costs
47 relating to the defaulting state unless otherwise mutually agreed
48 upon in writing between the interstate commission and the
49 defaulting state.

50 (8) Reinstatement following termination of any compacting
51 state requires both a reenactment of the compact by the
52 defaulting state and the approval of the interstate commission
53 pursuant to the rules.

Section C. Judicial Enforcement.

1 (c) The interstate commission may, by majority vote of the
2 members, initiate legal action in the United States District Court
3 for the District of Columbia or, at the discretion of the interstate
4 commission, in the federal district where the interstate
5 commission has its offices, to enforce compliance with the
6 provisions of the compact, its duly promulgated rules and
7 bylaws, against any compacting state in default. In the event
8 judicial enforcement is necessary the prevailing party shall be
9 awarded all costs of such litigation including reasonable
10 attorneys fees.

Section D. Dissolution of Compact.

1 (d)(1) The compact dissolves effective upon the date of the
2 withdrawal or default of the compacting state, which reduces
3 membership in the compact to one compacting state.

4 (2) Upon the dissolution of this compact, the compact
5 becomes null and void and shall be of no further force or effect,
6 and the business and affairs of the interstate commission shall be

7 concluded and any surplus funds shall be distributed in
8 accordance with the bylaws.

ARTICLE XII. SEVERABILITY AND CONSTRUCTION.

1 (a) The provisions of this compact shall be severable, and if
2 any phrase, clause, sentence or provision is deemed
3 unenforceable, the remaining provisions of the compact shall be
4 enforceable.

5 (b) The provisions of this compact shall be liberally
6 construed to effectuate its purposes.

ARTICLE XIII. BINDING EFFECT OF COMPACT AND OTHER LAWS.

Section A. Other Laws.

1 (a)(1) Nothing herein prevents the enforcement of any other
2 law of a compacting state that is not inconsistent with this
3 compact.

4 (2) All compacting states' laws other than state Constitutions
5 and other interstate compacts conflicting with this compact are
6 superseded to the extent of the conflict.

Section B. Binding Effect of the Compact.

1 (b)(1) All lawful actions of the interstate commission,
2 including all rules and bylaws promulgated by the interstate
3 commission, are binding upon the compacting states.

4 (2) All agreements between the interstate commission and
5 the compacting states are binding in accordance with their terms.

6 (3) Upon the request of a party to a conflict over meaning or
7 interpretation of interstate commission actions, and upon a
8 majority vote of the compacting states, the interstate commission

9 may issue advisory opinions regarding such meaning or
10 interpretation.

11 (4) In the event any provision of this compact exceeds the
12 constitutional limits imposed on the Legislature of any
13 compacting state, the obligations, duties, powers or jurisdiction
14 sought to be conferred by such provision upon the interstate
15 commission shall be ineffective and such obligations, duties,
16 powers or jurisdiction shall remain in the compacting state and
17 shall be exercised by the agency thereof to which such
18 obligations, duties, powers or jurisdiction are delegated by law
19 in effect at the time this compact becomes effective.

**§49-7-302. State council for interstate juvenile supervision;
members; authority.**

1 (a) Upon the effective date of the interstate compact for
2 juveniles, there shall be created a state council for interstate
3 juvenile supervision. The state council shall be comprised of a
4 total of nine members, to be selected and designated as follows:

5 (1) Two members designated by the Legislature, one of
6 whom shall be named and appointed by the Speaker of the
7 House, and the other of whom shall be designated by the
8 President of the Senate;

9 (2) Two members designated by the judiciary, both of whom
10 shall be named and appointed by the Chief Justice of the
11 Supreme Court of Appeals of West Virginia;

12 (3) The compact administrator or a designee of the compact
13 administrator; and

14 (4) Four members to be designated and appointed by the
15 Governor, two of whom must be representatives of state agencies
16 dealing with juvenile corrections, juvenile placement or juvenile
17 services, and one of whom must be a representative of a victims'
18 group.

19 (b) Within ninety days of the effective date of this compact,
20 the state council shall meet and designate a commissioner who
21 shall represent the state as the compacting state's voting
22 representative under Article III of this compact.

23 (c) The state council will exercise oversight and advocacy
24 concerning West Virginia's participation in interstate
25 commission activities and rule makings, and engage in other
26 duties and activities as determined by its members, including,
27 but not limited to, the development of policy concerning the
28 operations and procedures for implementing the compact and
29 interstate commission rules within West Virginia.

§49-7-303. Appointment of compact administrator.

1 (a) Upon and after the effective date of the interstate
2 compact for juveniles, the Governor is hereby authorized and
3 empowered to designate an officer who shall be the compact
4 administrator and who, acting jointly with like offices of the
5 other party states, shall be responsible for the administration and
6 management of this state's supervision and transfer of juveniles
7 subject to the terms of this compact, the rules adopted by the
8 interstate commission and the policies adopted by the state
9 council under this compact. The compact administrator shall
10 serve subject to the will and pleasure of the Governor, and must
11 meet the minimum qualifications for the position of compact
12 administrator, as established by the state council. The compact
13 administrator is hereby authorized, empowered and directed to
14 cooperate with all departments, agencies and officers of and in
15 the government of this state and its subdivisions in facilitating
16 the proper administration of the compact or of any
17 supplementary agreement or agreements entered into by this
18 state hereunder.

19 (b) Until the state council has met and established minimum
20 qualifications for the position of compact administrator the

21 individual or administrator who has been designated to act as the
22 juvenile compact administrator for the interstate compact for
23 juveniles may perform the duties and responsibilities of compact
24 administrator under this article.

25 (c) Until the state council has met and designated a
26 commissioner to vote on behalf of the State of West Virginia at
27 the interstate commission, the individual or administrator who
28 has been designated to act as the juvenile compact administrator
29 for the interstate compact for juveniles shall function as the
30 acting commissioner for the State of West Virginia before the
31 interstate commission formed under the new compact.

**§49-7-304. Notification of the effective date of the interstate
compact for juveniles.**

1 Within ten days of the date that the thirty-fifth state adopts
2 legislation approving this compact, the appointed or designated
3 juvenile compact administrator under section three hundred
4 three, article seven of this chapter shall advise the Governor, the
5 Chief Justice of the Supreme Court of Appeals of West Virginia,
6 the Speaker of the House of Delegates and the President of the
7 Senate of the effective date of this compact.

CHAPTER 47

(Com. Sub. for H. B. 2939 - By Delegate B. White)

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §49-1-201 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §49-2-803

and §49-2-812 of said code, all relating to requirements for mandatory reporting of sexual offenses on school premises involving or between students; defining terms; adding conduct that must be reported to law enforcement; defining nature of conduct to be reported; creating criminal penalties for failure to report; increasing penalties for other reporting requirements; and requiring school administrators to provide written notice of reporting requirement to employees and to obtain and preserve signed acknowledgments thereof.

Be it enacted by the Legislature of West Virginia:

That §49-1-201 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-2-803 and §49-2-812 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

***§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

1 When used in this chapter, terms defined in this section have
2 the meanings ascribed to them that relate to, but are not limited
3 to, child abuse and neglect, except in those instances where a
4 different meaning is provided or the context in which the word
5 is used clearly indicates that a different meaning is intended.

6 “Abandonment” means any conduct that demonstrates the
7 settled purpose to forego the duties and parental responsibilities
8 to the child;

9 “Abused child” means a child whose health or welfare is
10 being harmed or threatened by:

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46) which passed prior to this Act.

11 (A) A parent, guardian or custodian who knowingly or
12 intentionally inflicts, attempts to inflict or knowingly allows
13 another person to inflict, physical injury or mental or emotional
14 injury, upon the child or another child in the home. Physical
15 injury may include an injury to the child as a result of excessive
16 corporal punishment;

17 (B) Sexual abuse or sexual exploitation;

18 (C) The sale or attempted sale of a child by a parent,
19 guardian or custodian in violation of section fourteen-h, article
20 two, chapter sixty-one of this code; or

21 (D) Domestic violence as defined in section two hundred
22 two, article twenty-seven, chapter forty-eight of this code.

23 “Abusing parent” means a parent, guardian or other
24 custodian, regardless of his or her age, whose conduct has been
25 adjudicated by the court to constitute child abuse or neglect as
26 alleged in the petition charging child abuse or neglect.

27 “Battered parent,” for the purposes of part six, article four of
28 this chapter, means a respondent parent, guardian, or other
29 custodian who has been adjudicated by the court to have not
30 condoned the abuse or neglect and has not been able to stop the
31 abuse or neglect of the child or children due to being the victim
32 of domestic violence as defined by section two hundred two,
33 article twenty-seven, chapter forty-eight of this code which was
34 perpetrated by the same person or persons determined to have
35 abused or neglected the child or children.

36 “Child abuse and neglect services” means social services
37 which are directed toward:

38 (A) Protecting and promoting the welfare of children who
39 are abused or neglected;

40 (B) Identifying, preventing and remedying conditions which
41 cause child abuse and neglect;

42 (C) Preventing the unnecessary removal of children from
43 their families by identifying family problems and assisting
44 families in resolving problems which could lead to a removal of
45 children and a breakup of the family;

46 (D) In cases where children have been removed from their
47 families, providing time-limited reunification services to the
48 children and the families so as to reunify those children with
49 their families or some portion thereof;

50 (E) Placing children in suitable adoptive homes when
51 reunifying the children with their families, or some portion
52 thereof, is not possible or appropriate; and

53 (F) Assuring the adequate care of children or juveniles who
54 have been placed in the custody of the department or third
55 parties.

56 “Condition requiring emergency medical treatment” means
57 a condition which, if left untreated for a period of a few hours,
58 may result in permanent physical damage; that condition
59 includes, but is not limited to, profuse or arterial bleeding,
60 dislocation or fracture, unconsciousness and evidence of
61 ingestion of significant amounts of a poisonous substance.

62 “Imminent danger to the physical well-being of the child”
63 means an emergency situation in which the welfare or the life of
64 the child is threatened. These conditions may include an
65 emergency situation when there is reasonable cause to believe
66 that any child in the home is or has been sexually abused or
67 sexually exploited, or reasonable cause to believe that the
68 following conditions threaten the health, life, or safety of any
69 child in the home:

70 (A) Nonaccidental trauma inflicted by a parent, guardian,
71 custodian, sibling or a babysitter or other caretaker;

72 (B) A combination of physical and other signs indicating a
73 pattern of abuse which may be medically diagnosed as battered
74 child syndrome;

75 (C) Nutritional deprivation;

76 (D) Abandonment by the parent, guardian or custodian;

77 (E) Inadequate treatment of serious illness or disease;

78 (F) Substantial emotional injury inflicted by a parent,
79 guardian or custodian;

80 (G) Sale or attempted sale of the child by the parent,
81 guardian or custodian;

82 (H) The parent, guardian or custodian's abuse of alcohol or
83 drugs or other controlled substance as defined in section one
84 hundred one, article one, chapter sixty-a of this code, has
85 impaired his or her parenting skills to a degree as to pose an
86 imminent risk to a child's health or safety; or

87 (I) Any other condition that threatens the health, life, or
88 safety of any child in the home.

89 "Neglected child" means a child:

90 (A) Whose physical or mental health is harmed or threatened
91 by a present refusal, failure or inability of the child's parent,
92 guardian or custodian to supply the child with necessary food,
93 clothing, shelter, supervision, medical care or education, when
94 that refusal, failure or inability is not due primarily to a lack of
95 financial means on the part of the parent, guardian or custodian;
96 or

97 (B) Who is presently without necessary food, clothing,
98 shelter, medical care, education or supervision because of the
99 disappearance or absence of the child's parent or custodian;

100 (C) "Neglected child" does not mean a child whose
101 education is conducted within the provisions of section one,
102 article eight, chapter eighteen of this code.

103 "Petitioner or co-petitioner" means the Department or any
104 reputable person who files a child abuse or neglect petition
105 pursuant to section six hundred one, article four of this chapter.

106 "Permanency plan" means the part of the case plan which is
107 designed to achieve a permanent home for the child in the least
108 restrictive setting available.

109 "Respondent" means all parents, guardians, and custodians
110 identified in the child abuse and neglect petition who are not
111 petitioners or co-petitioners.

112 "Sexual abuse" means:

113 (A) Sexual intercourse, sexual intrusion, sexual contact, or
114 conduct proscribed by section three, article eight-c, chapter
115 sixty-one, which a parent, guardian or custodian engages in,
116 attempts to engage in, or knowingly procures another person to
117 engage in with a child notwithstanding the fact that for a child
118 who is less than sixteen years of age the child may have
119 willingly participated in that conduct or the child may have
120 suffered no apparent physical injury or mental or emotional
121 injury as a result of that conduct or, for a child sixteen years of
122 age or older the child may have consented to that conduct or the
123 child may have suffered no apparent physical injury or mental or
124 emotional injury as a result of that conduct;

125 (B) Any conduct where a parent, guardian or custodian
126 displays his or her sex organs to a child, or procures another

127 person to display his or her sex organs to a child, for the purpose
128 of gratifying the sexual desire of the parent, guardian or
129 custodian, of the person making that display, or of the child, or
130 for the purpose of affronting or alarming the child; or

131 (C) Any of the offenses proscribed in sections seven, eight
132 or nine of article eight-b, chapter sixty-one of this code.

133 “Sexual assault” means any of the offenses proscribed in
134 sections three, four or five of article eight-b, chapter sixty-one of
135 this code.

136 “Sexual contact” means sexual contact as that term is
137 defined in section one, article eight-b, chapter sixty-one of this
138 code.

139 “Sexual exploitation” means an act where:

140 (A) A parent, custodian or guardian, whether for financial
141 gain or not, persuades, induces, entices or coerces a child to
142 engage in sexually explicit conduct as that term is defined in
143 section one, article eight-c, chapter sixty-one of this code; or

144 (B) A parent, guardian or custodian persuades, induces,
145 entices or coerces a child to display his or her sex organs for the
146 sexual gratification of the parent, guardian, custodian or a third
147 person, or to display his or her sex organs under circumstances
148 in which the parent, guardian or custodian knows that the display
149 is likely to be observed by others who would be affronted or
150 alarmed.

151 “Sexual intercourse” means sexual intercourse as that term
152 is defined in section one, article eight-b, chapter sixty-one of this
153 code.

154 “Sexual intrusion” means sexual intrusion as that term is
155 defined in section one, article eight-b, chapter sixty-one of this
156 code.

157 “Serious physical abuse” means bodily injury which creates
158 a substantial risk of death, which causes serious or prolonged
159 disfigurement, prolonged impairment of health or prolonged loss
160 or impairment of the function of any bodily organ.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

***§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.**

1 (a) Any medical, dental or mental health professional,
2 Christian Science practitioner, religious healer, school teacher or
3 other school personnel, social service worker, child care or foster
4 care worker, emergency medical services personnel, peace
5 officer or law-enforcement official, humane officer, member of
6 the clergy, circuit court judge, family court judge, employee of
7 the Division of Juvenile Services, magistrate, youth camp
8 administrator or counselor, employee, coach or volunteer of an
9 entity that provides organized activities for children, or
10 commercial film or photographic print processor who has
11 reasonable cause to suspect that a child is neglected or abused or
12 observes the child being subjected to conditions that are likely to
13 result in abuse or neglect shall immediately, and not more than
14 forty-eight hours after suspecting this abuse or neglect, report the
15 circumstances or cause a report to be made to the Department of
16 Health and Human Resources. In any case where the reporter
17 believes that the child suffered serious physical abuse or sexual
18 abuse or sexual assault, the reporter shall also immediately
19 report, or cause a report to be made, to the State Police and any
20 law-enforcement agency having jurisdiction to investigate the
21 complaint. Any person required to report under this article who
22 is a member of the staff or volunteer of a public or private
23 institution, school, entity that provides organized activities for

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46) which passed prior to this Act.

24 children, facility or agency shall also immediately notify the
25 person in charge of the institution, school, entity that provides
26 organized activities for children, facility or agency, or a
27 designated agent thereof, who may supplement the report or
28 cause an additional report to be made.

29 (b) Any person over the age of eighteen who receives a
30 disclosure from a credible witness or observes any sexual abuse
31 or sexual assault of a child, shall immediately, and not more than
32 forty-eight hours after receiving that disclosure or observing the
33 sexual abuse or sexual assault, report the circumstances or cause
34 a report to be made to the Department of Health and Human
35 Resources or the State Police or other law-enforcement agency
36 having jurisdiction to investigate the report. In the event that the
37 individual receiving the disclosure or observing the sexual abuse
38 or sexual assault has a good faith belief that the reporting of the
39 event to the police would expose either the reporter, the subject
40 child, the reporter's children or other children in the subject
41 child's household to an increased threat of serious bodily injury,
42 the individual may delay making the report while he or she
43 undertakes measures to remove themselves or the affected
44 children from the perceived threat of additional harm and the
45 individual makes the report as soon as practicable after the threat
46 of harm has been reduced. The law-enforcement agency that
47 receives a report under this subsection shall report the
48 allegations to the Department of Health and Human Resources
49 and coordinate with any other law-enforcement agency, as
50 necessary to investigate the report.

51 (c) Any school teacher or other school personnel who
52 receives a disclosure from a witness, which a reasonable prudent
53 person would deem credible, or personally observes any sexual
54 contact, sexual intercourse or sexual intrusion, as those terms are
55 defined in article eight-b, chapter sixty-one, of a child on school
56 premises or on school buses or on transportation used in
57 furtherance of a school purpose shall immediately, but not more

58 than 24 hours, report the circumstances or cause a report to be
59 made to the State Police or other law-enforcement agency having
60 jurisdiction to investigate the report: *Provided*, That this
61 subsection will not impose any reporting duty upon school
62 teachers or other school personnel who observe, or receive a
63 disclosure of any consensual sexual contact, intercourse, or
64 intrusion occurring between students who would not otherwise
65 be subject to section three, five, seven or nine of article eight-8,
66 chapter sixty-one of this code: *Provided, however*, That any
67 teacher or other school personnel shall not be in violation of this
68 section if he or she makes known immediately, but not more
69 than 24 hours. to the principal, assistant principal or similar
70 person in charge, a disclosure from a witness, which a reasonable
71 prudent person would deem credible, or personal observation of
72 conduct described in this section: *Provided further*, That a
73 principal, assistant principal or similar person in charge made
74 aware of such disclosure or observation from a teacher or other
75 school personnel shall be responsible for immediately, but not
76 more than 24 hours, reporting such conduct to law enforcement.

77 (d) County boards of education and private school
78 administrators shall provide all employees with a written
79 statement setting forth the requirement contained in this
80 subsection and shall obtain and preserve a signed
81 acknowledgment from school employees that they have received
82 and understand the reporting requirement.

83 (e) The reporting requirements contained in this section
84 specifically include reported, disclosed or observed conduct
85 involving or between students enrolled in a public or private
86 institution of education, or involving a student and school
87 teacher or personnel. When the alleged conduct is between two
88 students or between a student and school teacher or personnel,
89 the law enforcement body that received the report under this
90 section is required to make such a report under this section shall
91 additionally immediately, but not more than 24 hours, notify the

92 students' parents, guardians, and custodians about the
93 allegations.

94 (f) Nothing in this article is intended to prevent individuals
95 from reporting suspected abuse or neglect on their own behalf.
96 In addition to those persons and officials specifically required to
97 report situations involving suspected abuse or neglect of
98 children, any other person may make a report if that person has
99 reasonable cause to suspect that a child has been abused or
100 neglected in a home or institution or observes the child being
101 subjected to conditions or circumstances that would reasonably
102 result in abuse or neglect.

***§49-2-812. Failure to report; penalty.**

1 (a) Any person, official or institution required by this article
2 to report a case involving a child known or suspected to be
3 abused or neglected, or required by section eight hundred nine of
4 this article to forward a copy of a report of serious injury, who
5 knowingly fails to do so or knowingly prevents another person
6 acting reasonably from doing so, is guilty of a misdemeanor and,
7 upon conviction, shall be confined in jail not more than ninety
8 days or fined not more than \$5,000, or both fined and confined.

9 (b) Any person, official or institution required by this article
10 to report a case involving a child known or suspected to be
11 sexually assaulted or sexually abused, or student known or
12 suspected to have been a victim of any non-consensual sexual
13 contact, sexual intercourse or sexual intrusion on school
14 premises, who knowingly fails to do so or knowingly prevents
15 another person acting reasonably from doing so, is guilty of a
16 misdemeanor and, upon conviction thereof, shall be confined in
17 jail not more than six months or fined not more than \$10,000, or
18 both.

* **NOTE:** This section was also amended by H. B. 2200 (Chapter 46)
which passed prior to this Act.

CHAPTER 48

**(S. B. 262 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed February 18, 2015; in effect ninety days from passage.]

[Approved by the Governor on February 25, 2015.]

AN ACT to amend and reenact §5-16B-1 and §5-16B-2 of the Code of West Virginia, 1931, as amended, all relating to transferring the Children's Health Insurance Program and Children's Health Insurance Agency from the Department of Administration to the Department of Health and Human Resources; providing for orderly transfer of functions, funds and accounts; and clarifying definition of "Children's Health Insurance Agency".

Be it enacted by the Legislature of West Virginia:

That §5-16B-1 and §5-16B-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH
INSURANCE PROGRAM.**

**§5-16B-1. Expansion of health care coverage to children; creation
of program; legislative directives.**

- 1 (a) It is the intent of the Legislature to expand access to
- 2 health services for eligible children and to pay for this coverage
- 3 by using private, state and federal funds to purchase those
- 4 services or purchase insurance coverage for those services. To
- 5 achieve this intention, the West Virginia Children's Health
- 6 Insurance Program is created. The program shall be administered
- 7 by the Children's Health Insurance Agency within the
- 8 Department of Administration in accordance with the provisions

9 of this article and the applicable provisions of Title XXI of the
10 Social Security Act of 1997: *Provided*, That on and after July 1,
11 2015, the agencies, boards and programs including all of the
12 allied, advisory, affiliated or related entities and funds associated
13 with the Children's Health Insurance Program and Children's
14 Health Insurance Agency, shall be incorporated in and
15 administered as a part of the Department of Health and Human
16 Resources. Participation in the program may be made available
17 to families of eligible children, subject to eligibility criteria and
18 processes to be established, which does not create an entitlement
19 to coverage in any person. Nothing in this article requires any
20 appropriation of State General Revenue Funds for the payment
21 of any benefit provided in this article. In the event that this
22 article conflicts with the requirements of federal law, federal law
23 governs.

24 (b) In developing a Children's Health Insurance Program
25 that operates with the highest degree of simplicity and
26 governmental efficiency, the board shall avoid duplicating
27 functions available in existing agencies and may enter into
28 interagency agreements for the performance of specific tasks or
29 duties at a specific or maximum contract price.

30 (c) In developing benefit plans, the board may consider any
31 cost savings, administrative efficiency or other benefit to be
32 gained by considering existing contracts for services with state
33 health plans and negotiating modifications of those contracts to
34 meet the needs of the program.

35 (d) For the transfer of the functions of the Children's Health
36 Insurance Program and the Children's Health Insurance Agency
37 from the Department of Administration to the Department of
38 Health and Human Resources, the Secretary of the Department
39 of Health and Human Resources and the Secretary of the
40 Department of Administration, acting jointly, are empowered to
41 authorize and shall authorize the transfers of program and
42 agency funds including, but not limited to, the West Virginia

43 Children's Health Fund created in section seven of this article
44 and associated investment accounts; and transfers of Children's
45 Health Insurance Program and Children's Health Insurance
46 Agency personnel and equipment, as are necessary, to facilitate
47 an orderly transfer of the functions of the Children's Health
48 Insurance Program and the Children's Health Insurance Agency.

49 (e) In order to enroll as many eligible children as possible in
50 the program created by this article and to expedite the effective
51 date of their health insurance coverage, the board shall develop
52 and implement a plan whereby applications for enrollment may
53 be taken at any primary care center or other health care provider,
54 as determined by the director, and transmitted electronically to
55 the program's offices for eligibility screening and other
56 necessary processing. The board may use any funds available to
57 it in the development and implementation of the plan, including
58 grant funds or other private or public moneys.

§5-16B-2. Definitions.

1 As used in this article, unless the context clearly requires a
2 different meaning:

3 (a) "Agency" means the Children's Health Insurance
4 Agency.

5 (b) "Board" means the Children's Health Insurance Program
6 Board.

7 (c) "Director" means the Director of the Children's Health
8 Insurance Agency.

9 (d) "Essential community health service provider" means a
10 health care provider that:

11 (1) Has historically served medically needy or medically
12 indigent patients and demonstrates a commitment to serve low-
13 income and medically indigent populations which constitute a
14 significant portion of its patient population or, in the case of a

15 sole community provider, serves medically indigent patients
16 within its medical capability; and

17 (2) Either waives service fees or charges fees based on a
18 sliding scale and does not restrict access or services because of
19 a client's financial limitations. Essential community health
20 service provider includes, but is not limited to, community
21 mental health centers, school health clinics, primary care centers,
22 pediatric health clinics or rural health clinics.

23 (e) "Program" means the West Virginia Children's Health
24 Insurance Program.

CHAPTER 49

**(H. B. 2876 - By Delegate(s) E. Nelson, Ashley, Boggs,
Williams, Anderson, A. Evans, Walters, Canterbury, Hamilton,
L. Phillips and Pethtel)**

[Passed March 9, 2015; in effect from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT finding and declaring certain claims against the state and its
agencies to be moral obligations of the state; and directing the
Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

**§1. Finding and declaring certain claims against the Department
of Administration/Office of Technology; Department of
Agriculture; Division of Corrections; Division of Highways;
Division of Homeland Security and Emergency Manage-**

ment; Division of Motor Vehicles; Division of Natural Resources; Division of Natural Resources/Parks and Recreation; Real Estate Commission; Regional Jail and Correctional Facility Authority; State of West Virginia and West Virginia State Police to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
2 recommendations reported to it by the Court of Claims
3 concerning various claims against the state and agencies thereof
4 and in respect to each of the following claims, the Legislature
5 adopts those findings of fact as its own and in respect of certain
6 claims herein, the Legislature has independently made findings
7 of fact and determinations of award and hereby declares it to be
8 the moral obligation of the state to pay each such claim in the
9 amount specified below and directs the Auditor to issue warrants
10 for the payment thereof out of any fund appropriated and
11 available for the purpose.

12 (a) *Claims against the Department of Administration/Office*
13 *of Technology:*

14 (TO BE PAID FROM SPECIAL REVENUE FUND)

- 15 (1) CDI Corporation. \$8,164.00
- 16 (2) Peak-Ryzex Inc. \$6,091.80
- 17 (3) Verizon Business. \$115,987.50
- 18 (4) Verizon Select Services Inc. \$151,496.38

19 (b) *Claim against the Department of Agriculture:*

20 (TO BE PAID FROM GENERAL REVENUE FUND)

- 21 (1) Atrium TRS V LLC dba Embassy Suites. . \$10,101.20

22	<i>(c) Claims against the Division of Corrections:</i>	
23	(TO BE PAID FROM GENERAL REVENUE FUND)	
24	(1) Yesser Abdelhaq.	\$20.95
25	(2) Abner Allen.	\$87.67
26	(3) Robert Blake.	\$31.54
27	(4) William Bumpus.	\$40.00
28	(5) Miguel Delgado.	\$25.00
29	(6) Robert E. Gura.	\$160.00
30	(7) Mark F. Hanna.	\$129.99
31	(8) Keith W.R. Lowe.	\$950.00
32	(9) Jason Ramsey.	\$85.93
33	(10) Gary Wade Stanley.	\$502.16
34	(11) Bruce Thomas.	\$6.35
35	(12) Edward Wall.	\$273.45
36	(13) Jason S. Williams.	\$48.74
37	(14) Neil Williams.	\$259.00
38	<i>(d) Claims against the Division of Highways:</i>	
39	(TO BE PAID FROM STATE ROAD FUND)	
40	(1) Stacy L. Acree.	\$187.62
41	(2) Danny C. Aderholt.	\$581.02

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42	(3) Edna Delores Adkins.....	\$250.00
43	(4) Glenda Adkins.....	\$385.00
44	(5) Greg Adkins.....	\$428.24
45	(6) Kelly Adkins.....	\$63.55
46	(7) Lucian C. Adkins.....	\$321.44
47	(8) Shawn P. Adkins.....	\$351.31
48	(9) Sylvia Adkins.....	\$236.33
49	(10) Joshua Alexander.....	\$423.95
50	(11) Lynn M. Allen.....	\$312.70
51	(12) Joe H. Allen II and Latalsha Allen.....	\$1,000.00
52	(13) Thomas C. Allman and Anna Allman.....	\$150.00
53	(14) Linda D. Alt.....	\$117.66
54	(15) Joy A. Alvarado.....	\$500.00
55	(16) Stephanie T. Anderson.....	\$500.00
56	(17) Bryan Andrews.....	\$497.35
57	(18) Alice Andrzejewski.....	\$200.00
58	(19) Jeremi C. Annon.....	\$76.32
59	(20) Matthew L. Anslin.....	\$114.83
60	(21) Anthony Chevrolet Leasing	
61	and Rental Company.....	\$490.01

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62	(22) Wesley A. Areford and Holly N. Areford. . . .	\$94.87
63	(23) Terri Areford-Shaw.	\$274.90
64	(24) Joyce L. Armentrout.	\$250.00
65	(25) Lisa M. Armes.	\$387.93
66	(26) John D. Arnold.	\$683.05
67	(27) Tara R. Arnold.	\$220.50
68	(28) Blair Asbury.	\$94.16
69	(29) Kristy Asbury.	\$650.00
70	(30) Heath Atkins.	\$317.98
71	(31) Gerald R. Bailes.	\$50.00
72	(32) James Bailey.	\$135.68
73	(33) Kristen Bailey.	\$212.56
74	(34) Richard G. Bailey.	\$157.94
75	(35) Francesca Baisden.	\$73.67
76	(36) Ronald Baker.	\$500.00
77	(37) Mike Baldwin and Amy Baldwin.	\$145.00
78	(38) Jennifer R. Baldwin.	\$500.00
79	(39) Nicole L. Ball.	\$100.70
80	(40) John D. Ballard and Tammy R. Ballard. . . .	\$313.01
81	(41) Kenneth H. Balsler.	\$74.09

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82	(42) Baltic Capital Inc..	\$493.83
83	(43) Janet L. Barbe.	\$500.00
84	(44) Carol S. Barker.	\$811.96
85	(45) Belinda Barnett.	\$79.18
86	(46) Brian Barnett and Tammy Barnett.	\$219.95
87	(47) John J. Barr.	\$321.00
88	(48) Mikealo Barro.	\$187.92
89	(49) Jaclyn Marie Barron.	\$69.95
90	(50) Janice Bartlett.	\$829.93
91	(51) Wendy Michelle Basham.	\$494.62
92	(52) Jennifer Kay Bass.	\$968.77
93	(53) Linda L. Batton.	\$85.11
94	(54) Michael Baumann and Melody Baumann. . .	\$500.00
95	(55) James R. Baxter.	\$87.98
96	(56) Cameron L. Bays.	\$2,994.43
97	(57) John G. Beachler II.	\$553.90
98	(58) Sandra Beals.	\$332.99
99	(59) Dreama Kaye Beaver.	\$153.70
100	(60) Jimmy Lee Belcher.	\$282.49
101	(61) Nancy Belcher.	\$185.30

816	CLAIMS	[Ch. 49
102	(62) Joseph A. Bell.	\$374.76
103	(63) Lillian M. Bell.	\$332.26
104	(64) Jason Berisford and Jacqueline Berisford. . . .	\$80.84
105	(65) Lawrence W. Berkel.	\$500.00
106	(66) Aron A. Berry.	\$1,426.10
107	(67) Kathy M. Berry.	\$200.00
108	(68) Renee L. Berry.	\$189.21
109	(69) Michael Best and Diane Best.	\$243.46
110	(70) Timothy M. Bidwell.	\$378.27
111	(71) Alexis Bigler and Kimberly Bigler.	\$500.00
112	(72) Christi Bills.	\$333.59
113	(73) Jeran C. Blackburn.	\$250.00
114	(74) Jeanetta Lee Blake.	\$193.65
115	(75) Nelson Blake.	\$190.74
116	(76) Josh Blevins.	\$500.00
117	(77) Marsha Blosser.	\$500.00
118	(78) John Boardman.	\$250.00
119	(79) Ralph Boardman.	\$174.20
120	(80) Donald L. Bobbins and Jennifor Jo Bobbins.	\$241.00
121	(81) Tammy J. Boka.	\$166.18

Ch. 49]	CLAIMS	817
122	(82) Raymond E. Bolyard.	\$115.00
123	(83) Sandra Bonnell.	\$81.51
124	(84) Barbara Booher.	\$500.00
125	(85) David Boone and Cathy Boone.	\$654.00
126	(86) Eric D. Booth.	\$210.11
127	(87) Gary Booth.	\$386.43
128	(88) Fred Borcheck.	\$495.00
129	(89) Jonathan W. Bowen.	\$682.00
130	(90) Donald E. Bowman.	\$200.00
131	(91) Stephanie R. Bowman.	\$500.00
132	(92) Gail A. Bowmar.	\$203.00
133	(93) Jeffrey Scott Boyd.	\$217.30
134	(94) Jeffery K. Boyles and Sharon D. Boyles.	\$199.99
135	(95) Deirdre R. Bradley.	\$418.16
136	(96) Sandra Bradley.	\$375.41
137	(97) Carlisha Bragg.	\$188.43
138	(98) Maria A. Branch.	\$180.42
139	(99) Clayton C. Brandli Jr..	\$217.57
140	(100) Phyllis B. Bravo.	\$116.60
141	(101) Marvin L. Braxton.	\$165.07

818	CLAIMS	[Ch. 49
142	(102) Justin E. Brinn.	\$422.76
143	(103) Charles E. Britt and Sherrell Britt.	\$350.56
144	(104) Jeffrey W. Britton.	\$500.00
145	(105) Karen A. Brothers.	\$500.00
146	(106) Connie J. Brown.. . . .	\$250.00
147	(107) Cynthia Brown.. . . .	\$492.66
148	(108) Daniel S. Brown.. . . .	\$250.00
149	(109) Deb Austin Brown.. . . .	\$387.83
150	(110) Donna Brown.. . . .	\$152.56
151	(111) Jeffrey Allen Brown.. . . .	\$250.00
152	(112) Whitney Brown.	\$500.00
153	(113) William E. Brown.	\$287.69
154	(114) Margie Brumfield.	\$240.49
155	(115) Sue Brunk.. . . .	\$109.65
156	(116) Kaitlyn M. Bryant.	\$500.00
157	(117) Timothy S. Bryant.	\$88.51
158	(118) James R. Buchanan III.. . . .	\$413.33
159	(119) Taylor Buffkin.	\$75.26
160	(120) Bruce Bullock and Kathy Bullock.. . . .	\$387.74
161	(121) David Burchett.. . . .	\$287.68

Ch. 49]	CLAIMS	819
162	(122) Oley J. Burgess Jr.....	\$500.00
163	(123) Meghan Burkey.....	\$187.62
164	(124) Raymond Burnette.....	\$125.00
165	(125) Barbara E. Butler.....	\$500.00
166	(126) Kirstin Louise Butts.....	\$594.71
167	(127) Christy Byard and Erin Patrick.....	\$667.80
168	(128) Melinda Byers.....	\$185.50
169	(129) Royce Dee Cain.....	\$1,072.58
170	(130) Melinda Calhoun.....	\$475.00
171	(131) Keith E. Calkins.....	\$114.48
172	(132) Tara Campbell.....	\$84.22
173	(133) Trista R. Campbell.....	\$235.00
174	(134) Winston Canada.....	\$493.00
175	(135) Lee Ann Carnahan.....	\$189.49
176	(136) Raylene Caron.....	\$555.43
177	(137) Tana D. Carpenter.....	\$605.37
178	(138) Vernon L. Carpenter.....	\$434.54
179	(139) Bruce Casto and Kathryn Casto.....	\$959.43
180	(140) Paul A. Casto.....	\$169.60
181	(141) Jerrica Caudill.....	\$500.00

820	CLAIMS	[Ch. 49
182	(142) Douglas W. Cavender and Jodi Cavender.	\$1,000.00
183	(143) Timothy Cawthon and Elizabeth Cawthon.	\$236.58
184	(144) Delana Cecil.	\$107.10
185	(145) Timothy T. Cecil.	\$404.11
186	(146) James Chambers.	\$320.00
187	(147) Cassie Y. Channel.	\$412.86
188	(148) Chelsea L. Channell.	\$126.14
189	(149) Dennis Chapman.	\$464.17
190	(150) Richard Chaty.	\$974.03
191	(151) Brian Childers.	\$53.50
192	(152) Richard E. Chipps Sr..	\$133.69
193	(153) Cathy Chisler.	\$238.39
194	(154) City of Hinton.	\$568.49
195	(155) John M. Clark.	\$381.28
196	(156) Richard A. Clark.	\$149.58
197	(157) Lorraine D. Clay.	\$103.88
198	(158) Angela B. Cline.	\$625.93
199	(159) Arville Cline.	\$950.00
200	(160) William Thomas Cloer III	
201	and Sara M. Cloer.	\$251.06

Ch. 49]	CLAIMS	821
202	(161) Brian David Cochran.....	\$500.00
203	(162) Dusten Cogar.....	\$99.11
204	(163) Joseph L. Cole.....	\$328.49
205	(164) Irma Colegrove.....	\$126.99
206	(165) Wayne Coleman.....	\$177.54
207	(166) Arnold Collins and M. Virginia Collins. . .	\$500.00
208	(167) Rick D. Collins.	\$139.88
209	(168) Sandra Collins.	\$404.41
210	(169) Opie D. Collins and Sara D. Collins.	\$454.00
211	(170) Ben Conaway.....	\$1,000.00
212	(171) Debra L. Conley.....	\$252.65
213	(172) James F. Conley and Debra L. Conley. . . .	\$250.00
214	(173) Guy R. Conley Jr.....	\$1,000.00
215	(174) Rodney Conner.	\$165.00
216	(175) Marilyn Cook.....	\$350.00
217	(176) Cool Cars Preowned Auto Sales.	\$109.00
218	(177) John Cooper.....	\$595.97
219	(178) Rodger D. Cooper.	\$1,000.00
220	(179) Jerry W. Copeland.....	\$250.00
221	(180) Sammie L. Copley.....	\$451.00

822	CLAIMS	[Ch. 49
222	(181) Amal S. Corey.	\$500.00
223	(182) Jessica L. Corker.	\$280.66
224	(183) Jeffrey B. Costilow.	\$250.00
225	(184) Taylor Cote.	\$103.58
226	(185) Pamela Cottrill.	\$373.65
227	(186) Carole Renee Courtney.	\$446.51
228	(187) Lula M. Cox.	\$180.85
229	(188) Katie Craig.	\$500.00
230	(189) Flossie Craighead.	\$500.00
231	(190) Staci M. Cralton.	\$224.90
232	(191) James R. Creel.	\$846.95
233	(192) Ryan H. Cremeans.	\$72.61
234	(193) Luke Crimm.	\$95.00
235	(194) Andrew A. Crites.	\$238.48
236	(195) Rosie A. Crites.	\$464.23
237	(196) Ray Crook and Sarah Crook.	\$82.30
238	(197) Michael A. Crosby.	\$876.70
239	(198) Amanda Crow.	\$212.68
240	(199) Jack D. Crowder.	\$200.29
241	(200) Benjamin T. Crowe.	\$143.37

Ch. 49]	CLAIMS	823
242	(201) Precious Culp.....	\$84.07
243	(202) Robert Culp.	\$100.00
244	(203) Amanda Cummings.....	\$500.00
245	(204) Connie L. Cunningham.	\$58.59
246	(205) Jennifer Cunningham.....	\$174.85
247	(206) Jessica Cunningham.....	\$612.73
248	(207) Nancy Cunningham.....	\$129.32
249	(208) Richard T. Cunningham.....	\$303.10
250	(209) Charles L. Curry.	\$250.00
251	(210) Demetria Curry.....	\$450.00
252	(211) Earl Curry.	\$284.08
253	(212) Jeanie Dailey.	\$500.00
254	(213) Gina Y. Daley.	\$136.21
255	(214) Kevin R. Dameron and	
256	Alda Ray Dameron.	\$251.11
257	(215) Glenna J. Daniels.....	\$139.39
258	(216) Jonathan Daniels, an infant who	
259	sues by his parent and next	
260	friend, Jon Daniels.....	\$500.00
261	(217) Richard Darnell.	\$500.00
262	(218) Kristy L. Daugherty.....	\$236.45

824	CLAIMS	[Ch. 49
263	(219) Cassandra D. Davis.	\$183.00
264	(220) Donald J. Davis.	\$1,313.70
265	(221) Jeffrey D. Davis.	\$139.99
266	(222) Larry G. Davis.	\$235.27
267	(223) Joseph H. Deacon II.	\$168.00
268	(224) Elizabeth Dean.	\$283.00
269	(225) Bailey S. Dean II.	\$313.00
270	(226) Leonard F. Dearstine and	
271	Linda S. Dearstine.	\$349.50
272	(227) Roney Deering.	\$313.73
273	(228) Victor DeFazio and Carol DeFazio.	\$135.81
274	(229) Anthony Delguzzi.	\$250.00
275	(230) Louise Delp.	\$164.97
276	(231) Peggy and Michael Denkenberger.	\$137.27
277	(232) Julianna R. Dennis.	\$160.50
278	(233) Lee Ann DePinho.	\$500.00
279	(234) Hobert D. Depta.	\$6,300.00
280	(235) Crisha Deyton.	\$97.44
281	(236) Charles M. Dicataldo.	\$500.00
282	(237) Joshua M. Bartram and Kay Dick.	\$206.00

Ch. 49]	CLAIMS	825
283	(238) Michael J. Dixon.	\$100.00
284	(239) Philip J. Dixon.	\$400.34
285	(240) Doddridge Controls Inc..	\$500.00
286	(241) Howard L. Dolin.	\$166.42
287	(242) Amanda Gayle Dooley..	\$500.00
288	(243) Jennifer Dorsey.	\$691.98
289	(244) Cecil Doss.	\$159.11
290	(245) Richard Doss.	\$500.00
291	(246) Scott A. Doss and Shelley J. Doss..	\$500.00
292	(247) Nathaniel Scott Drain..	\$275.57
293	(248) Jared Drvar..	\$250.00
294	(249) Charles W. Dudley..	\$199.27
295	(250) James Duke.	\$215.66
296	(251) Doris D. Dulaney..	\$324.31
297	(252) Karen S. Dulaney..	\$250.00
298	(253) Spencer Dumire.	\$230.00
299	(254) Daniel J. Duncan.	\$250.00
300	(255) Virginia Dunn.	\$384.96
301	(256) Tracy Dye..	\$218.15
302	(257) Steven Dyer II and Michelle Dyer..	\$500.00

826	CLAIMS	[Ch. 49
303	(258) Jeffery Eanes.	\$184.94
304	(259) Anthony D. Eates II.	\$500.00
305	(260) Cuylor Edgell.	\$222.05
306	(261) David M. Edmonds.	\$331.58
307	(262) Melanie Edmonds.	\$174.80
308	(263) Sarah Elkins.	\$211.42
309	(264) Karissa A. Ellis.	\$112.18
310	(265) Ellen M. Ellison.	\$439.90
311	(266) William Elmore and Jennifer Elmore.	\$477.00
312	(267) Frank Ennis.	\$245.92
313	(268) Sandra K. Epling.	\$345.00
314	(269) Dana Erlewine.	\$339.20
315	(270) Gary A. Erwin.	\$268.13
316	(271) Tony Erwin.	\$781.28
317	(272) Ronald Estep and Shirley Estep.	\$367.89
318	(273) Steven L. Estep and Rebecca A. Estep.	\$500.00
319	(274) Mike Evanoff.	\$103.43
320	(275) Alix Evans.	\$200.00
321	(276) Alston B. Evans.	\$500.00
322	(277) April D. Evans and William L. Evans.	\$1,815.80

Ch. 49]	CLAIMS	827
323	(278) Robin Evans.....	\$87.96
324	(279) James E. Fahey.	\$178.03
325	(280) John J. Falcone Jr..	\$478.59
326	(281) Gene E. Farmer and Gilda S. Farmer.....	\$105.99
327	(282) Rita M. Farris.....	\$250.00
328	(283) Carmela Farruggia.....	\$400.00
329	(284) Janet Fauber.....	\$138.34
330	(285) Rebecca L. Fear.....	\$224.82
331	(286) John R. Ferguson II and	
332	Amy M. Ferguson.	\$500.00
333	(287) Steven G. Ferguson.	\$128.00
334	(288) Charles Michael Ferrell.....	\$235.15
335	(289) Myrtle Marie Ferrell.	\$192.92
336	(290) Ruth E. Ferrell.	\$500.00
337	(291) Trudy Ferrell.	\$90.10
338	(292) Amy Fields.....	\$500.00
339	(293) Jane Fields.	\$500.00
340	(294) Scott Fields.	\$1,000.00
341	(295) Sally A. Finchum.....	\$119.77
342	(296) Fred Fiorini.	\$125.08

828	CLAIMS	[Ch. 49
343	(297) Drema D. Fixico.	\$122.13
344	(298) Gary L. Flanagan and Jennifer Flanagan..	\$1,000.00
345	(299) Nick Fleece.	\$95.40
346	(300) Abby N. Fleshman.	\$500.00
347	(301) Jerry L. Fletcher.	\$250.00
348	(302) Melissa Flinn.	\$303.16
349	(303) Jessica Flowers.	\$127.15
350	(304) Lucy K. Fluharty.	\$500.00
351	(305) Christopher Fordyce and Rebecca Fordyce.	\$872.74
352	(306) Stephen Forinash.	\$843.76
353	(307) Elma Jean Foster.	\$225.20
354	(308) Patricia Foster.	\$177.50
355	(309) Rebecca Foster.	\$169.59
356	(310) Shawna C. Foster.	\$151.84
357	(311) Matthew S. Fought.	\$185.00
358	(312) Norman E. Fox.	\$545.57
359	(313) Rhonda G. Fox.	\$87.00
360	(314) Richard D. Fox and Beverly J. Fox.	\$500.00
361	(315) William E. Francis.	\$3,145.35
362	(316) Michael Frank.	\$441.38

363	(317) Sara L. Frantz.....	\$500.00
364	(318) David Fraser and Cathy Fraser.	\$500.00
365	(319) Belinda Frausto.	\$126.14
366	(320) Peter B. Frazier.	\$500.00
367	(321) William R. French.	\$250.00
368	(322) John T. Friend Jr.....	\$124.95
369	(323) William Joseph Fritzman and	
370	Carol Mary Fritzman.....	\$272.95
371	(324) Jessica Frye.	\$510.00
372	(325) Todd Fulford.	\$500.00
373	(326) Larry B. Fullen.....	\$67.74
374	(327) Bradley A. Funk.....	\$774.54
375	(328) Frank Fury.	\$595.00
376	(329) Robert H. Gainer and Kirsti D. Fox.....	\$357.47
377	(330) Amber B. Gaines.	\$230.01
378	(331) Diana L. Gallihugh.	\$129.99
379	(332) Charles E. Galusky.	\$500.00
380	(333) Steven Ray Game.....	\$226.31
381	(334) Joshua B. Gardner.	\$75.00
382	(335) Deanna Garrett.....	\$165.47

830	CLAIMS	[Ch. 49
383	(336) Amanda Garrido.	\$135.17
384	(337) Andrea Gibson.	\$500.00
385	(338) Lowell Gibson and Kristy Gibson.	\$521.21
386	(339) Tika Gillispie.	\$125.00
387	(340) Shannon L. Givens.	\$206.98
388	(341) Karen Glash.	\$299.06
389	(342) Carol S. Glenn.	\$433.09
390	(343) Charlene Godish.	\$49.38
391	(344) Jamie Gollither.	\$1,000.00
392	(345) Tracy Goodson.	\$158.95
393	(346) Gary G. Grant and Lorene Grant.	\$405.26
394	(347) Sharon Grant.	\$311.48
395	(348) Susan L. Grant.	\$280.99
396	(349) Charles H. Gray II.	\$790.71
397	(350) Caitlin N. Graziani.	\$213.00
398	(351) Douglas P. Greathouse and	
399	Loretta M. Greathouse.	\$120.26
400	(352) Michael J. Greene.	\$91.99
401	(353) Julie A. Gregory.	\$139.07
402	(354) Elizabeth A. Gregory and Warren Hollis. .	\$189.74

Ch. 49]	CLAIMS	831
403	(355) Patricia A. Greskevitch.	\$103.30
404	(356) Sharon Griffith.	\$249.10
405	(357) Robert W. Grimm.	\$500.00
406	(358) Groff Tractor & Equipment Inc..	\$184,825.50
407	(359) Carol F. Gullet.	\$4,029.72
408	(360) Natalie Guthrie.	\$364.83
409	(361) Dwight Haddix.	\$201.40
410	(362) Anna S. Hager.	\$679.14
411	(363) Venetia Hale.	\$500.00
412	(364) Gerald W. Hall.	\$250.00
413	(365) Melissa Hall.	\$136.16
414	(366) Robert W. Hall and Anna B. Hall.	\$500.00
415	(367) Rudolph F. Hall.	\$130.00
416	(368) Earl Lee Hall Jr.	\$500.00
417	(369) Michael Edward Hall Jr..	\$1,000.00
418	(370) Amy L. Halstead.	\$462.38
419	(371) Jeremy Halstead.	\$80.56
420	(372) David Ray Hamric and	
421	Evelyn Kay Hamric.	\$250.00
422	(373) Tyler J. Hanna.	\$500.00

832	CLAIMS	[Ch. 49
423	(374) Calvin W. Hannah.	\$500.00
424	(375) John Hapney and Linda Hapney.	\$169.26
425	(376) Jack F. Harden.	\$500.00
426	(377) Carrie F. Hardsouk.	\$192.91
427	(378) Martha Harless.	\$7,200.00
428	(379) Cindy Ellen Harman.	\$421.88
429	(380) David Harmon and Kimberly Harmon.	\$250.00
430	(381) Rondle Harp and Barbara Harp.	\$209.32
431	(382) Angela Harper and Thomas J. Harper.	\$1,000.00
432	(383) Ashley Harper.	\$140.00
433	(384) Randall C. Harpold and Cheryl T. Harpold.	\$250.00
434	(385) Aaron Harrah and Sandra Harrah.	\$755.09
435	(386) Karla G. Harris.	\$164.30
436	(387) Sharon Harris.	\$163.14
437	(388) Angelique Hart.	\$169.02
438	(389) Sammie M. Hart.	\$309.50
439	(390) Richard Harter.	\$106.00
440	(391) Beth A. Hartwig.	\$137.50
441	(392) Gordon C. Harvey and Anna E. Harvey.	\$1,000.00
442	(393) John N. Haser.	\$500.00

443	(394) Lacy Lee Hash.....	\$707.50
444	(395) Gary L. Hatfield.....	\$200.09
445	(396) Mitchell Hatter.....	\$43.45
446	(397) Lisa Hawkins.....	\$223.28
447	(398) Debbie Hawley.....	\$117.60
448	(399) Stacey Hawley.....	\$310.57
449	(400) Angel Marie Hayes.....	\$469.69
450	(401) Connie L. Hayes.....	\$1,000.00
451	(402) John B. Hayes.....	\$500.00
452	(403) Seirra Hayhurst.....	\$751.35
453	(404) Floretta Haynes.....	\$403.85
454	(405) Rendell L. Heater.....	\$83.74
455	(406) Robert Heater.....	\$190.00
456	(407) Randy H. Hefner and Cetara M. Hefner. . .	\$500.00
457	(408) Matthew Heiskell.....	\$161.07
458	(409) Rick Hendricks.....	\$500.00
459	(410) Adam Henkins.....	\$233.09
460	(411) Beverly B. Henley.....	\$263.33
461	(412) Carol M. Henry.....	\$347.11
462	(413) Louellen Hensley.....	\$500.00

834	CLAIMS	[Ch. 49
463	(414) Sheila M. Herbst.	\$65.00
464	(415) Jay M. Hercules.	\$138.33
465	(416) Sue E. Hess.	\$250.00
466	(417) Joan P. Hessler.	\$500.00
467	(418) Debbie Hewitt.	\$117.13
468	(419) Robert H. Hickel.	\$500.00
469	(420) Don J. Hickman.	\$96.82
470	(421) Paul A. Hickman.	\$152.87
471	(422) Billy Clyde Hicks.	\$768.06
472	(423) Carol S. Hicks.	\$500.00
473	(424) Marcy Taylor Hile.	\$301.62
474	(425) Debbie Hill.	\$208.98
475	(426) John W. Hill.	\$469.88
476	(427) Versie P. Hill.	\$200.00
477	(428) Roger Hill Sr.	\$207.96
478	(429) Corey Hinkle.	\$500.00
479	(430) Beth Hixenbaugh.	\$256.94
480	(431) Deborah Hoback.	\$250.00
481	(432) Cynthia Hoerchler.	\$129.76
482	(433) Shane Hoff.	\$500.00

Ch. 49]	CLAIMS	835
483	(434) Russell T. Holbert.	\$349.69
484	(435) Russell Hollen.	\$464.77
485	(436) David Holman.	\$235.84
486	(437) Anna M. Holstein.	\$167.67
487	(438) Scott Holt.	\$169.95
488	(439) Travis Honaker.	\$299.55
489	(440) Donald Hoosier.	\$576.25
490	(441) Glenn B. Horn and Deanna Horn.	\$250.00
491	(442) Frank Hotlosz and Derek Hotlosz.	\$1,000.00
492	(443) Daniel Howard.	\$814.17
493	(444) Angela S. Howells.	\$131.77
494	(445) Joshua Huddleston.	\$884.39
495	(446) Brandy Mae Hudson.	\$290.47
496	(447) Brian Huffman.	\$469.74
497	(448) Sara Hughes.	\$343.42
498	(449) Tyler Hughes.	\$217.25
499	(450) John T. Hull.	\$250.00
500	(451) David A. Hunt.	\$166.98
501	(452) Marvin Husarik.	\$106.75
502	(453) James R. Hutchinson.	\$223.60

836	CLAIMS	[Ch. 49
503	(454) Bobby Hutspiller.	\$260.43
504	(455) Steve R. Hypes.	\$500.00
505	(456) Gary Ice.	\$60.00
506	(457) Lillian Iezzi.	\$384.25
507	(458) Maurice Gilliam and Susan Ingram.	\$500.00
508	(459) Paul E. Isaacs and Dorothy M. Isaacs.	\$744.44
509	(460) Jerold Isner.	\$500.00
510	(461) David L. Jackson.	\$250.00
511	(462) Shane Travis Jagers and	
512	Susan Kay Jagers.	\$20,097.00
513	(463) Karen James.	\$279.14
514	(464) Paul Jaquay.	\$355.00
515	(465) Keith L. Jarvis.	\$636.92
516	(466) Stephen Jaumot.	\$500.00
517	(467) Joyce A. Jeffrey.	\$746.28
518	(468) Larry D. Jenkins.	\$212.00
519	(469) Wayne E. Jenkins Jr..	\$227.90
520	(470) David Jesseman.	\$185.00
521	(471) Rusty Jewell and Brynne Jewell.	\$237.50
522	(472) Bonnie Johnson.	\$415.50

Ch. 49]	CLAIMS	837
523	(473) Chad A. Johnson.	\$250.00
524	(474) Hollie Johnson and Brian Johnson.. . . .	\$157.59
525	(475) James Johnson.	\$297.41
526	(476) Jennifer L. Johnson.	\$420.00
527	(477) Kristi D. Johnson.	\$192.92
528	(478) Andrew Johnson and Ocia Adams.	\$273.48
529	(479) Paul D. Johnson.	\$59.88
530	(480) Rufus Johnson and Sharon Johnson.	\$1,000.00
531	(481) Tina Dawn Johnston.	\$200.00
532	(482) Amanda Jones.	\$500.00
533	(483) Dennis A. Jones.	\$2,852.84
534	(484) Jason Jones.	\$214.24
535	(485) Stephen N. Jones.	\$496.66
536	(486) Carter Justice.	\$500.00
537	(487) Tammy Karnis-Parsons.	\$904.33
538	(488) Charlotte Keaton.	\$500.00
539	(489) Janice F. Keaton.	\$103.35
540	(490) James L. Keeling.	\$566.94
541	(491) Jason Keener.	\$401.64
542	(492) Carly A. Keeney.	\$210.45

838	CLAIMS	[Ch. 49
543	(493) Tony M. Keesee.....	\$500.00
544	(494) Meghan Keller.....	\$178.00
545	(495) David Kevin Kelley.....	\$186.91
546	(496) Thomas J. Kelley.....	\$496.04
547	(497) John B. Kelly.....	\$500.00
548	(498) Terri Kelly.....	\$106.00
549	(499) Virginia Kelly.....	\$361.51
550	(500) Jerry L. Kent.....	\$429.89
551	(501) Brent A. Kessinger.....	\$500.00
552	(502) Brock Kidd.....	\$467.20
553	(503) Jack Kidd.....	\$149.10
554	(504) Jerry Kinder and Judy Kinder.....	\$525.24
555	(505) Marian Kinder.....	\$500.00
556	(506) Jason M. Kinser and Misty M. Carte.....	\$421.82
557	(507) Douglas Kirchner.....	\$131.16
558	(508) Michael Kirk and Krystle Kirk.....	\$380.00
559	(509) Sheila Kirk.....	\$235.43
560	(510) Malcolm W. Kirk Jr.....	\$251.19
561	(511) Joseph M. Kirtner.....	\$395.11
562	(512) Harlan D. Kittle.....	\$172.77

563	(513) Brian Klishis and Stacie Klishis.	\$245.71
564	(514) Karen Knowlton.	\$328.18
565	(515) Michael Knoble.	\$476.95
566	(516) John T. Knotts.	\$205.00
567	(517) Bradley P. Knox.	\$880.64
568	(518) Steven Knudsen and Andrea Knudsen.	\$133.56
569	(519) William A. Kolibash.	\$372.75
570	(520) Anya Kovscek.	\$222.60
571	(521) John A. Kutsch.	\$249.07
572	(522) Roberta R. Lamb.	\$124.75
573	(523) Devola Lambert.	\$126.26
574	(524) George E. Lambert.	\$250.00
575	(525) Terry Lamm.	\$1,000.00
576	(526) Nadine Lane.	\$250.00
577	(527) Sharon Lane.	\$500.00
578	(528) Bobby V. Lantz.	\$228.71
579	(529) Angela K. Latta.	\$500.00
580	(530) Joshua Lawrence.	\$137.92
581	(531) Lee Lawson.	\$456.81
582	(532) Robert Lawson.	\$479.24

840	CLAIMS	[Ch. 49
583	(533) Shelley Layman.	\$319.37
584	(534) Sharon K. Layne.	\$116.00
585	(535) Joyce D. Leach.	\$153.67
586	(536) Russell Leadmon.	\$466.95
587	(537) Amanda N. Legg.	\$174.00
588	(538) Rachel Lemley.	\$250.00
589	(539) Guy David Leveaux and Kelley Leveaux. .	\$190.00
590	(540) Carla Lewis.	\$133.50
591	(541) Hollie Lewis.	\$201.40
592	(542) Sarah L. Lightner.	\$309.26
593	(543) Sandra Likens.	\$217.79
594	(544) Patricia Lilkendey.	\$367.54
595	(545) Dakota R. Lilly.	\$212.96
596	(546) Zachary T. Lilly.	\$319.74
597	(547) Barbara Linder.	\$500.00
598	(548) Nicole Marie Lipford.	\$248.57
599	(549) Eddie D. Lipscomb.	\$243.00
600	(550) Odessa Lipscomb, Admin. Of the	
601	Estate of Crystal Lea Woods.	\$15,926.62
602	(551) Patricia Little.	\$273.05

Ch. 49]	CLAIMS	841
603	(552) Randy Littlejohn and Denise Littlejohn. . .	\$641.76
604	(553) Dorothy Loyd.	\$191.90
605	(554) Thomas Lobb.	\$401.51
606	(555) Chad Long.	\$341.28
607	(556) Linda S. Long.	\$475.07
608	(557) Karen Ann Lopez.	\$241.57
609	(558) Teresa Loudermilk.	\$95.00
610	(559) Jeffrey J. Louk.	\$216.43
611	(560) Ronald Loy.	\$237.92
612	(562) David B. Loyd.	\$150.00
613	(563) Robert D. Lucas.	\$180.00
614	(564) Darryl L. Lutes.	\$250.00
615	(565) Catherine MacAlister.	\$215.98
616	(566) David MacDonald.	\$300.00
617	(567) Robert Scott Maguire.	\$104.89
618	(568) Gregory Malvito and Marge Malvito.	\$84.80
619	(569) Darlene F.S. Manley.	\$188.65
620	(570) John D. Manley.	\$174.74
621	(571) Dwayne Bruce Marcum.	\$500.00
622	(572) David J. Marino and Jacqueline C. Marino.	\$163.91

842	CLAIMS	[Ch. 49
623	(573) Joseph Marracino and	
624	Kimberly J. Marracino.....	\$250.00
625	(574) Marshall County Sewage District.	\$5,999.89
626	(575) Ashley Martin.	\$174.85
627	(576) Denzil S. Martin.....	\$200.91
628	(577) Johnny Angelo Martin.....	\$314.90
629	(578) Roger L. Martin.	\$190.96
630	(579) Steven A. Martin.	\$620.00
631	(580) Bruno Martinez and Hillary Martinez.	\$492.86
632	(581) Ricky Massey and Henrietta Massey.....	\$300.83
633	(582) Matthew L. Matheny.	\$434.02
634	(583) Pamela S. Mathes.....	\$234.94
635	(584) Jeanette E. Mathews.	\$500.00
636	(585) Wanda Maynard.....	\$131.49
637	(586) Briana McBride.	\$500.00
638	(587) Jamie L. McBride.	\$358.17
639	(588) David McCCase.	\$150.08
640	(589) Kyle W. McCauley.	\$543.00
641	(590) Adrian McClure.....	\$172.81
642	(591) Crystal McClurg.	\$143.74

643	(592) Charles Andrew McCord.....	\$1,530.10
644	(593) Megan E. McCullough.....	\$565.12
645	(594) Adena Ann McCune.	\$75.00
646	(595) Valerie C. McCune.	\$253.29
647	(596) Ralph P. McCutchan II.	\$500.00
648	(597) Roger McDiffit.	\$538.37
649	(598) Debra L. McDonald.....	\$215.02
650	(599) Elmer R. McFarland.	\$137.68
651	(600) Steven McGlumphy.....	\$396.47
652	(601) Kaitlyn McGrath.	\$466.40
653	(602) Kenneth McGuire.	\$250.00
654	(603) James P. McHugh.	\$307.98
655	(604) David McIntosh.	\$171.67
656	(605) Colleen McKinnie.	\$161.00
657	(606) Tobey B. McLean.	\$500.00
658	(607) Betty C. McMillen.....	\$90.10
659	(608) Clarence D. McNeely.	\$284.00
660	(609) Robert McPeak.	\$338.93
661	(610) Debra L. McVey.	\$250.00
662	(611) Kenneth R. Meade Jr..	\$216.20

844	CLAIMS	[Ch. 49
663	(612) Barbara Meadows.	\$500.00
664	(613) Charles E. Meadows.	\$99.81
665	(614) Christopher Meadows and	
666	Rebecca Meadows.	\$299.53
667	(615) Leroy Meadows and Nila Meadows.	\$250.00
668	(616) Mary Mechling.	\$452.30
669	(617) Ashley Medley.	\$218.00
670	(618) Bobby L. Medlin Jr.	\$86.98
671	(619) Glenn E. Meeks.	\$500.00
672	(620) Mary Meeks.	\$118.00
673	(621) Roland W. Meffert II.	\$304.75
674	(622) Bernard J. Mehlbauer Jr.	\$500.00
675	(623) Debra Mellott.	\$221.92
676	(624) Michael S. Merrifield.	\$210.94
677	(625) Michael Allan Messinger II.	\$177.02
678	(626) Gregory Michael.	\$500.00
679	(627) Kimberly D. Mick.	\$500.00
680	(628) Amy J. Miller.	\$167.72
681	(629) George David Miller.	\$190.80
682	(630) Lela M. Miller.	\$228.43

Ch. 49]	CLAIMS	845
683	(631) Lisa A. Miller.....	\$147.50
684	(632) Mark Miller.	\$643.40
685	(633) Tammy J. Miller.	\$500.00
686	(634) Vanessa J. Miller.	\$251.42
687	(635) James Mirasola.	\$191.85
688	(636) Thomas B. Mitchell and Karen L. Mitchell..	\$84.05
689	(637) Thomas W. Mitchell.	\$250.00
690	(638) Velma J. Mitchell..	\$162.18
691	(639) Mobile Diagnostic Imaging LLC.....	\$169.60
692	(640) Mobile Properties LLC.	\$445.42
693	(641) Sharon Mobley.....	\$200.31
694	(642) James M. Molina and	
695	Marsha A. Molina.	\$1,000.00
696	(643) Steven E. Monroe.	\$898.39
697	(644) Janet M. Monsch.	\$150.00
698	(645) Virginia Moon.	\$500.00
699	(646) Betsy Moore.....	\$142.04
700	(647) Bradley Moore.....	\$500.00
701	(648) George Moore.	\$488.24
702	(649) Linda Moore.	\$309.19

846	CLAIMS	[Ch. 49
703	(650) Megan Moore.....	\$500.00
704	(651) Scott Moore.	\$139.43
705	(652) Kayla Moorehead.....	\$153.70
706	(653) Lee Scott Morgan.....	\$170.00
707	(654) Brian Morris and Amanda Morris.....	\$500.00
708	(655) Elijah P. Morris.	\$210.94
709	(656) Heather D. Morris.	\$500.00
710	(657) Mary B. Morris.	\$158.75
711	(658) William Morris and Regina Morris.....	\$250.00
712	(659) Judy K. Morton.	\$265.00
713	(660) Rose Mosholder.....	\$100.00
714	(661) Lamar Mosley.	\$900.00
715	(662) Jayme M. Mount.	\$500.00
716	(663) Kimberly A. Mouser.	\$559.95
717	(664) Marilyn Mullens.	\$146.91
718	(665) Darrell O. Mullins.	\$144.33
719	(666) Roger G. Mullins.....	\$151.57
720	(667) Jerome P. Munsey.	\$250.00
721	(668) Winnie L. Murrin.....	\$1,105.38
722	(669) Kathleen D. Myers.....	\$500.00

Ch. 49]	CLAIMS	847
723	(670) Pamela J. Myers.....	\$500.00
724	(671) Debra Nance.....	\$504.43
725	(672) Lillian Narcise.....	\$140.00
726	(673) Marcell Marie Naylor.....	\$253.34
727	(674) Marion L. Neathery.....	\$261.82
728	(675) Chad Neil.....	\$943.32
729	(676) Christy Neil.....	\$826.60
730	(677) David Nelson.....	\$778.85
731	(678) Scott A. Nelson.....	\$162.18
732	(679) Robert Nelson Jr.....	\$349.81
733	(680) Adell Newbell.....	\$164.81
734	(681) Sarah B. Newland.....	\$71.50
735	(682) Robert R. Newton Jr.....	\$3,002.75
736	(683) Lori Nichols.....	\$217.22
737	(684) Mary Nicholson.....	\$76.08
738	(685) Whitney Nine.....	\$250.00
739	(686) Miriam L. Nitshe.....	\$1,000.00
740	(687) Daniel Noel.....	\$216.97
741	(688) Doug Nolte.....	\$166.24
742	(689) John S. Nugen.....	\$326.15

848	CLAIMS	[Ch. 49
743	(690) Trena Nutter.....	\$500.00
744	(691) Gary L. Nutter Jr. and Misty S. Nutter. . . .	\$500.00
745	(692) Milan Nypl.....	\$500.00
746	(693) Gary Obrero.....	\$236.64
747	(694) Heather Dawn Odom.....	\$500.00
748	(695) Stephen K. Ofori.	\$135.90
749	(696) Paul E. Oliver.....	\$217.30
750	(697) Richard Olivito.	\$500.00
751	(698) Betty Ann O'Mero.....	\$500.00
752	(699) Holly O'Neil.	\$500.00
753	(700) William L. Ooten.....	\$368.55
754	(701) Jerry G. Opyoke.....	\$322.24
755	(702) Otis Lee Osborne.....	\$161.45
756	(703) Teddy C. Osborne.	\$1,117.60
757	(704) Cheryl Pack.	\$300.51
758	(705) Jeffrey Pack.	\$500.00
759	(706) Frances Palermo.....	\$204.14
760	(707) John Paletta.	\$500.00
761	(708) David E. Palmer and Judy G. Palmer.	\$500.00
762	(709) Paul L. Paris.....	\$187.62

Ch. 49]	CLAIMS	849
763	(710) Vincent J. Parisi.....	\$250.00
764	(711) Lendel Parkins.....	\$250.00
765	(712) Vicki Parkins.....	\$633.35
766	(713) Charles E. Parson.....	\$1,398.59
767	(714) Aaron J. Parsons.....	\$267.80
768	(715) Eric R. Parsons.....	\$86.46
769	(716) Richard Lee Parsons.....	\$234.71
770	(717) Tammy Pase.....	\$248.52
771	(718) Kevin Patrick.....	\$71.00
772	(719) William Pauer.....	\$250.00
773	(720) Sarah M. Pauley.....	\$595.02
774	(721) Orval K. Paxton III.....	\$885.72
775	(722) Mark D. Pence.....	\$500.00
776	(723) John Perez.....	\$607.00
777	(724) Judy Perry.....	\$590.42
778	(725) Lori Dawn Perry.....	\$250.00
779	(726) Haley Perry and Sean Diehl.....	\$500.00
780	(727) Timothy A. Persand.....	\$409.12
781	(728) Matt Petersen and Tiffany Petersen.....	\$250.00
782	(729) Kimberly Jo Pethtel.....	\$250.00

850	CLAIMS	[Ch. 49
783	(730) Aaron Michael Pettry.....	\$555.44
784	(731) Mark Pettry.	\$500.00
785	(732) Kenneth W. Phillips.....	\$407.53
786	(733) Michael Phillips.....	\$179.36
787	(734) April Pierson.	\$500.00
788	(735) Randall Keith Pisino II.	\$529.54
789	(736) James H. Plogger and Sheila Plogger.	\$139.39
790	(737) John Poling and Cherie McCarthy.....	\$127.15
791	(738) Gary L. Poling.	\$185.50
792	(739) Derrick Keith Pope.	\$725.10
793	(740) Elizabeth Pope.....	\$643.42
794	(741) Edward Porrini.....	\$307.78
795	(742) Richard E. Porter.	\$250.00
796	(743) Paul J. Post.....	\$141.51
797	(744) Sheila Poth and Brittany Poth.	\$114.38
798	(745) Cinthia N. Powell.....	\$353.09
799	(746) Barbara Price.	\$15,600.00
800	(747) Carol R. Price.....	\$174.06
801	(748) Rita Primm.....	\$165.36
802	(749) Tommy Pringle.	\$500.00

Ch. 49]	CLAIMS	851
803	(750) Carrie Sue Proffitt.	\$400.00
804	(751) Abigail L. Pyles.	\$348.61
805	(752) Sheila L. Pyles.	\$370.41
806	(753) Frank Quaronta.	\$165.17
807	(754) Amy Querrey.	\$144.16
808	(755) Debra L. Quinn.	\$205.64
809	(756) Anthony Rabagia.	\$499.40
810	(757) Bryan Raber and Lisa Raber.	\$201.25
811	(758) Lisa Raber.	\$202.31
812	(759) Marion W. Rainey.	\$175.43
813	(760) Darrell Rakes.	\$165.56
814	(761) Twila Ramsey.	\$243.00
815	(762) Patrick Randolph.	\$20.00
816	(763) Randall K. Randolph.	\$200.00
817	(764) Frank Raspa.	\$164.30
818	(765) Jamie A. Ratliff.	\$236.32
819	(766) Roy G. Ray.	\$399.38
820	(767) Angelyn T. Reed.	\$168.65
821	(768) Richard R. Reed and Connie Reed.	\$250.00
822	(769) Sarah Reed.	\$87.00

852	CLAIMS	[Ch. 49
823	(770) Melissa Reel.....	\$250.00
824	(771) Tammy Reeves.	\$204.60
825	(772) Kellie Rexroad.....	\$500.00
826	(773) Liana L. Rexroad.....	\$149.62
827	(774) Sharon S. Rice.	\$656.30
828	(775) Sierra Rice.	\$86.04
829	(776) Helen L. Richards.	\$286.80
830	(777) Ronald Richardson.....	\$28,000.00
831	(778) Amber M. Richmond.....	\$157.52
832	(779) Carrie Richmond.	\$85.93
833	(780) John Richmond and Kimberly Richmond..	\$242.74
834	(781) Donna S. Riddle.....	\$78.90
835	(782) Roger L. Riddle.	\$250.00
836	(783) Jill Ridgway.....	\$215.18
837	(784) Tarrell Ries and Monica Ries.	\$115.51
838	(785) Lorita Y. Riggs.	\$500.00
839	(786) April Ripley.....	\$479.15
840	(787) Thomas Risko.	\$258.29
841	(788) Francis Rita.	\$42,500.00
842	(789) Janice F. Roberson.....	\$177.02

Ch. 49]	CLAIMS	853
843	(790) Jodi Roberson.	\$105.03
844	(791) Roland Robertson.	\$90.00
845	(792) Craig W. Robinson.	\$112.99
846	(793) Evelyn V. Rogers.	\$500.00
847	(794) Rodney H. Rogers.	\$250.00
848	(795) Charlotte K. Rohrbaugh.	\$500.00
849	(796) Brock N. Rollyson.	\$467.73
850	(797) Rochelle Romanello.	\$500.00
851	(798) Linda K. Roop.	\$161.81
852	(799) Darrel E. Rose.	\$500.00
853	(800) Isaac B. Rose.	\$156.41
854	(801) Woodrow D. Roseblock.	\$374.00
855	(802) Carol Ann Roset.	\$131.77
856	(803) Georgia Jill Roy.	\$276.96
857	(804) Lloyd Rucker.	\$250.00
858	(805) William F. RuLong Sr..	\$216.99
859	(806) Darla Rush.	\$100.00
860	(807) Arnett A. Russell.	\$536.31
861	(808) Barbara Russell.	\$139.39
862	(809) Danny Russell and Sherry Russell.	\$149.50

854	CLAIMS	[Ch. 49
863	(810) Billy Ruth and Betty Ruth.	\$130.00
864	(811) Andrea N. Salina.	\$147.16
865	(812) Rachelle A. Salisbury.	\$216.72
866	(813) Marvin Sanders Jr.	\$273.61
867	(814) Larry Santoe.	\$209.00
868	(815) Mitchell R. Sapolio.	\$160.44
869	(816) Tamra Sapp.	\$500.00
870	(817) Alice Ann Sarver and Sarah Brady.	\$268.18
871	(818) Laurel Satterfield.	\$115.99
872	(819) Ned H. Sawyers.	\$1,000.00
873	(820) Sandra L. Sayers.	\$159.88
874	(821) Mathew J. Schlemmer.	\$209.45
875	(822) Harold Joseph Scott.	\$292.50
876	(823) Steve H. Seamster.	\$254.17
877	(824) Michael D. Sears II.	\$500.00
878	(825) Charles Seaver.	\$148.55
879	(826) James E. Self.	\$500.00
880	(827) Charles M. Sergent.	\$783.53
881	(828) Jennifer R. Shabdue.	\$201.40
882	(829) Lisa Shaffer.	\$247.16

883	(830) Charles Shaheen.....	\$432.19
884	(831) Andrew Shamblin.	\$412.23
885	(832) Scott L. Shanteau.....	\$500.00
886	(833) Joshua Sharp.	\$500.00
887	(834) Lyn Sheldon.....	\$391.90
888	(835) Craig H. Shelton.	\$500.00
889	(836) Ariel M. Shidell.....	\$47.65
890	(837) Robert Shifflett Jr.....	\$276.06
891	(838) Nan Shin.....	\$226.76
892	(839) Shawn Shingleton.	\$119.76
893	(840) Howard C. Shoemaker.....	\$409.48
894	(841) Jessica Lynn Shuler.....	\$500.00
895	(842) Christopher Shuman.	\$500.00
896	(843) Kenneth Siburt.....	\$305.20
897	(844) David Siders.....	\$212.93
898	(845) Debra J. Siebel.....	\$100.55
899	(846) Vanessa Sigley.....	\$189.59
900	(847) Ted L. Sigman.	\$250.00
901	(848) William E. Simmons Jr.....	\$264.21
902	(849) Sokratis Simos.....	\$500.00

856	CLAIMS	[Ch. 49
903	(850) Carl D. Simpkins II.	\$487.00
904	(851) Aaron M. Sink.	\$500.00
905	(852) Denver E. Sisson and Ashley N. Barnette..	\$500.00
906	(853) James R. Six..	\$275.60
907	(854) Timothy E. Skiles.	\$100.00
908	(855) Robert W. Slate Jr.....	\$184.92
909	(856) Andrea Smith.....	\$245.22
910	(857) Brenda L. Smith.....	\$121.89
911	(858) Darrell D. Smith.....	\$452.09
912	(859) Frances N. Smith.	\$500.00
913	(860) Grant Smith and Lori Smith.	\$500.00
914	(861) John W. Smith.	\$100.00
915	(862) Johnny E. Smith.....	\$979.05
916	(863) Kay Smith.	\$271.68
917	(864) Kenneth Smith.....	\$119.62
918	(865) Robert C. Smith.....	\$153.70
919	(866) Robert W. Smith.	\$330.03
920	(867) Takeiya Smith.	\$168.16
921	(868) Jamie Snider.....	\$685.84
922	(869) Henry Snyder and Kimberly Snyder.	\$45.58

Ch. 49]	CLAIMS	857
923	(870) Linda Sollish.	\$198.27
924	(871) Brenda Somers.	\$123.70
925	(872) Lori Sorensen.	\$500.00
926	(873) Southern States Marshall Coop.	\$1,000.00
927	(874) John A. Spera.	\$500.00
928	(875) Nickolas A. Stankovich.	\$500.00
929	(876) Jesse Stanley and Sarah Stanley.	\$250.00
930	(877) Stacy States.	\$193.68
931	(878) April Steakley.	\$226.31
932	(879) Amy Stephen.	\$639.73
933	(880) Michael Stern and Amy Stern.	\$223.61
934	(881) William K. Stern.	\$846.46
935	(882) David G. Stewart.	\$339.09
936	(883) Charles L. Stickler.	\$82.32
937	(884) Bethany A. Stiles.	\$500.00
938	(885) Tiffany J. Stiles and Colby A. Stiles.	\$500.00
939	(886) David C. Stinson.	\$205.69
940	(887) Patty Stokes.	\$147.34
941	(888) John M. Stolar.	\$602.78
942	(889) Teresa S. Stone.	\$242.88

858	CLAIMS	[Ch. 49
943	(890) Terri Stottlemeyer.	\$232.14
944	(891) Patrick F. Stover.	\$472.76
945	(892) Stephanie Stover and Lana Stover.	\$157.94
946	(893) Phyllis J. Stratton.	\$250.00
947	(894) Tabitha Strickland.	\$500.00
948	(895) Shelly Stump.	\$206.38
949	(896) Brian Sturm and Kelsey Sturm.	\$500.00
950	(897) Christopher M. Suarez.	\$500.00
951	(898) Judith A. Summers.	\$776.96
952	(899) Jeremy Susanek.	\$500.00
953	(900) Tammy Renee Sutton.	\$329.38
954	(901) Regina Swaney.	\$301.00
955	(902) Mary Sypolt.	\$278.94
956	(903) Brett M. Szeligo.	\$100.00
957	(904) Kenneth E. Tabor.	\$94.34
958	(905) Cherra Taylor.	\$185.48
959	(906) Michael D. Taylor.	\$225.67
960	(907) Robert C. Taylor.	\$298.87
961	(908) Ruth Taylor.	\$500.00
962	(909) Scott Taylor.	\$119.15

963	(910) Tonya L. Taylor.....	\$500.00
964	(911) Forrest L. Tennant.	\$250.00
965	(912) Alicia J. Thomas.	\$500.00
966	(913) Jessica Thomas.	\$119.94
967	(914) Michael A. Thomas.	\$241.66
968	(915) Ralph Thomas and Mary Jane Thomas. . .	\$1,358.18
969	(916) Howard Thompson..	\$271.05
970	(917) Mikalia Thompson and Ray Crook.	\$69.73
971	(918) Sandra Thompson.	\$500.00
972	(919) Amy L. Thorpe..	\$500.00
973	(920) Mona Tignor.	\$500.00
974	(921) Robert L. Toliver and Belinda R. Toliver. .	\$500.00
975	(922) Jewette Toney.	\$500.00
976	(923) Brandon James Trescott and	
977	Angela Gail Trescott.	\$500.00
978	(924) Earnest C. Triplett Sr..	\$174.68
979	(925) Bryce Trushel..	\$201.62
980	(926) Julie E. Tucker.	\$250.00
981	(927) Ron Tucker..	\$99.00
982	(928) Melissa Turner.	\$40.00

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983	(929) William E. Turner.	\$223.47
984	(930) Lynn E. Vance.	\$163.48
985	(931) Kathryn VanHoose.	\$607.10
986	(932) Marquette VanHoose.	\$500.00
987	(933) James E. Varner and	
988	Christine A. Varner.	\$1,000.00
989	(934) Donald G. Varney.	\$428.53
990	(935) Billy G. Vaughn and Linda L. Vaughn.	\$250.00
991	(936) John Vidovich.	\$206.07
992	(937) Michelle Wagemen.	\$424.59
993	(938) Courtney A. Walker.	\$135.00
994	(939) Eddie R. Walker.	\$239.35
995	(940) Nancy C. Wamsley.	\$558.00
996	(941) James Ward.	\$139.92
997	(942) Samuel Aaron Ward.	\$500.00
998	(943) Stephen D. Ward.	\$500.00
999	(944) Vernon Ware.	\$250.00
1000	(945) Jonathan R. Warner.	\$872.00
1001	(946) Timothy Warnick.	\$324.83
1002	(947) April Warren.	\$79.50

Ch. 49]	CLAIMS	861
1003	(948) Debi Watkins.	\$79.00
1004	(949) Mary J. Watson.	\$123.13
1005	(950) Amanda Webb.	\$148.75
1006	(951) Laura Welch.	\$250.00
1007	(952) Lee Ann Welch.	\$109.77
1008	(953) Tonia J. Wells.	\$92.87
1009	(954) John J. Wesolowski.	\$115.92
1010	(955) Robert J. West.	\$308.80
1011	(956) Wetzell County Commission.	\$1,000.00
1012	(957) David M. Whipkey and	
1013	Karen L. Whipkey.	\$191.82
1014	(958) Benjamin A. White.	\$107.50
1015	(959) Allen R. White and Christinia White.	\$850.14
1016	(960) Dana Ray White.	\$250.00
1017	(961) Frances White.	\$100.70
1018	(962) James A. White.	\$153.70
1019	(963) Shannon R. White.	\$370.34
1020	(964) Richard L. Whitehead.	\$250.00
1021	(965) William Whitley.	\$105.00
1022	(966) Robert C. Whitlock and	
1023	Brandilyn J. Whitlock.	\$250.00

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1024	(967) Melanie G. Whittington.....	\$136.00
1025	(968) Janice M. Whorton.....	\$500.00
1026	(969) Lucy Wiethe.....	\$500.00
1027	(970) Lonnie R. Wilcoxon Jr.	\$20,000.00
1028	(971) Melanie Wilkerson.....	\$186.66
1029	(972) Garnette S. Wilkinson.	\$142.52
1030	(973) Daniel Williams.....	\$129.30
1031	(974) James D. Williams and Gloria Williams...	\$237.65
1032	(975) Karyn Williams.	\$250.00
1033	(976) Stacie Lynn Williams and	
1034	Ronald S. Williams.	\$400.00
1035	(977) Samantha Williams.	\$64.55
1036	(978) Homer Mitchell Williamson.	\$3,200.00
1037	(979) Jim Wills and Carly Wills.....	\$723.20
1038	(980) Dennis W. Wills.....	\$1,499.77
1039	(981) Jennifer Wilson.	\$500.00
1040	(982) Roger Wilson and Linda Wilson.....	\$831.95
1041	(983) Woodrow J. Wilson.....	\$254.96
1042	(984) James E. Wilson Jr.	\$250.00
1043	(985) Rossie B. Wilson Jr.....	\$4,112.77

1044	(986) Cynthia Winebrenner.....	\$268.24
1045	(987) Edward Winemiller.	\$290.49
1046	(988) Michelle Wise.	\$805.20
1047	(989) Joshua K. Wiseman.	\$192.23
1048	(990) Margie Withrow.....	\$242.29
1049	(991) Michael Witt.	\$250.00
1050	(992) Barbara S. Wood.	\$250.00
1051	(993) Justin Wood and Heather Wood.	\$500.00
1052	(994) Mitchell E. Woodrum.	\$1,000.00
1053	(995) Whitney Woods.....	\$270.34
1054	(996) Jennifer Woodward.	\$487.71
1055	(997) Shawn Woody.	\$621.16
1056	(998) Gina Workman.....	\$291.50
1057	(999) Sherry Workman.	\$464.28
1058	(1000) Tiffany D. Worst.	\$340.10
1059	(1001) Anna Wright.	\$279.01
1060	(1002) Robin Wright.....	\$500.00
1061	(1003) Linda F. Wriston.	\$211.98
1062	(1004) Stephen C. Wrobleski.	\$176.13
1063	(1005) Buddy J. Wyatt and Trudy A. Wyatt.....	\$363.49

864	CLAIMS	[Ch. 49
1064	(1006) Tim Wyckoff and Mary Wyckoff.	\$204.00
1065	(1007) Wallace Yancey and Patty Yancey.	\$250.00
1066	(1008) Gregory Yates.	\$250.00
1067	(1009) Robert Jay Yeager.	\$205.64
1068	(1010) Kimberly Yingling.	\$500.00
1069	(1011) Andrew B. Yost.	\$128.26
1070	(1012) Cary M. Young.	\$614.11
1071	(1013) Anthony Yowell.	\$293.99
1072	(1014) Patrick R. Zinn.	\$275.07
1073	(1015) Sherri Zirke and Aaron Zirke.	\$493.31
1074	(1016) Richard D. Collins.	\$6,867.93
1075	(1017) Sandra K. Collins.	\$157.95
1076	(1018) Dennis M. Jones.	\$121.95
1077	(e) <i>Claim against the Division of Homeland Security and</i>	
1078	<i>Emergency Management:</i>	
1079	(TO BE PAID FROM SPECIAL REVENUE FUND)	
1080	(1) Motorola Solutions Inc.	\$420,000.00
1081	(f) <i>Claims against the Division of Motor Vehicles:</i>	
1082	(TO BE PAID FROM STATE ROAD FUND)	
1083	(1) Glen Dale Motor Company.	\$6,285.00

1084	(2) Huntington Cycles Inc., dba Charlie's	
1085	Harley Davidson.	\$347.50
1086	(3) Joe's Cars.	\$355.50
1087	(4) Keith Paul Rhea.	\$4,240.00
1088	(g) <i>Claim against the Division of Natural Resources:</i>	
1089	(TO BE PAID FROM SPECIAL REVENUE FUND)	
1090	(1) J S Company LLC.	\$32,275.00
1091	(h) <i>Claim against the Division of Natural Resources/Parks</i>	
1092	<i>and Recreation:</i>	
1093	(TO BE PAID FROM SPECIAL REVENUE FUND)	
1094	(1) True Value Home Center.	\$9,485.00
1095	(i) <i>Claim against the Real Estate Commission:</i>	
1096	(TO BE PAID FROM SPECIAL REVENUE FUND)	
1097	(1) Department of Administration/	
1098	Office of Technology.	\$3,549.53
1099	(j) <i>Claims against the Regional Jail and Correctional</i>	
1100	<i>Facility Authority:</i>	
1101	(TO BE PAID FROM SPECIAL REVENUE FUND)	
1102	(1) William Andrews.	\$169.84
1103	(2) Allen Baker and Beverly Baker.	\$28.98
1104	(3) Gary R. Baker.	\$20.00
1105	(4) Jonathan Butts.	\$18.21

1106	(5) Stella Frantz and Marguerita May.....	\$30.81
1107	(6) Lawrence Galbearth.....	\$14.95
1108	(7) Christopher Hayman.....	\$65.76
1109	(8) Adam Ruthers.....	\$50.00
1110	(9) Norman D. Staley.....	\$39.92
1111	(10) Timothy L. Taylor.....	\$22.24
1112	(11) Carl Tyndale.....	\$360.00
1113	(k) <i>Claim against the State of West Virginia:</i>	
1114	(TO BE PAID FROM GENERAL REVENUE FUND)	
1115	(1) Landon R. Brown.....	\$11,655.05
1116	(l) <i>Claim against the West Virginia State Police:</i>	
1117	(TO BE PAID FROM GENERAL REVENUE FUND)	
1118	(1) Sarah M. Weidig.....	\$2,608.81

1119 The Legislature finds that the above moral obligations and
1120 the appropriations made in satisfaction thereof shall be the full
1121 compensation for all claimants and that prior to the payments to
1122 any claimant provided in this bill, the Court of Claims shall
1123 receive a release from said claimant releasing any and all claims
1124 for moral obligations arising from the matters considered by the
1125 Legislature in the finding of the moral obligations and the making
1126 of the appropriations for said claimant. The Court of Claims shall
1127 deliver all releases obtained from claimants to the department
1128 against which the claim was allowed.

CHAPTER 50

(S. B. 363 - By Senator Cole (Mr. President))

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §14-2A-19b, relating to allowing the Court of Claims to establish maximum rates and service limitations for reimbursement of health care services; requiring rates to be filed with Joint Committee on Government and Finance; setting effective date for changes to rates and limitations; prohibiting payment from other sources, as well as claimants; and authorizing court to review claims.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §14-2A-19b, to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-19b. Rates and limitations for health care services.

1 The court may establish by court rule or court order
2 maximum rates and service limitations for reimbursement of
3 health care services rendered by a physician, hospital, or other
4 health care provider. An informational copy of the maximum
5 rates and service limitations shall be filed with the Joint
6 Committee on Government and Finance upon adoption by the
7 court. Any change in the maximum rates or service limitations

8 shall be effective sixty days after the adoption of the changes. A
9 provider who accepts payment from the court for a service shall
10 accept the court's rates as payment in full and may not accept
11 any payment on account of the service from any other source if
12 the total of payments accepted would exceed the maximum rate
13 set by the court for that service. A provider may not charge a
14 claimant for any difference between the cost of a service
15 provided to a claimant and the court's payment for that service.
16 To ensure service limitations are uniform and appropriate to the
17 levels of treatment required by the claimant, the court may
18 review all claims for these services as necessary to ensure their
19 medical necessity.

CHAPTER 51

(S. B. 382 - By Senators M. Hall and Walters)

[Passed February 28, 2015; in effect from passage.]

[Approved by the Governor on March 5, 2015.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Health and Human Resources to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services

rendered by certain claimants herein and has considered these claims against the state, and agency thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the Court of Claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the Court of Claims on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the Court of Claims as its own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the Auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the Code of West Virginia, 1931, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

1 *Claims against the Department of Health and Human*
 2 *Resources:*

3 (TO BE PAID FROM GENERAL REVENUE FUND)

4	(1) Altmeyer Funeral Homes Inc..	\$13,595.00
5	(2) Bailey-Kirk Funeral Home.	\$5,000.00
6	(3) Bartlett-Chapman Funeral Home.. . . .	\$2,500.00
7	(4) Beard Mortuary.	\$2,500.00
8	(5) Browning Funeral Home Inc..	\$2,500.00
9	(6) Broyles-Shrewsbury Funeral Home Inc.. . . .	\$1,250.00

870	CLAIMS	[Ch. 51
10	(7) Carpenter and Ford Funeral Home.	\$3,750.00
11	(8) Casto Funeral Home Inc.	\$2,500.00
12	(9) Chafin Funeral Home Inc.	\$3,750.00
13	(10) Chambers-James Funeral Homes Inc.	\$2,500.00
14	(11) Chapman's Mortuary Inc.	\$13,750.00
15	(12) Cunningham-Parker-Johnson	
16	Funeral Home Inc.	\$1,250.00
17	(13) Curry Funeral Home.	\$3,750.00
18	(14) Douglas Mortuary.	\$2,500.00
19	(15) Family Heritage Funeral Home.	\$1,250.00
20	(16) Fanning Funeral Home Inc.	\$1,250.00
21	(17) Ferrell-Chambers Funeral Home and Ceredo	
22	Kenova Funeral Home.	\$5,000.00
23	(18) Ford Funeral Home Inc.	\$2,088.81
24	(19) Giffin Funeral Home Inc.	\$1,250.00
25	(20) Helsley-Johnson Funeral Home Inc.	\$5,000.00
26	(21) JG Lampkin Funeral Home.	\$1,250.00
27	(22) Johnson Tiller Funeral Home.	\$7,500.00
28	(23) Keller Funeral Home.	\$8,750.00
29	(24) Kimes Funeral Home.	\$5,000.00

30	(25) Klingel-Carpenter Mortuary.	\$1,250.00
31	(26) Lambert-Tatman Funeral Home.	\$11,250.00
32	(27) Leavitt Funeral Home Inc.	\$6,250.00
33	(28) McCulla Funeral Home.	\$7,500.00
34	(29) Melton Mortuary Inc.	\$18,750.00
35	(30) Myers Funeral Home.	\$2,500.00
36	(31) Perine Funeral Home.	\$1,250.00
37	(32) Perry & St. Clair Funeral Home.	\$1,250.00
38	(33) Pivont Funeral Service Inc.	\$1,250.00
39	(34) Roselawn Funeral Home.	\$2,500.00
40	(35) Schaeffer Funeral Home Inc.	\$2,500.00
41	(36) Seaver Funeral Services Inc.	\$6,250.00
42	(37) Spurgeon Funeral Home.	\$2,500.00
43	(38) Stevens & Grass Funeral Home.	\$ 660.61
44	(39) Tankersley Funeral Home.	\$1,250.00
45	(40) Taylor & Verdale Funeral Home Inc.	\$2,500.00
46	(41) Vaughn Funeral Home.	\$2,500.00
47	(42) Wallace & Wallace Inc.	\$1,250.00
48	(43) Wallace Funeral Home Inc.	\$3,750.00

CHAPTER 52

**(Com Sub. for S. B. 357 - By Senators Mullins,
Blair, Boley, Boso, Ferns, Gaunch, D. Hall, M. Hall, Karnes,
Carmichael, Kirkendoll, Leonhardt, Maynard, Nohe,
Plymale, Prezioso, Stollings, Sypolt, Takubo,
Trump, Walters and Williams)**

[Passed March 3, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 12, 2015.]

AN ACT to repeal §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-3-13 and §22-3-19 of said code; to amend and reenact §22-11-6 and §22-11-8 of said code; to amend said code by adding thereto a new section, designated §22-11-22a; to amend said code by adding thereto a new section, designated §22A-1-41; to amend and reenact §22A-1A-1 of said code; to amend and reenact §22A-2-6, §22A-2-28 and §22A-2-37 of said code; to amend and reenact §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code; and to amend said code by adding thereto a new section, designated §22A-2A-204a, all relating to coal mining generally; providing that discharges from waste piles do not exceed applicable water quality standards; promulgating rules regarding procedures for requesting and obtaining inactive status and rules relating to requirements for contemporaneous reclamation under West Virginia Surface Coal Mining and Reclamation Act; abolishing West Virginia Diesel Equipment Commission; transferring duties and responsibilities of West Virginia Diesel Equipment Commission to Director of the

Office of Miners' Health, Safety and Training; defining terms; providing rule-making authority; providing that rules previously approved by Diesel Equipment Commission continue in full force and effect; requiring rules for statewide hardness-based aluminum water quality criteria for protection of aquatic life; prohibiting wholesale incorporation of water quality standards into permits; modifying the scope of the permit shield as it relates to compliance with water quality standards; establishing an administrative and civil enforcement process for coal mining-related permits that conforms with corresponding federal requirements; making legislative findings; requiring suspension or revocation of a certificate held by a certified person under certain circumstances; disallowing prescription as a defense if prescription is more than one year old; setting forth requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; increasing distance from the nearest working face where transportation of certain personnel in certain instances is done exclusively by rail; requiring certain equipment be readily available in certain circumstances; increasing distance of track to be maintained when a section is fully developed and being prepared for retreating; establishing criteria for the use of sideboards on shuttle cars; changing distance of shelter holes along haulage entries; and setting requirements for riders on locomotives.

Be it enacted by the Legislature of West Virginia:

That §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307 of the Code of West Virginia, 1931, as amended, be repealed; that §22-3-13 and §22-3-19 of said code be amended and reenacted; that §22-11-6 and §22-11-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22-11-22a; that said code be amended by adding thereto a new section, designated §22A-1-41; that §22A-1A-1 of said code be amended and reenacted; that §22A-2-6, §22A-2-28 and §22A-2-37 of said code be amended and reenacted; that §22A-2A-101,

§22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §22A-2A-204a, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-13. General environmental protection performance standards for surface mining; variances.

1 (a) Any permit issued by the director pursuant to this article
2 to conduct surface mining operations shall require that the
3 surface mining operations meet all applicable performance
4 standards of this article and other requirements set forth in
5 legislative rules proposed by the director.

6 (b) The following general performance standards are
7 applicable to all surface mines and require the operation, at a
8 minimum, to:

9 (1) Maximize the utilization and conservation of the solid
10 fuel resource being recovered to minimize re-affecting the land
11 in the future through surface mining;

12 (2) Restore the land affected to a condition capable of
13 supporting the uses which it was capable of supporting prior to
14 any mining, or higher or better uses of which there is reasonable
15 likelihood so long as the use or uses do not present any actual or
16 probable hazard to public health or safety or pose any actual or
17 probable threat of water diminution or pollution and the permit
18 applicants' declared proposed land use following reclamation is
19 not considered to be impractical or unreasonable, inconsistent

20 with applicable land use policies and plans, involves
21 unreasonable delay in implementation or is violative of federal,
22 state or local law;

23 (3) Except as provided in subsection (c) of this section, with
24 respect to all surface mines, backfill, compact where advisable
25 to ensure stability or to prevent leaching of toxic materials and
26 grade in order to restore the approximate original contour:
27 *Provided*, That in surface mining which is carried out at the
28 same location over a substantial period of time where the
29 operation transects the coal deposit and the thickness of the coal
30 deposits relative to the volume of the overburden is large and
31 where the operator demonstrates that the overburden and other
32 spoil and waste materials at a particular point in the permit area
33 or otherwise available from the entire permit area is insufficient,
34 giving due consideration to volumetric expansion, to restore the
35 approximate original contour, the operator, at a minimum, shall
36 backfill, grade and compact, where advisable, using all available
37 overburden and other spoil and waste materials to attain the
38 lowest practicable grade, but not more than the angle of repose,
39 to provide adequate drainage and to cover all acid-forming and
40 other toxic materials in order to achieve an ecologically sound
41 land use compatible with the surrounding region: *Provided*,
42 *however*, That in surface mining where the volume of
43 overburden is large relative to the thickness of the coal deposit
44 and where the operator demonstrates that due to volumetric
45 expansion the amount of overburden and other spoil and waste
46 materials removed in the course of the mining operation is more
47 than sufficient to restore the approximate original contour, the
48 operator shall, after restoring the approximate contour, backfill,
49 grade and compact, where advisable, the excess overburden and
50 other spoil and waste materials to attain the lowest grade, but not
51 more than the angle of repose, and to cover all acid-forming and
52 other toxic materials in order to achieve an ecologically sound
53 land use compatible with the surrounding region and the
54 overburden or spoil shall be shaped and graded in a way as to

55 prevent slides, erosion and water pollution and revegetated in
56 accordance with the requirements of this article: *Provided*
57 *further*, That the director shall propose rules for legislative
58 approval in accordance with article three, chapter twenty-nine-a
59 of this code governing variances to the requirements for return
60 to approximate original contour or highwall elimination and
61 where adequate material is not available from surface mining
62 operations permitted after the effective date of this article for:
63 (A) Underground mining operations existing prior to August 3,
64 1977; or (B) for areas upon which surface mining prior to July
65 1, 1977, created highwalls;

66 (4) Stabilize and protect all surface areas, including spoil
67 piles, affected by the surface mining operation to effectively
68 control erosion and attendant air and water pollution;

69 (5) Remove the topsoil from the land in a separate layer,
70 replace it on the backfill area or, if not utilized immediately,
71 segregate it in a separate pile from other spoil and, when the
72 topsoil is not replaced on a backfill area within a time short
73 enough to avoid deterioration of the topsoil, maintain a
74 successful vegetative cover by quick growing plants or by other
75 similar means in order to protect topsoil from wind and water
76 erosion and keep it free of any contamination by other acid or
77 toxic material: *Provided*, That if topsoil is of insufficient
78 quantity or of poor quality for sustaining vegetation, or if other
79 strata can be shown to be more suitable for vegetation
80 requirements, then the operator shall remove, segregate and
81 preserve in a like manner any other strata which is best able to
82 support vegetation;

83 (6) Restore the topsoil or the best available subsoil which is
84 best able to support vegetation;

85 (7) Ensure that all prime farmlands are mined and reclaimed
86 in accordance with the specifications for soil removal, storage,
87 replacement and reconstruction established by the United States

88 Secretary of Agriculture and the Soil Conservation Service
89 pertaining thereto. The operator, at a minimum, shall: (A)
90 Segregate the A horizon of the natural soil, except where it can
91 be shown that other available soil materials will create a final
92 soil having a greater productive capacity and, if not utilized
93 immediately, stockpile this material separately from other spoil
94 and provide needed protection from wind and water erosion or
95 contamination by other acid or toxic material; (B) segregate the
96 B horizon of the natural soil, or underlying C horizons or other
97 strata, or a combination of the horizons or other strata that are
98 shown to be both texturally and chemically suitable for plant
99 growth and that can be shown to be equally or more favorable
100 for plant growth than the B horizon, in sufficient quantities to
101 create in the regraded final soil a root zone of comparable depth
102 and quality to that which existed in the natural soil and, if not
103 utilized immediately, stockpile this material separately from
104 other spoil and provide needed protection from wind and water
105 erosion or contamination by other acid or toxic material; (C)
106 replace and regrade the root zone material described in
107 paragraph (B) of this subdivision with proper compaction and
108 uniform depth over the regraded spoil material; and (D)
109 redistribute and grade in a uniform manner the surface soil
110 horizon described in paragraph (A) of this subdivision;

111 (8) Create, if authorized in the approved surface mining and
112 reclamation plan and permit, permanent impoundments of water
113 on mining sites as part of reclamation activities in accordance
114 with rules promulgated by the director;

115 (9) Where augering is the method of recovery, seal all auger
116 holes with an impervious and noncombustible material in order
117 to prevent drainage except where the director determines that the
118 resulting impoundment of water in the auger holes may create a
119 hazard to the environment or the public welfare and safety:
120 *Provided*, That the director may prohibit augering if necessary
121 to maximize the utilization, recoverability or conservation of the

122 mineral resources or to protect against adverse water quality
123 impacts;

124 (10) Minimize the disturbances to the prevailing hydrologic
125 balance at the mine site and in associated off-site areas and to the
126 quality and quantity of water in surface and groundwater systems
127 both during and after surface mining operations and during
128 reclamation by: (A) Avoiding acid or other toxic mine drainage
129 by such measures as, but not limited to: (I) Preventing or
130 removing water from contact with toxic producing deposits; (ii)
131 treating drainage to reduce toxic content which adversely affects
132 downstream water upon being released to water courses; and (iii)
133 casing, sealing or otherwise managing boreholes, shafts and
134 wells and keep acid or other toxic drainage from entering ground
135 and surface waters; (B) conducting surface mining operations so
136 as to prevent to the extent possible, using the best technology
137 currently available, additional contributions of suspended solids
138 to streamflow or runoff outside the permit area, but in no event
139 may contributions be in excess of requirements set by applicable
140 state or federal law; (C) constructing an approved drainage
141 system pursuant to paragraph (B) of this subdivision, prior to
142 commencement of surface mining operations, the system to be
143 certified by a person approved by the director to be constructed
144 as designed and as approved in the reclamation plan; (D)
145 avoiding channel deepening or enlargement in operations
146 requiring the discharge of water from mines; (E) unless
147 otherwise authorized by the director, cleaning out and removing
148 temporary or large settling ponds or other siltation structures
149 after disturbed areas are revegetated and stabilized, and
150 depositing the silt and debris at a site and in a manner approved
151 by the director; (F) restoring recharge capacity of the mined area
152 to approximate premining conditions; and (G) any other actions
153 prescribed by the director;

154 (11) With respect to surface disposal of mine wastes,
155 tailings, coal processing wastes and other wastes in areas other

156 than the mine working excavations: (A) Stabilize all waste piles
157 in designated areas through construction in compacted layers,
158 including the use of noncombustible and impervious materials if
159 necessary, and assure the final contour of the waste pile will be
160 compatible with natural surroundings and that the site will be
161 stabilized and revegetated according to the provisions of this
162 article; and (B) assure that the construction of any coal waste
163 pile or other coal waste storage area utilizes appropriate
164 technologies, such as capping or the use of liners, or any other
165 demonstrated technologies or measures which are consistent
166 with good engineering practices, to prevent an acid mine
167 drainage discharge;

168 (12) Design, locate, construct, operate, maintain, enlarge,
169 modify and remove or abandon, in accordance with standards
170 and criteria developed pursuant to subsection (f) of this section,
171 all existing and new coal mine waste piles consisting of mine
172 wastes, tailings, coal processing wastes or other liquid and solid
173 wastes and used either temporarily or permanently as dams or
174 embankments;

175 (13) Refrain from surface mining within five hundred feet of
176 any active and abandoned underground mines in order to prevent
177 breakthroughs and to protect health or safety of miners:
178 *Provided*, That the director shall permit an operator to mine near,
179 through or partially through an abandoned underground mine or
180 closer to an active underground mine if: (A) The nature, timing
181 and sequencing of the approximate coincidence of specific
182 surface mine activities with specific underground mine activities
183 are coordinated jointly by the operators involved and approved
184 by the director; and (B) the operations will result in improved
185 resource recovery, abatement of water pollution or elimination
186 of hazards to the health and safety of the public: *Provided*,
187 *however*, That any breakthrough which does occur shall be
188 sealed;

189 (14) Ensure that all debris, acid-forming materials, toxic
190 materials or materials constituting a fire hazard are treated or
191 buried and compacted, or otherwise disposed of in a manner
192 designed to prevent contamination of ground or surface waters,
193 and that contingency plans are developed to prevent sustained
194 combustion: *Provided*, That the operator shall remove or bury all
195 metal, lumber, equipment and other debris resulting from the
196 operation before grading release;

197 (15) Ensure that explosives are used only in accordance with
198 existing state and federal law and the rules promulgated by the
199 director, which shall include provisions to:

200 (A) Maintain for a period of at least three years and make
201 available for public inspection, upon written request, a log
202 detailing the location of the blasts, the pattern and depth of the
203 drill holes, the amount of explosives used per hole and the order
204 and length of delay in the blasts; and

205 (B) Require that all blasting operations be conducted by
206 persons certified by the Office of Explosives and Blasting.

207 (16) Ensure that all reclamation efforts proceed in an
208 environmentally sound manner and as contemporaneously as
209 practicable with the surface mining operations. Time limits shall
210 be established by the director requiring backfilling, grading and
211 planting to be kept current: *Provided*, That where surface mining
212 operations and underground mining operations are proposed on
213 the same area, which operations must be conducted under
214 separate permits, the director may grant a variance from the
215 requirement that reclamation efforts proceed as
216 contemporaneously as practicable to permit underground mining
217 operations prior to reclamation:

218 (A) If the director finds in writing that:

219 (i) The applicant has presented, as part of the permit
220 application, specific, feasible plans for the proposed
221 underground mining operations;

222 (ii) The proposed underground mining operations are
223 necessary or desirable to assure maximum practical recovery of
224 the mineral resource and will avoid multiple disturbance of the
225 surface;

226 (iii) The applicant has satisfactorily demonstrated that the
227 plan for the underground mining operations conforms to
228 requirements for underground mining in the jurisdiction and that
229 permits necessary for the underground mining operations have
230 been issued by the appropriate authority;

231 (iv) The areas proposed for the variance have been shown by
232 the applicant to be necessary for the implementing of the
233 proposed underground mining operations;

234 (v) No substantial adverse environmental damage, either
235 on-site or off-site, will result from the delay in completion of
236 reclamation as required by this article; and

237 (vi) Provisions for the off-site storage of spoil will comply
238 with subdivision (22), subsection (b) of this section;

239 (B) If the director has promulgated specific rules to govern
240 the granting of the variances in accordance with the provisions
241 of this subparagraph and has imposed any additional
242 requirements as the director considers necessary;

243 (C) If variances granted under the provisions of this
244 paragraph are reviewed by the director not more than three years
245 from the date of issuance of the permit: *Provided*, That the
246 underground mining permit shall terminate if the underground
247 operations have not commenced within three years of the date
248 the permit was issued, unless extended as set forth in subdivision
249 (3), section eight of this article; and

250 (D) If liability under the bond filed by the applicant with the
251 director pursuant to subsection (b), section eleven of this article
252 is for the duration of the underground mining operations and
253 until the requirements of subsection (g), section eleven of this
254 article and section twenty-three of this article have been fully
255 complied with;

256 (17) Ensure that the construction, maintenance and
257 post-mining conditions of access and haul roads into and across
258 the site of operations will control or prevent erosion and
259 siltation, pollution of water, damage to fish or wildlife or their
260 habitat, or public or private property: *Provided*, That access
261 roads constructed for and used to provide infrequent service to
262 surface facilities, such as ventilators or monitoring devices, are
263 exempt from specific construction criteria provided adequate
264 stabilization to control erosion is achieved through alternative
265 measures;

266 (18) Refrain from the construction of roads or other access
267 ways up a stream bed or drainage channel or in proximity to the
268 channel so as to significantly alter the normal flow of water;

269 (19) Establish on the regraded areas, and all other lands
270 affected, a diverse, effective and permanent vegetative cover of
271 the same seasonal variety native to the area of land to be affected
272 or of a fruit, grape or berry producing variety suitable for human
273 consumption and capable of self-regeneration and plant
274 succession at least equal in extent of cover to the natural
275 vegetation of the area, except that introduced species may be
276 used in the revegetation process where desirable or when
277 necessary to achieve the approved post-mining land use plan;

278 (20) Assume the responsibility for successful revegetation,
279 as required by subdivision (19) of this subsection, for a period of
280 not less than five growing seasons, as defined by the director,
281 after the last year of augmented seeding, fertilizing, irrigation or
282 other work in order to assure compliance with subdivision (19)

283 of this subsection: *Provided*, That when the director issues a
284 written finding approving a long-term agricultural post-mining
285 land use as a part of the mining and reclamation plan, the
286 director may grant exception to the provisions of subdivision
287 (19) of this subsection: *Provided, however*, That when the
288 director approves an agricultural post-mining land use, the
289 applicable five growing seasons of responsibility for
290 revegetation begins on the date of initial planting for the
291 agricultural post-mining land use;

292 On lands eligible for re-mining assume the responsibility for
293 successful revegetation, as required by subdivision (19) of this
294 subsection, for a period of not less than two growing seasons, as
295 defined by the director after the last year of augmented seeding,
296 fertilizing, irrigation or other work in order to assure compliance
297 with subdivision (19) of this subsection;

298 (21) Protect off-site areas from slides or damage occurring
299 during surface mining operations and not deposit spoil material
300 or locate any part of the operations or waste accumulations
301 outside the permit area: *Provided*, That spoil material may be
302 placed outside the permit area if approved by the director after
303 a finding that environmental benefits will result from the placing
304 of spoil material outside the permit area;

305 (22) Place all excess spoil material resulting from surface
306 mining activities in a manner that: (A) Spoil is transported and
307 placed in a controlled manner in position for concurrent
308 compaction and in a way as to assure mass stability and to
309 prevent mass movement; (B) the areas of disposal are within the
310 bonded permit areas and all organic matter is removed
311 immediately prior to spoil placements; (C) appropriate surface
312 and internal drainage system or diversion ditches are used to
313 prevent spoil erosion and movement; (D) the disposal area does
314 not contain springs, natural water courses or wet weather seeps,
315 unless lateral drains are constructed from the wet areas to the

316 main under drains in a manner that filtration of the water into the
317 spoil pile will be prevented; (E) if placed on a slope, the spoil is
318 placed upon the most moderate slope among those upon which,
319 in the judgment of the director, the spoil could be placed in
320 compliance with all the requirements of this article, and is
321 placed, where possible, upon, or above, a natural terrace, bench
322 or berm, if placement provides additional stability and prevents
323 mass movement; (F) where the toe of the spoil rests on a
324 downslope, a rock toe buttress, of sufficient size to prevent mass
325 movement, is constructed; (G) the final configuration is
326 compatible with the natural drainage pattern and surroundings
327 and suitable for intended uses; (H) the design of the spoil
328 disposal area is certified by a qualified registered professional
329 engineer in conformance with professional standards; and (I) all
330 other provisions of this article are met: *Provided*, That where the
331 excess spoil material consists of at least eighty percent, by
332 volume, sandstone, limestone or other rocks that do not slake in
333 water and will not degrade to soil material, the director may
334 approve alternate methods for disposal of excess spoil material,
335 including fill placement by dumping in a single lift, on a site-
336 specific basis: *Provided, however*, That the services of a
337 qualified registered professional engineer experienced in the
338 design and construction of earth and rockfill embankment are
339 utilized: *Provided further*, That the approval may not be
340 unreasonably withheld if the site is suitable;

341 (23) Meet any other criteria necessary to achieve reclamation
342 in accordance with the purposes of this article, taking into
343 consideration the physical, climatological and other
344 characteristics of the site;

345 (24) To the extent possible, using the best technology
346 currently available, minimize disturbances and adverse impacts
347 of the operation on fish, wildlife and related environmental
348 values, and achieve enhancement of these resources where
349 practicable;

350 (25) Retain a natural barrier to inhibit slides and erosion on
351 permit areas where outcrop barriers are required: *Provided*, That
352 constructed barriers may be allowed where: (A) Natural barriers
353 do not provide adequate stability; (B) natural barriers would
354 result in potential future water quality deterioration; and (C)
355 natural barriers would conflict with the goal of maximum
356 utilization of the mineral resource: *Provided, however*, That at
357 a minimum, the constructed barrier shall be of sufficient width
358 and height to provide adequate stability and the stability factor
359 shall equal or exceed that of the natural outcrop barrier:
360 *Provided further*, That where water quality is paramount, the
361 constructed barrier shall be composed of impervious material
362 with controlled discharge points; and

363 (26) The director shall promulgate for review and
364 consideration by the West Virginia Legislature legislative rules
365 or emergency rules during the 2016 Regular Session of the West
366 Virginia Legislature, revisions to rules for contemporaneous
367 reclamation as required under subdivision (16), subsection (b) of
368 this section. The secretary shall specifically consider the
369 adoption of federal standards codified at 30 C. F. R.
370 §§816.100-116 (1983) and 30 C. F. R. §§817.100-116 (1983)
371 when proposing revisions to the state rule.

372 (c) (1) The director may prescribe procedures pursuant to
373 which he or she may permit surface mining operations for the
374 purposes set forth in subdivision (3) of this subsection.

375 (2) Where an applicant meets the requirements of
376 subdivisions (3) and (4) of this subsection, a permit without
377 regard to the requirement to restore to approximate original
378 contour set forth in subsection (b) or (d) of this section may be
379 granted for the surface mining of coal where the mining
380 operation will remove an entire coal seam or seams running
381 through the upper fraction of a mountain, ridge or hill, except as

382 provided in paragraph (A), subdivision (4) of this subsection, by
383 removing all of the overburden and creating a level plateau or a
384 gently rolling contour with no highwalls remaining and capable
385 of supporting post-mining uses in accordance with the
386 requirements of this subsection.

387 (3) In cases where an industrial, commercial, agricultural,
388 commercial forestry, residential or public facility including
389 recreational uses is proposed for the post-mining use of the
390 affected land, the director may grant a permit for a surface
391 mining operation of the nature described in subdivision (2) of
392 this subsection where: (A) The proposed post-mining land use is
393 determined to constitute an equal or better use of the affected
394 land, as compared with premining use; (B) the applicant presents
395 specific plans for the proposed post-mining land use and
396 appropriate assurances that the use will be: (I) Compatible with
397 adjacent land uses; (ii) practicable with respect to achieving the
398 proposed use; (iii) obtainable according to data regarding
399 expected need and market; (iv) supported by commitments from
400 public agencies where appropriate; (v) practicable with respect
401 to private financial capability for completion of the proposed
402 use; (vi) planned pursuant to a schedule attached to the
403 reclamation plan so as to integrate the mining operation and
404 reclamation with the post-mining land use; and (vii) designed by
405 a person approved by the director in conformance with standards
406 established to assure the stability, drainage and configuration
407 necessary for the intended use of the site; (C) the proposed use
408 would be compatible with adjacent land uses, and existing state
409 and local land use plans and programs; (D) the director provides
410 the county commission of the county in which the land is located
411 and any state or federal agency which the director, in his or her
412 discretion, determines to have an interest in the proposed use, an
413 opportunity of not more than sixty days to review and comment
414 on the proposed use; and (E) all other requirements of this article
415 will be met.

416 (4) In granting any permit pursuant to this subsection, the
417 director shall require that: (A) A natural barrier be retained to
418 inhibit slides and erosion on permit areas where outcrop barriers
419 are required: *Provided*, That constructed barriers may be allowed
420 where: (i) Natural barriers do not provide adequate stability; (ii)
421 natural barriers would result in potential future water quality
422 deterioration; and (iii) natural barriers would conflict with the
423 goal of maximum utilization of the mineral resource: *Provided*,
424 *however*, That, at a minimum, the constructed barrier shall be
425 sufficient in width and height to provide adequate stability and
426 the stability factor shall equal or exceed that of the natural
427 outcrop barrier: *Provided further*, That where water quality is
428 paramount, the constructed barrier shall be composed of
429 impervious material with controlled discharge points; (B) the
430 reclaimed area is stable; (C) the resulting plateau or rolling
431 contour drains inward from the outcrops except at specific
432 points; (D) no damage will be done to natural watercourses; (E)
433 spoil will be placed on the mountaintop bench as is necessary to
434 achieve the planned post-mining land use: *And provided further*,
435 That all excess spoil material not retained on the mountaintop
436 shall be placed in accordance with the provisions of subdivision
437 (22), subsection (b) of this section; and (F) ensure stability of the
438 spoil retained on the mountaintop and meet the other
439 requirements of this article.

440 (5) All permits granted under the provisions of this
441 subsection shall be reviewed not more than three years from the
442 date of issuance of the permit; unless the applicant affirmatively
443 demonstrates that the proposed development is proceeding in
444 accordance with the terms of the approved schedule and
445 reclamation plan.

446 (d) In addition to those general performance standards
447 required by this section, when surface mining occurs on slopes
448 of twenty degrees or greater, or on lesser slopes as may be
449 defined by rule after consideration of soil and climate, no debris,

450 abandoned or disabled equipment, spoil material or waste
451 mineral matter will be placed on the natural downslope below
452 the initial bench or mining cut: *Provided*, That soil or spoil
453 material from the initial cut of earth in a new surface mining
454 operation may be placed on a limited specified area of the
455 downslope below the initial cut if the permittee can establish to
456 the satisfaction of the director that the soil or spoil will not slide
457 and that the other requirements of this section can still be met.

458 (e) The director may propose rules for legislative approval
459 in accordance with article three, chapter twenty-nine-a of this
460 code that permit variances from the approximate original contour
461 requirements of this section: *Provided*, That the watershed
462 control of the area is improved: *Provided, however*, That
463 complete backfilling with spoil material is required to
464 completely cover the highwall, which material will maintain
465 stability following mining and reclamation.

466 (f) The director shall propose rules for legislative approval
467 in accordance with article three, chapter twenty-nine-a of this
468 code for the design, location, construction, maintenance,
469 operation, enlargement, modification, removal and abandonment
470 of new and existing coal mine waste piles. In addition to
471 engineering and other technical specifications, the standards and
472 criteria developed pursuant to this subsection shall include
473 provisions for review and approval of plans and specifications
474 prior to construction, enlargement, modification, removal or
475 abandonment; performance of periodic inspections during
476 construction; issuance of certificates of approval upon
477 completion of construction; performance of periodic safety
478 inspections; and issuance of notices and orders for required
479 remedial or maintenance work or affirmative action: *Provided*,
480 That whenever the director finds that any coal processing waste
481 pile constitutes an imminent danger to human life, he or she
482 may, in addition to all other remedies and without the necessity
483 of obtaining the permission of any person prior or present who

484 operated or operates a pile or the landowners involved, enter
485 upon the premises where any coal processing waste pile exists
486 and may take or order to be taken any remedial action that may
487 be necessary or expedient to secure the coal processing waste
488 pile and to abate the conditions which cause the danger to human
489 life: *Provided, however,* That the cost reasonably incurred in any
490 remedial action taken by the director under this subsection may
491 be paid for initially by funds appropriated to the division for
492 these purposes and the sums expended shall be recovered from
493 any responsible operator or landowner, individually or jointly,
494 by suit initiated by the Attorney General at the request of the
495 director. For purposes of this subsection, "operates" or
496 "operated" means to enter upon a coal processing waste pile, or
497 part of a coal processing waste pile, for the purpose of disposing,
498 depositing, dumping coal processing wastes on the pile or
499 removing coal processing waste from the pile, or to employ a
500 coal processing waste pile for retarding the flow of or for the
501 impoundment of water.

**§22-3-19. Permit revision and renewal requirements; incidental
boundary revisions; requirements for transfer;
assignment and sale of permit rights; operator
reassignment; and procedures to obtain inactive
status.**

1 (a)(1) Any valid permit issued pursuant to this article carries
2 with it the right of successive renewal upon expiration with
3 respect to areas within the boundaries of the existing permit. The
4 holders of the permit may apply for renewal and the renewal
5 shall be issued: *Provided,* That on application for renewal, the
6 burden is on the opponents of renewal, unless it is established
7 that and written findings by the secretary are made that: (A) The
8 terms and conditions of the existing permit are not being
9 satisfactorily met: *Provided, however,* That if the permittee is
10 required to modify operations pursuant to mining or reclamation
11 requirements which become applicable after the original date of

12 permit issuance, the permittee shall be provided an opportunity
13 to submit a schedule allowing a reasonable period to comply
14 with such revised requirements; (B) the present surface mining
15 operation is not in compliance with the applicable environmental
16 protection standards of this article; (C) the renewal requested
17 substantially jeopardizes the operator's continuing responsibility
18 on existing permit areas; (D) the operator has not provided
19 evidence that the bond in effect for said operation will continue
20 in effect for any renewal requested as required pursuant to
21 sections eleven or twelve of this article; or (E) any additional
22 revised or updated information as required pursuant to rules
23 promulgated by the secretary has not been provided.

24 (2) If an application for renewal of a valid permit includes a
25 proposal to extend the surface mining operation beyond the
26 boundaries authorized in the existing permit, that portion of the
27 application for renewal which addresses any new land area is
28 subject to the full standards of this article, which includes, but is
29 not limited to: (A) Adequate bond; (B) a map showing the
30 disturbed area and facilities; and (C) a reclamation plan.

31 (3) Any permit renewal shall be for a term not to exceed the
32 period of time for which the original permit was issued.
33 Application for permit renewal shall be made at least one
34 hundred twenty days prior to the expiration of the valid permit.

35 (4) Any renewal application for an active permit shall be on
36 forms prescribed by the secretary and shall be accompanied by
37 a filing fee of \$3,000. The application shall contain such
38 information as the secretary requires pursuant to rule.

39 (b) (1) During the term of the permit, the permittee may
40 submit to the secretary an application for a revision of the
41 permit, together with a revised reclamation plan.

42 (2) An application for a significant revision of a permit is
43 subject to all requirements of this article and rules promulgated

44 pursuant thereto and shall be accompanied by a filing fee of
45 \$2,00.

46 (3) Any extension to an area already covered by the permit,
47 except incidental boundary revisions, shall be made by
48 application for another permit. If the permittee desires to add the
49 new area to his or her existing permit in order to have existing
50 areas and new areas under one permit, the secretary may so
51 amend the original permit: *Provided*, That the application for the
52 new area is subject to all procedures and requirements applicable
53 to applications for original permits under this article and a filing
54 fee of \$550.

55 (c) The secretary shall review outstanding permits of a
56 five-year term before the end of the third year of the permit.
57 Other permits shall be reviewed within the time established by
58 rules. The secretary may require reasonable revision or
59 modification of the permit following review: *Provided*, That
60 such revision or modification shall be based upon written
61 findings and shall be preceded by notice to the permittee of an
62 opportunity for hearing.

63 (d) No transfer, assignment or sale of the rights granted
64 under any permit issued pursuant to this article may be made
65 without the prior written approval of the secretary, application
66 for which shall be accompanied by a filing fee of \$1,500 for
67 transfer or \$1,500 for assignment.

68 (e) Each request for inactive status shall be submitted on
69 forms prescribed by the secretary, shall be accompanied by a
70 filing fee of \$2,00, and shall be granted in accordance with the
71 procedure established in the Surface Mining and Reclamation
72 Rule.

73 (f) The secretary shall promulgate for review and
74 consideration by the West Virginia Legislature legislative rules

75 or emergency rules during the 2016 Regular Session of the West
76 Virginia Legislature revisions to rules for granting inactive status
77 under this article. The secretary shall specifically consider the
78 adoption of federal standards codified at 30 C. F. R. §816.131
79 (1979) and 30 C. F. R. §817.131 (1979).

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

1 All persons affected by rules establishing water quality
2 standards and effluent limitations shall promptly comply
3 therewith: *Provided*, That:

4 (1) Where necessary and proper, the secretary may specify
5 a reasonable time for persons not complying with such standards
6 and limitations to comply therewith and upon the expiration of
7 any such period of time, the secretary shall revoke or modify any
8 permit previously issued which authorized the discharge of
9 treated or untreated sewage, industrial wastes or other wastes
10 into the waters of this state which result in reduction of the
11 quality of such waters below the standards and limitations
12 established therefor by rules of the board or secretary;

13 (2) For purposes of both this article and sections 309 and 505
14 of the federal Water Pollution Control Act, compliance with a
15 permit issued pursuant to this article shall be deemed compliance
16 for purposes of both this article and sections 301, 302, 303, 306,
17 307 and 403 of the federal Water Pollution Control Act and with
18 all applicable state and federal water quality standards, except
19 for any such standard imposed under section 307 of the federal
20 Water Pollution Control Act for a toxic pollutant injurious to
21 human health. Notwithstanding any provision of this code or rule
22 or permit condition to the contrary, water quality standards
23 themselves shall not be considered “effluent standards or

24 limitations” for the purposes of both this article and sections 309
25 and 505 of the federal Water Pollution Control Act and shall not
26 be independently or directly enforced or implemented except
27 through the development of terms and conditions of a permit
28 issued pursuant to this article. Nothing in this section, however,
29 prevents the secretary from modifying, reissuing or revoking a
30 permit during its term. The provisions of this section addressing
31 compliance with a permit are intended to apply to all existing
32 and future discharges and permits without the need for permit
33 modifications; and

34 (3) The Legislature finds that there are concerns within West
35 Virginia regarding the applicability of the research underlying
36 the federal selenium criteria to a state such as West Virginia
37 which has high precipitation rates and free-flowing streams and
38 that the alleged environmental impacts that were documented in
39 applicable federal research have not been observed in West
40 Virginia and, further, that considerable research is required to
41 determine if selenium is having an impact on West Virginia
42 streams, to validate or determine the proper testing methods for
43 selenium and to better understand the chemical reactions related
44 to selenium mobilization in water.

45 (4) The Legislature finds that EPA has been contemplating
46 a revision to the federally recommended criteria for several years
47 but has yet to issue a revised standard.

48 (5) Because of the uncertainty regarding the applicability of
49 the current selenium standard, the secretary is hereby directed to
50 develop within six months of the effective date of this
51 subdivision an implementation plan for the current selenium
52 standard that will include, at minimum, the following:

53 (A) Implementing the criteria as a threshold standard;

54 (B) A monitoring plan that will include chemical speciation
55 of any selenium discharge;

56 (C) A fish population survey and monitoring plan that will
57 be implemented at a representative location to assess any
58 possible impacts from selenium discharges if the threshold
59 criteria are exceeded; and

60 (D) The results of the monitoring will be reported to the
61 department for use in the development of state-specific selenium
62 criteria.

63 (6) Within twenty-four months of the effective date of this
64 subdivision, the secretary shall propose rules for legislative
65 approval in accordance with the provisions of article three,
66 chapter twenty-nine of this code which establish a state-specific
67 selenium standard that protects aquatic life. Concurrent with
68 proposing a legislative rule, the secretary shall also submit the
69 proposed standard and supporting documentation to the
70 administrator of the Environmental Protection Agency. The
71 secretary shall also consult with and consider research and data
72 from the West Virginia Water Research Institute at West
73 Virginia University, the regulated community and other
74 appropriate groups in developing the state-specific selenium
75 standard.

76 (7) Within thirty days of the effective date of this section, the
77 secretary shall promulgate an emergency rule revising the
78 statewide aluminum water quality criteria for the protection of
79 aquatic life to incorporate aluminum criteria values using a
80 hardness-based equation. Concurrent with issuing an emergency
81 rule, the secretary shall also submit the proposed revisions and
82 supporting documentation to the administrator of the
83 Environmental Protection Agency.

§22-11-8. Prohibitions; permits required.

1 (a) The secretary may, after public notice and opportunity
2 for public hearing, issue a permit for the discharge or disposition
3 of any pollutant or combination of pollutants into waters of this

4 state upon condition that the discharge or disposition meets or
5 will meet all applicable state and federal water quality standards
6 and effluent limitations and all other requirements of this article
7 and article three, chapter twenty-two-b of this code. While
8 permits shall contain conditions that are designed to meet all
9 applicable state and federal water quality standards and effluent
10 limitations, water quality standards themselves shall not be
11 incorporated wholesale either expressly or by reference as
12 effluent standards or limitations in a permit issued pursuant to
13 this article.

14 (b) It is unlawful for any person, unless the person holds a
15 permit therefor from the department, which is in full force and
16 effect, to:

17 (1) Allow sewage, industrial wastes or other wastes, or the
18 effluent therefrom, produced by or emanating from any point
19 source, to flow into the waters of this state;

20 (2) Make, cause or permit to be made any outlet, or
21 substantially enlarge or add to the load of any existing outlet, for
22 the discharge of sewage, industrial wastes or other wastes, or the
23 effluent therefrom, into the waters of this state;

24 (3) Acquire, construct, install, modify or operate a disposal
25 system or part thereof for the direct or indirect discharge or
26 deposit of treated or untreated sewage, industrial wastes or other
27 wastes, or the effluent therefrom, into the waters of this state, or
28 any extension to or addition to the disposal system;

29 (4) Increase in volume or concentration any sewage,
30 industrial wastes or other wastes in excess of the discharges or
31 disposition specified or permitted under any existing permit;

32 (5) Extend, modify or add to any point source, the operation
33 of which would cause an increase in the volume or concentration
34 of any sewage, industrial wastes or other wastes discharging or
35 flowing into the waters of the state;

36 (6) Construct, install, modify, open, reopen, operate or
37 abandon any mine, quarry or preparation plant, or dispose of any
38 refuse or industrial wastes or other wastes from the mine or
39 quarry or preparation plant: *Provided*, That the department's
40 permit is only required wherever the aforementioned activities
41 cause, may cause or might reasonably be expected to cause a
42 discharge into or pollution of waters of the state, except that a
43 permit is required for any preparation plant: *Provided, however*,
44 That unless waived in writing by the secretary, every application
45 for a permit to open, reopen or operate any mine, quarry or
46 preparation plant or to dispose of any refuse or industrial wastes
47 or other wastes from the mine or quarry or preparation plant
48 shall contain a plan for abandonment of the facility or operation,
49 which plan shall comply in all respects to the requirements of
50 this article. The plan of abandonment is subject to modification
51 or amendment upon application by the permit holder to the
52 secretary and approval of the modification or amendment by the
53 secretary; or

54 (7) Operate any disposal well for the injection or reinjection
55 underground of any industrial wastes, including, but not limited
56 to, liquids or gases, or convert any well into such a disposal well
57 or plug or abandon any such disposal well.

58 (c) Where a person has a number of outlets emerging into the
59 waters of this state in close proximity to one another, the outlets
60 may be treated as a unit for the purposes of this section, and only
61 one permit issued for all the outlets.

**§22-11-22a. Civil penalties and injunctive relief; civil
administrative penalties for coal mining
operations.**

1 (a) Any person who holds a permit to operate a coal mining
2 operation issued under article three of this chapter who violates
3 any provision of any permit issued under or subject to the

4 provisions of this article or article eleven-a of this chapter is
5 subject to a civil penalty not to exceed \$25,000 per day of the
6 violation and any person who violates any provision of this
7 article or of any rule or who violates any standard or order
8 promulgated or made and entered under the provisions of this
9 article, article eleven-a of this chapter or article one, chapter
10 twenty-two-b of this code is subject to a civil penalty not to
11 exceed \$25,000 per day of the violation: *Provided*, That any
12 penalty imposed pursuant to the Surface Coal Mining and
13 Reclamation Act [§§ 22-3-1 et seq.] shall be credited against any
14 enforcement action under this article for violations of standards
15 protecting state waters.

16 (1) Any such civil penalty may be imposed and collected
17 only by a civil action instituted by the secretary in the circuit
18 court of the county in which the violation occurred or is
19 occurring or of the county in which the waters thereof are
20 polluted as the result of such violation.

21 (2) In determining the amount of a civil penalty the circuit
22 court shall consider the seriousness of the violation or violations,
23 the economic benefit, if any, resulting from the violation, any
24 history of the violations, any good-faith efforts to comply with
25 the applicable requirements, cooperation by the permittee with
26 the secretary, the economic impact of the penalty on the violator,
27 and other matters as justice may require.

28 (3) Upon application by the secretary, the circuit courts of
29 the state or the judges thereof in vacation may by injunction
30 compel compliance with and enjoin violations of the provisions
31 of this article, article eleven-a of this chapter, the rules of the
32 board or secretary, effluent limitations, the terms and conditions
33 of any permit granted under the provisions of this article or
34 article eleven-a of this chapter or any order of the secretary or
35 board, and the venue of any such actions shall be the county in
36 which the violations or noncompliance exists or is taking place

37 or in any county in which the waters thereof are polluted as the
38 result of the violation or noncompliance. The court or the judge
39 thereof in vacation may issue a temporary or preliminary
40 injunction in any case pending a decision on the merits of any
41 injunction application filed. Any other section of this code to the
42 contrary notwithstanding, the state is not required to furnish
43 bond as a prerequisite to obtaining injunctive relief under this
44 article or article eleven-a of this chapter. An application for an
45 injunction under the provisions of this section may be filed and
46 injunctive relief granted notwithstanding that all of the
47 administrative remedies provided in this article have not been
48 pursued or invoked against the person or persons against whom
49 such relief is sought and notwithstanding that the person or
50 persons against whom such relief is sought have not been
51 prosecuted or convicted under the provisions of this article.

52 (4) The judgment of the circuit court upon any application
53 filed or in any civil action instituted under the provisions of this
54 section is final unless reversed, vacated or modified on appeal to
55 the Supreme Court of Appeals. Any such appeal shall be sought
56 in the manner provided by law for appeals from circuit courts in
57 other civil cases, except that the petition seeking review in any
58 injunctive proceeding must be filed with said Supreme Court of
59 Appeals within ninety days from the date of entry of the
60 judgment of the circuit court.

61 (5) Legal counsel and services for the director, secretary or
62 the board in all civil penalty and injunction proceedings in the
63 circuit court and in the Supreme Court of Appeals of this state
64 shall be provided by legal counsel employed by the department,
65 the Attorney General or his or her assistants and by the
66 prosecuting attorneys of the several counties as well, all without
67 additional compensation, or the director, secretary or the board
68 may employ counsel to represent him or her or it in a particular
69 proceeding.

70 (b) The secretary may assess a civil administrative penalty
71 whenever he or she finds that a person who holds a permit to
72 operate a coal mining operation issued under article three of this
73 chapter has violated any provision of this article or article
74 eleven-a of this chapter, any permit issued under or subject to the
75 provisions of this article or article eleven-a of this chapter or any
76 rule or order issued pursuant to this article or article eleven-a of
77 this chapter. A civil administrative penalty may be assessed
78 unilaterally by the director in accordance with this subsection.

79 (1) Any civil administrative penalty assessed pursuant to this
80 section shall not exceed \$10,000 per violation and the maximum
81 amount of any civil administrative penalty assessed pursuant to
82 this section shall not exceed \$125,000: *Provided*, That any
83 stipulated penalties accrued after the date of the draft order shall
84 not be included for purposes of determining the total amount of
85 the civil administrative penalty. For purposes of this section, a
86 single operational upset which leads to simultaneous violations
87 of more than one pollutant parameter shall be treated as a single
88 violation.

89 (2) In determining the amount of any civil administrative
90 penalty assessed under this subsection, the secretary shall take
91 into account the nature, circumstances, extent and gravity of the
92 violation, or violations, and, with respect to the violator, ability
93 to pay, any prior history of such violations, the degree of good
94 faith, economic benefit or savings, if any, resulting from the
95 violation, cooperation of the alleged violator, and such other
96 matters as justice may require.

97 (3) No assessment may be levied pursuant to this subsection
98 until after the alleged violator has been notified by certified mail
99 or personal service pursuant to the West Virginia rules of civil
100 procedure. The notice shall include a proposed order which
101 refers to the provision of the statute, rule, order or permit alleged
102 to have been violated, a concise statement of the facts alleged to

103 constitute the violation, a statement of the amount of the
104 administrative penalty to be imposed and a statement of the
105 alleged violator's right to an informal hearing prior to the
106 issuance of the proposed order.

107 (A) The alleged violator has thirty calendar days from
108 receipt of the notice within which to deliver to the secretary a
109 written request for an informal hearing.

110 (B) If no hearing is requested, the proposed order becomes
111 a draft order after the expiration of the thirty-day period.

112 (C) If an informal hearing is requested, the director shall
113 inform the alleged violator of the time and place of the hearing.
114 The secretary may appoint an assessment officer to conduct the
115 informal hearing and make a written recommendation to the
116 secretary concerning the proposed order and the assessment of
117 a civil administrative penalty.

118 (D) Within thirty days following the informal hearing, the
119 secretary shall render and furnish to the alleged violator a written
120 decision, and the reasons therefor, concerning the assessment of
121 a civil administrative penalty. The proposed order shall be
122 revised, if necessary, and shall become a draft order.

123 (4) The secretary shall provide the opportunity for the public
124 to comment on any draft order by publishing a Class II legal
125 advertisement in the newspaper with the largest circulation in the
126 county in which the violation occurred, and by other such means
127 as the secretary deems appropriate, which shall provide notice of
128 the draft order, including the civil administrative penalty
129 assessment. The secretary shall consider any comments received
130 in determining whether to revise the draft order before issuance
131 of a final order. During the thirty-day public comment period,
132 any person may request a public hearing regarding the draft
133 order and the secretary may grant or deny the request at his or

134 her discretion. If a request for a public hearing is denied, the
135 secretary shall provide notice to the person requesting a hearing
136 and reasons for such denial.

137 (5) Within thirty days of the close of the public comment
138 period on a draft order, the secretary shall issue a final order or
139 make a determination not to issue a final order, and shall provide
140 written notice by certified mail or personal service pursuant to
141 the West Virginia rules of civil procedure to the alleged violator
142 and shall provide notice by certified mail or personal service
143 pursuant to the West Virginia rules of civil procedure to those
144 persons who submitted written comments on the draft order
145 during the public comment period.

146 (6) The issuance of a final order assessing a civil
147 administrative penalty pursuant to subsection (b) of this section
148 may be appealed to the environmental quality board pursuant to
149 section twenty-one of this article. Any person who submitted
150 written comments on a draft order during the public comment
151 period shall have the right to file such an appeal or intervene in
152 any appeal filed by the alleged violator.

153 (7) The authority to levy a civil administrative penalty is in
154 addition to all other enforcement provisions of this article and
155 the payment of any assessment does not affect the availability of
156 any other enforcement provision in connection with the violation
157 for which the assessment is levied: *Provided*, That no
158 combination of assessments against a violator under this section
159 shall exceed \$25,000 for each violation: *Provided, however*, That
160 any violation for which the violator has paid a civil
161 administrative penalty assessed under this section may not be the
162 subject of a separate civil penalty action. No assessment levied
163 pursuant to this section becomes due and payable until at least
164 thirty days after receipt of the final order or the procedures for
165 review of the assessment, including any appeals, have been
166 completed, whichever is later.

167 (c) In addition to the authorities set forth in this section, the
168 secretary may also enter into agreements, settlements and other
169 consent orders resolving alleged violations of this chapter.

170 (d) The secretary shall propose, for legislative review, rules,
171 including emergency rules, in accordance with the provisions of
172 article three, chapter twenty-nine-a of this code to establish
173 procedures for assessing civil administrative penalties in
174 accordance with this section by no later than July 1, 2015.

CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-41. The Coal Jobs and Safety Act of 2015; legislative findings.

1 (a) *Legislative findings.* —

2 (1) In the past six years, West Virginia's coal industry has
3 been battered by constant judicial and regulatory assaults, which
4 have disproportionately raised the cost of mining coal in West
5 Virginia compared with production costs in other coal producing
6 states. These increased costs of production have caused West
7 Virginia coal to become uncompetitive with other coals in the
8 declining worldwide and domestic coal markets.

9 (2) Coal production in West Virginia has fallen from one
10 hundred sixty-five million tons in 2008 to approximately one
11 hundred fifteen million tons in 2014, a decline of thirty-one
12 percent. Much of this decline has been concentrated in the
13 southern coalfields.

14 (3) The number of active mines producing coal has
15 decreased by more than fifty-three percent, from two hundred
16 fifty-nine in 2008 to just one hundred twenty-one today.

17 (4) During that same period, direct coal mining employment
18 has decreased by approximately four thousand jobs, from a high
19 of twenty-two thousand three hundred thirty-six in 2011 to just
20 eighteen thousand two hundred today, a decline of nineteen
21 percent.

22 (5) When the coal-related jobs multiplier, established by the
23 West Virginia University and Marshall University Colleges of
24 Business, 2010 Joint Economic Impact Report, is factored in the
25 total direct and indirect jobs impact on the West Virginia
26 economy shows a twenty thousand six hundred eighty-job
27 decline in mining and mine-dependent employment in the state
28 from one hundred thousand eleven six hundred eighty in 2011 to
29 ninety-one thousand today. The impact of this damage to the
30 West Virginia economy is demonstrated by the rapid rise of
31 unemployment in the coalfields with some counties now
32 reporting an unemployment rate of more than ten percent.

33 (6) The economic stress to the coal industry and to the state
34 as a whole is evident in the estimated loss of nearly \$300 million
35 in direct mining wages paid since 2011. This loss is
36 exponentially higher when you factor in indirect wages lost as
37 mining support jobs decline.

38 (7) As a direct result of the damage to the coal industry,
39 West Virginia has also lost significant tax revenues, as coal
40 severance taxes have declined by approximately twenty-four
41 percent in just the past two years – from a high of \$527 million
42 in 2012 to an estimated \$406 million in 2014. This damage
43 reverberates through the total economy, with reductions in
44 money available to fund schools, highways, basic services and
45 health care – needs that increase when income and health care is
46 lost with the loss of jobs.

47 (8) All of these challenges must be addressed and overcome
48 if we are to continue to provide the economic foundation for our
49 state's economy. The encouragement of economic growth and
50 development in the coal industry in this state is in the public
51 interest and promotes the general welfare of the people of this
52 state.

53 (b) *Coal Jobs and Safety Act of 2015*. — Therefore, in order
54 to encourage the recovery of the West Virginia coal industry and
55 to increase direct and indirect employment thus created, the
56 Legislature enacts the Coal Jobs and Safety Act of 2015 and it is
57 collectively comprised of:

58 (1) This section;

59 (2) The amendments to:

60 (A) Sections thirteen and nineteen, article three, chapter
61 twenty-two of this code;

62 (B) Sections six and eight, article eleven, chapter twenty-two
63 of this code;

64 (C) Section one, article one-a of this chapter;

65 (D) Sections six, twenty-eight and thirty-seven, article two
66 of this chapter;

67 (E) Section one hundred one, article two-a, chapter twenty-
68 two-a of this code; and

69 (F) Sections three hundred one, three hundred eight, three
70 hundred nine, three hundred ten, four hundred two, four hundred
71 three, four hundred four, four hundred five, five hundred one, six
72 hundred one, six hundred two, six hundred three and six hundred
73 four, article two-a of this chapter; and

74 (3) The following new sections:

75 (A) Section twenty-two-a, article eleven, chapter twenty-two
76 of this code; and

77 (B) Section two hundred four-a, article two-a of this chapter
78 that were adopted and enacted during the 2015 Regular Session
79 of the Legislature.

**ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY AND
TRAINING; ADMINISTRATION;
SUBSTANCE ABUSE.**

**§22A-1A-1. Substance abuse screening; minimum requirements;
standards and procedures for screening.**

1 (a) Every employer of certified persons, as defined in section
2 two, article one of this chapter, shall implement a substance
3 abuse screening policy and program that shall, at a minimum,
4 include:

5 (1) A preemployment, ten-panel urine test for the following
6 and any other substances as set out in rules adopted by the Office
7 of Miners' Health, Safety and Training:

8 (A) Amphetamines;

9 (B) Cannabinoids/THC;

10 (C) Cocaine;

11 (D) Opiates;

12 (E) Phencyclidine (PCP);

13 (F) Benzodiazepines;

14 (G) Propoxyphene;

15 (H) Methadone;

16 (I) Barbiturates; and

17 (J) Synthetic narcotics.

18 Split samples shall be collected by providers who are
19 certified as complying with standards and procedures set out in
20 the United States Department of Transportation's rule, 49 C. F.
21 R. Part 40, which may be amended, from time to time, by
22 legislative rule of the Office of Miners' Health, Safety and
23 Training. Collected samples shall be tested by laboratories
24 certified by the United States Department of Health and Human
25 Services, Substance Abuse and Mental Health Services
26 Administration (SAMHSA) for collection and testing.
27 Notwithstanding the provisions of this subdivision, the mine
28 operator may implement a more stringent substance abuse
29 screening policy and program;

30 (2) A random substance abuse testing program covering the
31 substances referenced in subdivision (1) of this subsection.
32 "Random testing" means that each person subject to testing has
33 a statistically equal chance of being selected for testing at
34 random and at unscheduled times. The selection of persons for
35 random testing shall be made by a scientifically valid method,
36 such as a random number table or a computer-based random
37 number generator that is matched with the persons' Social
38 Security numbers, payroll identification numbers or other
39 comparable identifying numbers; and

40 (3) Review of the substance abuse screening program with
41 all persons required to be tested at the time of employment, upon
42 a change in the program and annually thereafter.

43 (b) For purposes of this subsection, preemployment testing
44 shall be required upon hiring by a new employer, rehiring by a
45 former employer following a termination of the
46 employer/employee relationship or transferring to a West
47 Virginia mine from an employer's out-of-state mine to the extent

48 that any substance abuse test required by the employer in the
49 other jurisdiction does not comply with the minimum standards
50 for substance abuse testing required by this article. Furthermore,
51 the provisions of this section apply to all employers that employ
52 certified persons who work in mines, regardless of whether that
53 employer is an operator, contractor, subcontractor or otherwise.

54 (c) (1) Every employer shall notify the director, on a form
55 prescribed by the director, within seven days of any of the
56 following:

57 (A) A positive drug or alcohol test of a certified person,
58 whether it be a preemployment test, random test, reasonable
59 suspicion test or post-accident test. However, for purposes of
60 determining whether a drug test is positive the certified
61 employee may not rely on a prescription dated more than one
62 year prior to the date of the drug test result;

63 (B) The refusal of a certified person to submit a sample;

64 (C) A certified person possessing a substituted sample or an
65 adulterated sample; or

66 (D) A certified person submitting a substituted sample or an
67 adulterated sample.

68 (2) With respect to any certified person subject to a
69 collective bargaining agreement, the employer shall notify the
70 director, on a form prescribed by the director, within seven days
71 of any of the following:

72 (A) A positive drug or alcohol test of a certified person,
73 whether it be a preemployment test, random test, reasonable
74 suspicion test or post-accident test. However, for purposes of
75 determining whether a drug test is positive the certified
76 employee may not rely on a prescription dated more than one
77 year prior to the date of the drug test result;

78 (B) The refusal of a certified person to submit a sample;

79 (C) A certified person possessing a substituted sample or an
80 adulterated sample; or

81 (D) A certified person submitting a substituted sample or an
82 adulterated sample.

83 (3) When the employer submits the completed notification
84 form prescribed by the director, the employer shall also submit
85 a copy of the laboratory test results showing the substances
86 tested for and the results of the test.

87 (4) Notice shall result in the immediate temporary
88 suspension of all certificates held by the certified person who
89 failed the screening, pending a hearing before the board of
90 appeals pursuant to section two of this article.

91 (d) Suspension or revocation of a certified person's
92 certificate as a miner or other miner specialty in another
93 jurisdiction by the applicable regulatory or licensing authority
94 for substance abuse-related matters shall result in the director
95 immediately and temporarily suspending the certified person's
96 West Virginia certificate until such time as the certified person's
97 certification is reinstated in the other jurisdiction.

98 (e) The provisions of this article shall not be construed to
99 preclude an employer from developing or maintaining a drug and
100 alcohol abuse policy, testing program or substance abuse
101 program that exceeds the minimum requirements set forth in this
102 section. The provisions of this article shall also not be construed
103 to require an employer to alter, amend, revise or otherwise
104 change, in any respect, a previously established substance abuse
105 screening policy and program that meets or exceeds the
106 minimum requirements set forth in this section. The provisions
107 of this article shall require an employer to subject its employees
108 who as part of their employment are regularly present at a mine

109 and who are employed in a safety-sensitive position to
110 preemployment and random substance abuse tests: *Provided,*
111 That each employer shall retain the discretion to establish the
112 parameters of its substance abuse screening policy and program
113 so long as it meets the minimum requirements of this article. For
114 purposes of this section, a “safety-sensitive position” means an
115 employment position where the employee’s job responsibilities
116 include duties and activities that involve the personal safety of
117 the employee or others working at a mine.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-6. Requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; premovement requirements; certified and qualified persons.

1 Mining equipment being transported or trammed
2 underground, other than ordinary sectional movements, shall be
3 transported or trammed by qualified personnel. When equipment
4 is being transported or trammed where trolley wire is energized
5 on the split of air in which said equipment is being transported
6 or trammed, no person shall be permitted to be in by the
7 equipment in the ventilating split that is passing over such
8 equipment, except those directly involved with transporting or
9 tramping the equipment, and shall be under the supervision of
10 a certified foreman. To avoid accidental contact with power
11 lines, face equipment shall be insulated and assemblies removed,
12 if necessary, so as to provide clearance.

§22A-2-28. Equipment to conform with height of seam.

1 The use of underground mining equipment of a size that
2 does not conform to the height of the seam being mined, which
3 creates unsafe working conditions for the miner operating the

4 equipment or others, is prohibited: *Provided*, That the addition
5 of or use of sideboards on shuttle cars shall be permitted if the
6 shuttle car is equipped with cameras: *Provided, however*, That
7 shuttle cars with sideboards as manufactured by an equipment
8 manufacturer shall be permitted to be used without the use of
9 cameras if permitted by the director. The board of coal mine
10 health and safety shall promulgate such rules as are necessary to
11 effectuate this section.

**§22A-2-37. Haulage roads and equipment; shelter holes;
prohibited practices; signals; inspection.**

1 (a) The roadbed, rails, joints, switches, frogs and other
2 elements of all haulage roads shall be constructed, installed and
3 maintained in a manner consistent with speed and type of
4 haulage operations being conducted to ensure safe operation.
5 Where transportation of personnel is exclusively by rail, track
6 shall be maintained to within one thousand five hundred feet of
7 the nearest working face, except that when any section is fully
8 developed and being prepared for retreating, then the track shall
9 be maintained to within one thousand five hundred feet of that
10 retreat mining section if a rubber tired vehicle is readily
11 available: *Provided*, That in any case where such track is
12 maintained to within a distance of more than five hundred feet
13 and not more than one thousand five hundred feet of the nearest
14 working face, a self-propelled rubber-tired vehicle capable of
15 transporting an injured worker shall be readily available.

16 (b) Track switches, except room and entry development
17 switches, shall be provided with properly installed throws, bridle
18 bars and guard rails; switch throws and stands, where possible,
19 shall be placed on the clearance side.

20 (c) Haulage roads on entries shall have a continuous,
21 unobstructed clearance of at least twenty-four inches from the
22 farthest projection of any moving equipment on the clearance
23 side.

24 (d) On haulage roads where trolley lines are used, the
25 clearance shall be on the side opposite the trolley lines.

26 (e) On the trolley wire or “tight” side, there shall be at least
27 twelve inches of clearance from the farthest projection of any
28 moving equipment.

29 (f) Warning lights or reflective signs or tapes shall be
30 installed along haulage roads at locations of abrupt or sudden
31 changes in the overhead clearance.

32 (g) The clearance space on all haulage roads shall be kept
33 free of loose rock, coal, supplies or other material: *Provided,*
34 That not more than twenty-four inches need be kept free of such
35 obstructions.

36 (h) Ample clearance shall be provided at all points where
37 supplies are loaded or unloaded along haulage roads or
38 conveyors which in no event shall be less than twenty-four
39 inches.

40 (i) Shelter holes shall be provided along haulage entries.
41 Such shelter holes shall be spaced not more than one hundred
42 five feet apart, except when variances are authorized by the
43 director with unanimous agreement of the mine safety and
44 technical review committee. Shelter holes shall be on the side of
45 the entry opposite the trolley wire except that shelter holes may
46 be on the trolley wire and feeder wire side if the trolley wire and
47 feeder wire are guarded in a manner approved by the director.

48 (j) Shelter holes shall be at least five feet in depth, not more
49 than four feet in width and as high as the traveling space, unless
50 the director with unanimous agreement of the mine safety and
51 technical review committee grants a waiver. Room necks and
52 crosscuts may be used as shelter holes even though their width
53 exceeds four feet.

54 (k) Shelter holes shall be kept clear of refuse and other
55 obstructions.

56 (l) Shelter holes shall be provided at switch throws and
57 manually operated permanent doors.

58 (m) No steam locomotive shall be used in mines where
59 miners are actually employed in the extraction of coal, but this
60 shall not prevent operation of a steam locomotive through any
61 tunnel haulway or part of a mine that is not in actual operation
62 and producing coal.

63 (n) Underground equipment powered by internal combustion
64 engines using petroleum products, alcohol, or any other
65 compound shall not be used in a coal mine, unless the equipment
66 is diesel-powered equipment approved, operated and maintained
67 as provided in article two-a of this chapter.

68 (o) Locomotives, personnel carriers, mine cars, supply cars,
69 shuttle cars, and all other haulage equipment shall be maintained
70 in a safe operating condition. Each locomotive, personnel carrier,
71 barrier tractor and other related equipment shall be equipped
72 with a suitable lifting jack and handle. An audible warning
73 device and headlights shall be provided on each locomotive and
74 each shuttle car. All other mobile equipment, using the face
75 areas of the mine, shall be provided with a conspicuous light or
76 other approved device so as to reduce the possibility of collision.

77 (p) No persons other than those necessary to operate a trip or
78 car shall ride on any loaded car or on the outside of any car.
79 Where pusher locomotives are not used, the locomotive operator
80 shall have an assistant to assist him or her in his or her duties.

81 (q) The pushing of trips, except for switching purposes, is
82 prohibited on main haulage roads: *Provided*, That nothing herein
83 shall prohibit the use of a pusher locomotive to assist the
84 locomotive pulling a trip. Motormen and trip riders shall use

85 care in handling locomotives and cars. It shall be their duty to
86 see that there is a conspicuous light on the front and rear of each
87 trip or train of cars when in motion: *Provided, however,* That trip
88 lights need not be used on cars being shifted to and from loading
89 machines, or on cars being handled at loading heads during
90 gathering operations at working faces. . No person, other than
91 the motorman and brakeman, should ride on a locomotive unless
92 authorized by the mine foreman, and then only when safe riding
93 facilities are provided. An empty car or cars shall be used to
94 provide a safe distance between the locomotive and the material
95 car when rail, pipe or long timbers are being hauled. A safe
96 clearance shall be maintained between the end car or trips placed
97 on side tracks and moving traffic. On haulage roads the
98 clearance point shall be marked with an approved device.

99 (r) No motorman, trip rider or brakeman shall get on or off
100 cars, trips or locomotives while they are in motion, except that
101 a trip rider or brakeman may get on or off the rear end of a
102 slowly moving trip or the stirrup of a slowly moving locomotive
103 to throw a switch, align a derail or open or close a door.

104 (s) Flying or running switches and riding on the front
105 bumper of a car or locomotive are prohibited. Back poling shall
106 be prohibited except with precaution to the nearest turning point
107 (not over eighty feet), or when going up extremely steep grades
108 and then only at slow speed. The operator of a shuttle car shall
109 face in the direction of travel except during the loading operation
110 when he or she shall face the loading machine.

111 (t) (1) A system of signals, methods or devices shall be used
112 to provide protection for trips, locomotives and other equipment
113 coming out onto tracks used by other equipment.

114 (2) In any coal mine where more than three hundred fifty
115 tons of coal are produced on any shift in each 24-hour period, a
116 dispatcher shall be on duty when there are movements of track

117 equipment underground, including time when there is no
118 production of coal. Such traffic shall move only at the direction
119 of the dispatcher.

120 (3) The dispatcher's only duty shall be to direct traffic:
121 *Provided*, That the dispatcher's duties may also include those of
122 the responsible person required by section forty-two of this
123 article: *Provided, however*, That the dispatcher may perform
124 other duties which do not interfere with his or her dispatching
125 responsibilities and do not require him or her to leave the
126 dispatcher's station except as approved by the mine safety and
127 technical review committee.

128 (4) Any dispatcher's station shall be on the surface.

129 (5) All self-propelled track equipment shall be equipped with
130 two-way communications.

131 (u) Motormen shall inspect locomotives, and report any
132 mechanical defects found to the proper supervisor before a
133 locomotive is put in operation.

134 (v) A locomotive following another trip shall maintain a
135 distance of at least three hundred feet from the rear end of the
136 trip ahead, unless such locomotive is coupled to the trip ahead.

137 (w) Positive stop blocks or derails shall be installed on all
138 tracks near the top and at landings of shafts, slopes and surface
139 inclines. Positive-acting stop blocks or derails shall be used
140 where necessary to protect persons from danger of runaway
141 haulage equipment.

142 (x) Shuttle cars shall not be altered by the addition of
143 sideboards so as to inhibit the view of the operator: *Provided*,
144 That the addition of or use of sideboards on shuttle cars shall be
145 permitted if the shuttle car is equipped with cameras: *Provided*,

146 *however*, That shuttle cars with sideboards as manufactured by
147 an equipment manufacturer shall be permitted to be used without
148 the use of cameras if permitted by the director.

149 (y) Mining equipment shall not be parked within fifteen feet
150 of a check curtain or fly curtain.

151 (z) All self-propelled track haulage equipment shall be
152 equipped with an emergency stop switch, self centering valves,
153 or other devices designed to de-energize the traction motor
154 circuit in the event of an emergency. All track mounted trolley
155 equipment shall be equipped with trolley pole swing limiters or
156 other means approved by the mine safety and technical review
157 committee to restrict movement of the trolley pole when it is
158 disengaged from the trolley wire. Battery-powered mobile
159 equipment shall have the operating controls clearly marked to
160 distinguish the forward and reverse positions.

ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.

PART I. GENERAL PROVISIONS.

§22A-2A-101. Use of diesel-powered equipment authorized.

1 Diesel-powered equipment for use in underground coal
2 mines may only be approved, operated and maintained in
3 accordance with rules, requirements and standards established
4 pursuant to this article.

§22A-2A-204a. Director defined.

1 “Director” means the Director of the Office of Miners’
2 Health, Safety and Training established in section one, article
3 one of this chapter.

§22A-2A-301. The West Virginia Diesel Equipment Commission abolished; transfer of duties and responsibilities; transfer of equipment and records; continuation of prior approvals of diesel equipment for use in underground coal mines; continuation of rules of the commission.

1 (a) The West Virginia Diesel Equipment Commission is
2 hereby abolished. All duties and responsibilities heretofore
3 imposed upon the commission are hereby imposed upon the
4 Director of the Office of Miners' Health, Safety and Training.

5 (b) On the effective date of the reenactment of this section,
6 all equipment and records necessary to effectuate the purposes
7 of this article shall be transferred to the director.

8 (c) The rules of the commission in effect immediately prior
9 to the effective date of the reenactment of this section shall
10 remain in force and effect until promulgation of new or
11 additional rules by the director pursuant to section three hundred
12 eight of this article. To the extent the director finds that the
13 commission rules in effect on the effective date of the
14 reenactment of this section adequately fulfill any of the duties of
15 the commission that are transferred to the director by the
16 reenactment of any of the provisions of this article, such rules
17 are deemed to be actions taken by the director to fulfill such
18 duties.

19 (d) All approvals of diesel-powered equipment, diesel power
20 packages or engines and exhaust emissions control and
21 conditioning systems made by the commission and in effect prior
22 to the effective date of this article shall remain in full force and
23 effect.

§22A-2A-308. Director's authority to promulgate legislative rules; continuation of rules adopted by the commission.

1 (a) The director has the power and authority to propose
2 legislative rules to carry out and implement the provisions of this
3 article in accordance with the provisions of article three, chapter
4 twenty-nine-a of this code. In proposing rules for legislative
5 approval, the director shall consider the highest achievable
6 measures of protection for miners' health and safety through
7 available technology, engineering controls and performance
8 requirements and shall further consider the cost, availability,
9 adaptability and suitability of any available technology,
10 engineering controls and performance requirements as they
11 relate to the use of diesel equipment in underground coal mines.

12 (b) All rules promulgated and adopted by the commission in
13 effect prior to the effective date of this section shall remain in
14 effect until changed or superseded by legislative rule enacted
15 pursuant to subsection (a) of this section.

16 (c) The duties imposed upon the director in this article that
17 were previously required to be performed by the adoption of
18 rules by the commission and that were satisfied or fulfilled by
19 rules adopted by the commission are deemed to be the acts of the
20 director.

§22A-2A-309. Director's authority to approve site-specific experimental testing prior to initial rules.

1 The director may approve limited site-specific requests for
2 experimental and testing use of diesel-powered equipment in
3 underground coal mines prior to promulgation of initial rules in
4 accordance with subsections (b), (c), (d), (e), (f) and (g), section
5 three hundred ten of this article.

§22A-2A-310. Duties of director.

1 (a) It is the duty of the director to carry out and implement
2 this article and to evaluate and adopt state-of-the-art technology

3 and methods, reflected in engines and engine components,
4 emission control equipment and procedures, which when applied
5 to diesel-powered underground mining machinery, shall
6 reasonably reduce or eliminate diesel exhaust emissions and
7 enhance protections of the health and safety of miners. The
8 technology and methods adopted by the director shall have been
9 demonstrated to be reliable. In making a decision to adopt new
10 technology and methods, the director shall consider the highest
11 achievable measures of protection for miners' health and safety
12 through available technology, engineering controls and
13 performance requirements and shall further consider the cost,
14 availability, adaptability and suitability of any available
15 technology, engineering controls and performance requirements
16 as they relate to the use of diesel equipment in underground coal
17 mines. Any state-of-the-art technology or methods adopted by
18 the director shall not reduce or compromise the level of health
19 and safety protection of miners.

20 (b) Upon application of a coal mine operator, the director
21 shall consider site-specific requests for the use of diesel
22 equipment in underground coal mines and for the use of
23 alternative diesel-related health and safety technologies and
24 methods. The director's action on applications submitted under
25 this subsection shall be on a mine-by-mine basis. Upon receipt
26 of a site-specific application, the director shall conduct an
27 investigation, which investigation shall include consultation with
28 the mine operator and the authorized representatives of the
29 miners at the mine. Authorized representatives of the miners
30 shall include a mine health and safety committee elected by
31 miners at the mine, a person or persons employed by an
32 employee organization representing miners at the mine or a
33 person or persons authorized as the representative or
34 representatives of miners of the mine in accordance with MSHA
35 regulations at 30 C. F. R. Pt. 40 (relating to representative of
36 miners). Where there is no authorized representative of the
37 miners, the director shall consult with a reasonable number of

38 miners at the mine. Upon completion of the investigation, the
39 director may approve the application for the site-specific request.

40 (1) Within one hundred eighty days of receipt of an
41 application for use of alternative technologies or methods, the
42 director shall complete its investigation. However, the director
43 has an additional one hundred eighty days to complete
44 investigations upon applications filed prior to the effective date
45 of the reenactment of this section. The time period may be
46 extended with the consent of the applicant.

47 (2) The director shall have thirty days upon completion of
48 the investigation in which to render a final decision approving or
49 rejecting the application.

50 (3) The director may not approve an application made under
51 this section if, at the conclusion of the investigation, the director
52 determines that the use of the alternative technology or method
53 will reduce or compromise the level of health and safety
54 protection of miners.

55 (4) The written approval of an application for the use of
56 alternative technologies or methods shall include the results of
57 the director's investigation and describe the specific conditions
58 of use for the alternative technology or method.

59 (5) The written decision to reject an application for the use
60 of alternative technologies or methods shall include the results
61 of the director's investigation and shall outline in detail the basis
62 for the rejection.

63 (c) The director shall establish conditions for the use of
64 diesel-powered equipment in shaft and slope construction
65 operations at coal mines.

66 (d) The director shall have access to the services of the
67 Board of Coal Mine Health and Safety necessary for the director

68 to implement and carry out the provisions of this article. The
69 board, at the request of the director, shall provide administrative
70 support and assistance pursuant to section six, article six of this
71 chapter to enable the director to carry out the duties imposed
72 upon the director in this article.

73 (e) Any action taken by the commission, prior to the
74 effective date of the reenactment of this section, or by the
75 director to either approve or reject the use of an alternative
76 technology or method, or establish conditions under subsection
77 (c) of this section shall be final and binding and not subject to
78 further review except where a decision by the commission, prior
79 to the effective date of the reenactment of this section, or by the
80 director may be deemed to be an abuse of discretion or contrary
81 to law. If any party affected by a decision of the commission,
82 prior to the effective date of the reenactment of this section, or
83 by the director believes that the decision is an abuse of discretion
84 or contrary to law, that party may file a petition for review with
85 the circuit court of Kanawha County in accordance with the
86 provisions of the administrative procedures act relating to
87 judicial review of governmental determinations. The court, in
88 finding that any decision made by the commission, prior to the
89 effective date of the reenactment of this section, or by the
90 director is an abuse of discretion or contrary to law, shall vacate
91 and, if appropriate, remand the case.

92 (f) Appropriations for the funding of the commission and to
93 effectuate the purposes of this article shall be made to a budget
94 account hereby established for that purpose in the General
95 Revenue Fund. Expenditures from this fund are provided for in
96 section six, article six of this chapter.

§22A-2A-402. Approval of diesel power package or diesel engine.

1 Every diesel power package or diesel engine used in
2 underground coal mining shall be approved by the director when

3 it complies with applicable requirements, standards and
4 procedures established by this article, and be certified or
5 approved, as applicable, by MSHA and maintained in
6 accordance with MSHA certification or approval.

§22A-2A-403. Exhaust emissions control and conditioning systems.

1 (a) All exhaust emissions control and conditioning systems
2 and their component devices for diesel-powered equipment for
3 use in underground coal mines shall be approved by the director.
4 Such approval requires compliance with applicable standards
5 and procedures pursuant to this article for the use of the system
6 or device in reducing or eliminating diesel particulate matter,
7 carbon monoxide and oxides of nitrogen.

8 All exhaust emissions control and conditioning systems must
9 undergo an initial series of laboratory tests, using test equipment
10 requirements and standard procedures approved by the director
11 for testing for gaseous and particulate emissions. The director
12 shall compile a list of acceptable third-party laboratories where
13 testing is performed competently and reliable results are
14 produced.

15 (b) Requirements and standards for exhaust emissions
16 control and conditioning systems include, but are not limited to,
17 the following:

18 (1) A minimum standard, stated as an average percentage,
19 for the reduction of diesel particulate matter emissions by a
20 diesel particulate matter filter or other comparably effective
21 emissions control device;

22 (2) A minimum standard, stated in parts per million, for the
23 reduction of emissions of undiluted carbon monoxide, using an
24 oxidation catalyst or other gaseous emissions control device;

25 (3) A minimum standard, stated in parts per million, for the
26 reduction of emissions of oxides of nitrogen, using advanced

27 control technology such as catalytic control technology or other
28 comparably effective control methods; and

29 (4) Any additional requirements established by the rules of
30 the commission prior to the enactment of this section, as may be
31 supplemented or amended by legislative rules promulgated by
32 the director or MSHA regulations relating to requirements for
33 permissible mobile diesel-powered transportation equipment set
34 forth in part 36, title thirty of the code of federal regulations, 30
35 C. F. R. §36.1, *et seq.*

§22A-2A-404. Emissions monitoring and control.

1 The director shall establish procedures for monitoring and
2 controlling emissions from diesel-powered equipment. The
3 procedures shall include, but not be limited to, monitoring and
4 controlling activities to be performed by a qualified person.

§22A-2A-405. Exhaust gas monitoring and control.

1 (a) For monitoring and controlling exhaust gases, the
2 director shall establish the maximum allowable ambient
3 concentration of exhaust gases in the mine atmosphere.
4 Standards for exhaust gases, stated in parts per million, shall be
5 established for carbon monoxide and oxides of nitrogen. The
6 rules shall establish the location in the mine at which the
7 concentration of these exhaust gases is to be measured, the
8 frequency at which measurements are to be made, and
9 requirements prescribing the sampling instruments to be used in
10 the measurement of exhaust gases.

11 (b) The director shall establish the concentration of exhaust
12 gas, stated as a percentage of an exposure limit, that when
13 present will require changes to be made in the use of
14 diesel-powered equipment or the methods of mine ventilation, or
15 will require other modifications in the mining process.

16 (c) The director shall provide for the remedial action to be
17 taken if the concentration of any of the gases listed in subsection
18 (a) of this section exceeds the exposure limit.

19 (d) In addition to the other maintenance requirements
20 required by this article, the director shall establish requirements,
21 provide for service, maintenance and tests which are specific to
22 an engine's fuel delivery system, timing or exhaust emissions
23 control and conditioning system.

PART 5. VENTILATION.

§22A-2A-501. Ventilation.

1 (a) The director shall establish values to be maintained for
2 the minimum quantities of ventilating air where diesel-powered
3 equipment is operated. The purpose of these rules is to ensure
4 that necessary minimum ventilating air quantity is provided
5 where diesel-powered equipment is operated.

6 (b) The director shall require that each specific model of
7 diesel-powered equipment shall be approved before it is taken
8 underground. Each diesel engine shall have an assigned MSHA
9 approval number securely attached to the engine with the
10 information required by 30 C. F. R. §§7.90 and 7.105, the
11 approval plate shall also specify the minimum ventilating air
12 quantity required by the director for the specific piece of
13 diesel-powered equipment. The minimum ventilating air quantity
14 shall be determined by the director based on the amount of air
15 necessary at all times to maintain the exhaust emissions at levels
16 not exceeding the exposure limits established pursuant to section
17 four hundred six of this article.

18 (c) The minimum quantities of air in any split where any
19 individual unit of diesel-powered equipment is being operated
20 shall be at least that specified on the approval plate for that
21 equipment. Air quantity measurements to determine compliance

22 with this requirement shall be made at the individual unit of
23 diesel-powered equipment.

24 (d) The director shall establish the minimum quantities of air
25 required in any split when multiple units are operated. Air
26 quantity measurements to determine compliance with this
27 requirement shall be made at the most downwind unit of
28 diesel-powered equipment that is being operated in that air split.

29 (e) Minimum quantities of air in any split where any
30 diesel-powered equipment is operated shall not be less than the
31 minimum air quantities established pursuant to subsections (a)
32 and (b) of this section and shall be specified in the mine diesel
33 ventilation plan.

PART 6. FUEL.

§22A-2A-601. Specifications for fuel.

1 (a) The director shall establish standards for fuel to be used
2 in diesel-powered equipment in underground coal mines. A
3 purpose of these standards is to require the use of low volatile
4 fuels that will lower diesel engine gaseous and particulate
5 emissions and will reduce equipment maintenance by limiting
6 the amount of sulfur in the fuel. Another purpose of the
7 standards for fuel is to reduce the risk of fire in underground
8 mines by establishing a minimum flash point for the diesel fuel
9 used.

10 (b) Each coal mine using diesel equipment underground
11 shall establish a quality control plan for assuring that the diesel
12 fuel used complies with the standards established pursuant to this
13 section. The director shall also establish a procedure under
14 which each mine operator will provide evidence that the diesel
15 fuel used in diesel-powered equipment underground meets the
16 standards for fuel established by the commission.

§22A-2A-602. Fuel storage facilities.

1 (a) The director shall establish requirements for the safe
2 storage of diesel fuel underground so as to minimize the risks
3 associated with fire hazards in areas where diesel fuel is stored.

4 (b) (1) The director shall either provide:

5 (A) That all stationary underground diesel fuel tanks are
6 prohibited; or

7 (B) That a stationary underground diesel fuel tank may only
8 be authorized through a petitioning process that permits a
9 stationary underground diesel fuel tank to be located in a
10 permanent underground diesel fuel storage facility, on a
11 site-specific basis. Stationary underground diesel fuel tanks may
12 not be located in temporary underground diesel fuel storage
13 areas.

14 (c) The director shall establish requirements for the
15 transportation and storage of diesel fuel in diesel fuel tanks and
16 safety cans.

17 (d) The director shall establish limits on the total amount of
18 diesel fuel that may be stored in each permanent underground
19 diesel fuel storage facility and in each temporary underground
20 diesel fuel storage area.

§22A-2A-603. Dispensing of diesel fuel.

1 The director shall establish requirements governing the
2 refueling of diesel-powered equipment which shall, at a
3 minimum, comply with the provisions of part 75 of the code of
4 federal regulations dealing with the dispensing of diesel fuel, set
5 forth in 30 C. F. R. §75.1905, effective April 25, 1997.

§22A-2A-604. Location of fueling.

1 (a) Fueling of diesel-powered equipment is not to be
2 conducted in the intake escapeways unless the mine design and
3 entry configuration make it necessary. For those cases where
4 fueling in the intake escapeways is necessary, the director shall
5 establish a procedure whereby the mine operator shall submit a
6 plan for approval, outlining the special safety precautions that
7 will be taken to insure the protection of miners. The plan shall
8 specify a fixed location where fueling will be conducted in the
9 intake escapeway and all other safety precautions that will be
10 taken, which shall include an examination of the area for spillage
11 or fire by a qualified person.

12 (b) At least one person, specially trained in the cleanup and
13 disposal of diesel fuel spills, shall be on duty at the mine when
14 diesel-powered equipment or mobile fuel transportation
15 equipment is being used or when any fueling of diesel-powered
16 equipment is being conducted.

CHAPTER 53

**(Com. Sub. for S. B. 255 - By Senators Cole (Mr. President)
and Kessler)**

[By Request of the Executive]

[Passed February 20, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 3, 2015.]

AN ACT to repeal §15-8-1, §15-8-2, §15-8-3, §15-8-4, §15-8-5,
§15-8-6, §15-8-7, §15-8-8, §15-8-9, §15-8-10, §15-8-11 and
§15-8-12 of the Code of West Virginia, 1931, as amended; to
repeal §16-5J-5 of said code; to repeal §16-5T-1 of said code; to

repeal §16-42-1, §16-42-2, §16-42-3, §16-42-4, §16-42-5 and §16-42-6 of said code; to repeal §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7 of said code; to repeal §18B-1C-3 of said code; to repeal §18B-14-11 of said code; to repeal §18B-16-6 of said code; to repeal §20-2B-2a of said code; to repeal §21-3A-10 and §21-3A-18 of said code; to repeal §21-3B-3 of said code; to repeal §22C-5-1, §22C-5-2, §22C-5-3, §22C-5-4, §22C-5-5, §22C-5-6, §22C-5-7 and §22C-5-8 of said code; to repeal §23-1-1a of said code; to repeal §29-12B-4 and §29-12B-5 of said code; to repeal §31-16-1, §31-16-2, §31-16-3 and §31-16-4 of said code; to repeal §33-48-2 and §33-48-3 of said code; to repeal §55-15-1, §55-15-2, §55-15-3, §55-15-4, §55-15-5 and §55-15-6 of said code; and to repeal §62-11E-1, §62-11E-2 and §62-11E-3 of said code, all relating to eliminating unnecessary, inactive or redundant boards, councils, committees, panels, task forces and commissions; terminating West Virginia Sheriffs' Bureau; terminating Clinical Laboratories Quality Assurance Advisory Board; terminating Care Home Advisory Board; terminating Comprehensive Behavioral Health Commission; terminating Public and Higher Education Unified Educational Technology Strategic Plan, including Governor's Advisory Council for Educational Technology; terminating West Virginia Consortium for Undergraduate Research and Engineering; terminating Governor's Commission on Graduate Study in Science, Technology, Engineering and Mathematics; terminating West Virginia Rural Health Advisory Panel; terminating Ohio River Management Fund Advisory Board; terminating Occupational Safety and Health Review Commission; terminating Occupational Safety and Health Advisory Board; terminating Environmental Assistance Resource Board; terminating Commercial Hazardous Waste Management Facility Siting Board; terminating Workers' Compensation Board of Managers; terminating State Medical Malpractice Advisory Panel; terminating West Virginia Steel Futures Program, including Steel Advisory Commission; terminating West Virginia Health

Insurance Plan Board; terminating Alternative Dispute Resolution Commission; and terminating Sexually Violent Predator Management Task Force.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article relating to the West Virginia Sheriffs' Bureau.

1 §15-8-1, §15-8-2, §15-8-3, §15-8-4, §15-8-5, §15-8-6,
2 §15-8-7, §15-8-8, §15-8-9, §15-8-10, §15-8-11 and §15-8-12 of
3 the Code of West Virginia, 1931, as amended, are hereby
4 repealed.

§2. Repeal of section relating to the Clinical Laboratories Quality Assurance Advisory Board.

1 §16-5J-5 of the Code of West Virginia, 1931, as amended,
2 is hereby repealed.

§3. Repeal of section relating to the Care Home Advisory Board.

1 §16-5T-1 of the Code of West Virginia, 1931, as amended,
2 is hereby repealed.

§4. Repeal of article relating to the Comprehensive Behavioral Health Commission.

1 §16-42-1, §16-42-2, §16-42-3, §16-42-4, §16-42-5 and
2 §16-42-6 of the Code of West Virginia, 1931, as amended, are
3 hereby repealed.

§5. Repeal of article relating to the Public and Higher Education Unified Educational Technology Strategic Plan.

1 §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6
2 and §18-2J-7 of the Code of West Virginia, 1931, as amended,
3 are hereby repealed.

§6. Repeal of section relating to the West Virginia Consortium for Undergraduate Research and Engineering.

1 §18B-1C-3 of the Code of West Virginia, 1931, as amended,
2 is hereby repealed.

§7. Repeal of section relating to the Governor's Commission on Graduate Study in Science, Technology, Engineering and Mathematics.

1 §18B-14-11 of the Code of West Virginia, 1931, as
2 amended, is hereby repealed.

§8. Repeal of section relating to the West Virginia Rural Health Advisory Panel.

1 §18B-16-6 of the Code of West Virginia, 1931, as amended,
2 is hereby repealed.

§9. Repeal of section relating to the Ohio River Management Fund Advisory Board.

1 §20-2B-2a of the Code of West Virginia, 1931, as amended,
2 is hereby repealed.

§10. Repeal of section relating to the Occupational Safety and Health Review Commission.

1 §21-3A-10 of the Code of West Virginia, 1931, as amended,
2 is hereby repealed.

§11. Repeal of section relating to the Occupational Safety and Health Advisory Board.

1 §21-3A-18 of the Code of West Virginia, 1931, as amended,
2 is hereby repealed.

§12. Repeal of section relating to terminating the Environmental Assistance Resource Board.

1 §21-3B-3 of the Code of West Virginia, 1931, as amended,
2 is hereby repealed.

§13. Repeal of article relating to the Commercial Hazardous Waste Management Facility Siting Board.

1 §22C-5-1, §22C-5-2, §22C-5-3, §22C-5-4, §22C-5-5,
2 §22C-5-6, §22C-5-7 and §22C-5-8 of the Code of West Virginia,
3 1931, as amended, are hereby repealed.

§14. Repeal of section relating to the Workers' Compensation Board of Managers.

1 §23-1-1a of the Code of West Virginia, 1931, as amended,
2 is hereby repealed.

§15. Repeal of sections relating to the Medical Malpractice Advisory Panel.

1 §29-12B-4 and §29-12B-5 of the Code of West Virginia,
2 1931, as amended, are hereby repealed.

§16. Repeal of article relating to the West Virginia Steel Futures Program.

1 §31-16-1, §31-16-2, §31-16-3 and §31-16-4 of the Code of
2 West Virginia, 1931, as amended, are hereby repealed.

§17. Repeal of sections relating to the West Virginia Health Insurance Plan Board.

1 §33-48-2 and §33-48-3 of the Code of West Virginia, 1931,
2 as amended, are hereby repealed.

§18. Repeal of article relating to the Alternative Dispute Resolution Commission.

1 §55-15-1, §55-15-2, §55-15-3, §55-15-4, §55-15-5 and §55-
2 15-6 of the Code of West Virginia, 1931, as amended, are hereby
3 repealed.

§19. Repeal of article relating to the Sexually Violent Predator Management Task Force.

1 §62-11E-1, §62-11E-2 and §62-11E-3 of the Code of West
2 Virginia, 1931, as amended, are hereby repealed.



CHAPTER 54

**(S. B. 267 - By Senators Cole (Mr. President)
and Kessler)
[By Request of the Executive]**

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to repeal §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4, §16-29H-5, §16-29H-6, §16-29H-7, §16-29H-8, §16-29H-9 and §16-29H-10 of the Code of West Virginia, 1931, as amended, relating to the Governor’s Office of Health Enhancement and Lifestyle Planning.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the Governor’s Office of Health Enhancement and Lifestyle Planning.

1 §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4, §16-29H-5,
2 §16-29H-6, §16-29H-7, §16-29H-8, §16-29H-9 and §16-29H-10

3 of the Code of West Virginia, 1931, as amended, are hereby
4 repealed.

CHAPTER 55

**(Com. Sub. for H. B. 2001 - By Delegate(s) Gearheart,
J. Nelson, Arvon, Ellington, Folk, B. White, Frich, Hill,
Householder, Moffatt and Shott)**

[Passed January 27, 2015; in effect from passage.]
[Approved by the Governor on February 3, 2015.]

AN ACT to repeal §24-2F-1, §24-2F-2, §24-2F-3, §24-2F-4, §24-2F-5, §24-2F-6, §24-2F-7, §24-2F-9, §24-2F-10, §24-2F-11 and §24-2F-12, of the Code of West Virginia, 1931, as amended, all relating to repealing certain provisions of the Alternative and Renewable Energy Portfolio Act.

Be it enacted by the Legislature of West Virginia:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2F. NET METERING OF CUSTOMER-GENERATORS.

§1. Repeal of sections relating to alternative and renewable energy portfolio standard.

1 §24-2F-1, §24-2F-2, §24-2F-3, §24-2F-4, §24-2F-5, §24-2F-
2 6, §24-2F-7, §24-2F-9, §24-2F-10, §24-2F-11 and §24-2F-12 of
3 the Code of West Virginia, 1931, as amended, are hereby
4 repealed.



CHAPTER 56

(H. B. 2492 - By Delegate(s) Householder, Azinger, Espinosa, Upson, Ellington, Gearheart, Campbell, Ihle, Blair, Hamrick and Waxman)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to repeal §29-5A-10 of the Code of West Virginia, 1931, as amended, relating to the authority of the State Athletic Commission.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section that requires the sanction of the athletic commission for showing of telecasts of certain events.

- 1 §29-5A-10 of the Code of West Virginia, 1931, as amended,
- 2 is hereby repealed.



CHAPTER 57

(S. B. 360 - By Senators Miller, Beach, Carmichael, D. Hall, Mullins, Nohe, Sypolt, Williams, Woelfel, Laird, Plymale and Facemire)

[Passed March 12, 2015; in effect from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to repeal §51-4-9 and §51-4-11 of the Code of West Virginia, 1931, as amended, relating to outdated provisions containing

circuit clerk responsibilities with regard to indexes of books and reports concerning claims against the state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS RELATING TO CLERKS OF COURTS.

§1. Repeal of outdated provisions relating to circuit clerk responsibilities.

- 1 §51-4-9 and §51-4-11 of the Code of West Virginia, 1931,
- 2 as amended, are hereby repealed.



CHAPTER 58

**(Com. Sub. for H. B. 2810 - By Delegate(s) Guthrie,
Pushkin, Byrd, Rowe, McCuskey, B. White,
Stansbury and Walters)**

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-18-28, generally relating to implementing the West Virginia Property Rescue Initiative; providing legislative findings relating to the need of such program; requiring the West Virginia Housing Development Fund to facilitate the West Virginia Property Rescue Initiative; providing that the West Virginia Housing Development Fund provide technical assistance to counties and municipalities for identification, purchase, removal and rehabilitation of dilapidated properties; requiring that the West Virginia Housing Development Fund establish and fund a revolving loan fund; directing the West

Virginia Housing Development Fund to deposit monies into the revolving loan fund over a five year period; providing that no obligation of the state shall be created by the West Virginia Property Rescue Initiative; and requiring annual reports over five years; and requiring a final report on the effectiveness of the West Virginia Property Rescue Initiative.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §31-18-28, to read as follows:

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-28. West Virginia Property Rescue Initiative: findings; technical assistance and revolving loan program for removal of dilapidated housing; reporting required.

1 (a) The program set forth in this section shall be known as
2 the “West Virginia Property Rescue Initiative”.

3 (b) The Legislature finds that a great number of dilapidated
4 housing structures exist throughout the state and that county and
5 municipal officials often lack the training and resources to
6 identify, purchase, remove, or rehabilitate these structures and
7 return the property to a condition beneficial to their
8 communities. The Legislature further finds that these structures
9 contribute to increased crime in neighborhoods, including illicit
10 drug use and sales; pose threats to health and safety; decrease the
11 values of surrounding properties; and reduce the quality of life
12 in their communities and neighborhoods. The Legislature further
13 finds that improved properties expand housing opportunities,
14 increase property values and enhance the quality of life in
15 communities and neighborhoods.

16 (c) The Legislature finds that the housing development fund,
17 as a public body corporate and the state's leading housing
18 authority, has the expertise and resources to lead a property
19 rescue initiative to assist counties and municipalities in removing
20 or rehabilitating dilapidated housing and improving their
21 communities and neighborhoods by providing technical
22 assistance, training and consultation as well as needed financial
23 resources.

24 (d) The housing development fund shall implement the West
25 Virginia Property Rescue Initiative to provide technical
26 assistance, training and consultation to counties and
27 municipalities which include, but are not limited to, the
28 following: (1) maintaining lists of contractors, developers,
29 nonprofit organizations, disposal companies and land fills
30 available to assist counties and municipalities in the removal or
31 rehabilitation of dilapidated properties; (2) providing
32 information on the use of the West Virginia Property Rescue
33 Initiative in other jurisdictions; and (3) conducting or facilitating
34 seminars in strategic areas of the state to encourage and inform
35 community leaders in counties and municipalities on how to
36 successfully use the West Virginia Property Rescue Initiative to
37 improve their communities and neighborhoods individually and
38 in combination with other counties or municipalities for
39 economies of scale and efficient use of local resources.

40 (e) For the purpose of the West Virginia Property Rescue
41 Initiative, the housing development fund shall establish and fund
42 a revolving loan program to make funding available to counties
43 and municipalities for the removal of dilapidated structures on
44 such terms for repayment of loans, with or without interest, as
45 the housing development fund finds appropriate and to provide
46 technical assistance, training and consulting services to counties
47 and municipalities regarding the identification, purchase,
48 removal and rehabilitation of properties to maximize the benefits

49 of the West Virginia Property Rescue Initiative on an ongoing
50 basis, with a commitment by the housing development fund to
51 deposit at least \$5 million dollars to the West Virginia Property
52 Rescue Initiative Revolving Loan Fund over a five year period
53 beginning on July, 2015, at the rate of at least \$1 million dollars
54 per fiscal year.

55 (f) Notwithstanding any other provision to the contrary, the
56 revolving loan fund established in this section shall not be
57 considered or construed as an obligation of the state.

58 (g) To enhance the success of the West Virginia Property
59 Rescue Initiative, the housing development fund may, as a form
60 of its technical assistance, seek grants and awards of funding to
61 be made to the housing development fund or directly to counties
62 and municipalities for their property rescue initiatives, from
63 public and private organizations and government agencies,
64 federal and state, in order to provide both for additional funding
65 for the property rescue revolving loan fund or the repayment of
66 loans and for grants to counties and municipalities with dire need
67 and limited resources such that special aid and funding is needed
68 to begin and complete their local property rescue initiatives.

69 (h) The executive director of the housing development fund
70 shall report on the West Virginia Property Rescue Initiative to
71 the Joint Committee on Government and Finance annually
72 during the initial five years of the West Virginia Property Rescue
73 Initiative. At the end of the initial five years of the West Virginia
74 Property Rescue Initiative, the housing development fund board
75 of directors shall evaluate participation and success of the West
76 Virginia Property Rescue Initiative as well as other aspects of
77 the West Virginia Property Rescue Initiative in order determine
78 whether and how to adjust services and levels of funding under
79 this section.

CHAPTER 59

**(Com. Sub. for H. B. 2002 - By Delegate(s) Wagner,
Overington, A. Evans, Anderson, Waxman, Shott, Kelly, E.
Nelson, Folk, Espinosa and Mr. Speaker (Mr. Armstead))**

[Passed February 24, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 5, 2015.]

AN ACT to repeal §55-7-13 and §55-7-24 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §55-7-13a, §55-7-13b, §55-7-13c and §55-7-13d, all generally relating to predicating actions for damages upon principles of comparative fault; establishing the comparative fault standard; abolishing joint liability and implementing several liability; establishing how to consider the fault of parties and nonparties to a civil action; establishing how to consider the fault of, and the amounts paid by, settling parties; establishing how to reallocate any portion of a judgment a plaintiff is unable to collect; providing for the use of special interrogatories; establishing certain exceptions to several liability; clarifying fault may be imputed to another person who was acting as an agent or servant of another; establishing limits on liability where a plaintiff is involved in a felony criminal act; providing for the burden of proof and limitations; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §55-7-13 and §55-7-24 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto four new sections, designated §55-7-13a, §55-7-13b, §55-7-13c and §55-7-13d, all to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.**§55-7-13a. Modified comparative fault standard established.**

1 (a) For purposes of this article, “comparative fault” means
2 the degree to which the fault of a person was a proximate cause
3 of an alleged personal injury or death or damage to property,
4 expressed as a percentage. Fault shall be determined according
5 to section thirteen-c of this article.

6 (b) In any action based on tort or any other legal theory
7 seeking damages for personal injury, property damage, or
8 wrongful death, recovery shall be predicated upon principles of
9 comparative fault and the liability of each person, including
10 plaintiffs, defendants and nonparties who proximately caused the
11 damages, shall be allocated to each applicable person in direct
12 proportion to that person’s percentage of fault.

13 (c) The total of the percentages of comparative fault
14 allocated by the trier of fact with respect to a particular incident
15 or injury must equal either zero percent or one hundred percent.

§55-7-13b. Definitions.

1 As used in this article:

2 “Compensatory damages” means damages awarded to
3 compensate a plaintiff for economic and noneconomic loss.

4 “Defendant” means, for purposes of determining an
5 obligation to pay damages to another under this chapter, any
6 person against whom a claim is asserted including a counter-
7 claim defendant, cross-claim defendant or third-party defendant.

8 “Fault” means an act or omission of a person, which is a
9 proximate cause of injury or death to another person or persons,
10 damage to property, or economic injury, including, but not

11 limited to, negligence, malpractice, strict product liability,
12 absolute liability, liability under section two, article four, chapter
13 twenty-three of this code or assumption of the risk.

14 “Plaintiff” means, for purposes of determining a right to
15 recover under this chapter, any person asserting a claim.

**§55-7-13c. Liability to be several; amount of judgment; allocation
of fault.**

1 (a) In any action for damages, the liability of each defendant
2 for compensatory damages shall be several only and may not be
3 joint. Each defendant shall be liable only for the amount of
4 compensatory damages allocated to that defendant in direct
5 proportion to that defendant’s percentage of fault, and a separate
6 judgment shall be rendered against each defendant for his or her
7 share of that amount. However, joint liability may be imposed on
8 two or more defendants who consciously conspire and
9 deliberately pursue a common plan or design to commit a
10 tortious act or omission. Any person held jointly liable under this
11 section shall have a right of contribution from other defendants
12 that acted in concert.

13 (b) To determine the amount of judgment to be entered
14 against each defendant, the court, with regard to each defendant,
15 shall multiply the total amount of compensatory damages
16 recoverable by the plaintiff by the percentage of each
17 defendant’s fault and, subject to subsection (d) of this section,
18 that amount shall be the maximum recoverable against that
19 defendant.

20 (c) Any fault chargeable to the plaintiff shall not bar
21 recovery by the plaintiff unless the plaintiff’s fault is greater than
22 the combined fault of all other persons responsible for the total
23 amount of damages, if any, to be awarded. If the plaintiff’s fault
24 is less than the combined fault of all other persons, the plaintiff’s

25 recovery shall be reduced in proportion to the plaintiff's degree
26 of fault.

27 (d) Notwithstanding subsection (b) of this section, if a
28 plaintiff through good faith efforts is unable to collect from a
29 liable defendant, the plaintiff may, not later than one year after
30 judgment becomes final through lapse of time for appeal or
31 through exhaustion of appeal, whichever occurs later, move for
32 reallocation of any uncollectible amount among the other parties
33 found to be liable.

34 (1) Upon the filing of the motion, the court shall determine
35 whether all or part of a defendant's proportionate share of the
36 verdict is uncollectible from that defendant and shall reallocate
37 the uncollectible amount among the other parties found to be
38 liable, including a plaintiff at fault, according to their
39 percentages at fault: *Provided*, That the court may not reallocate
40 to any defendant an uncollectible amount greater than that
41 defendant's percentage of fault multiplied by the uncollectible
42 amount: *Provided, however*, That there shall be no reallocation
43 against a defendant whose percentage of fault is equal to or less
44 than the plaintiff's percentage of fault.

45 (2) If the motion is filed, the parties may conduct discovery
46 on the issue of collectibility prior to a hearing on the motion.

47 (e) A party whose liability is reallocated under subsection
48 (d) of this section is nonetheless subject to contribution and to
49 any continuing liability to the plaintiff on the judgment.

50 (f) This section does not affect, impair or abrogate any right
51 of indemnity or contribution arising out of any contract or
52 agreement or any right of indemnity otherwise provided by law.

53 (g) The fault allocated under this section to an immune
54 defendant or a defendant whose liability is limited by law may
55 not be allocated to any other defendant.

56 (h) Notwithstanding any other provision of this section to the
57 contrary, a defendant that commits one or more of the followings
58 acts or omissions shall be jointly and severally liable:

59 (1) A defendant whose conduct constitutes driving a vehicle
60 under the influence of alcohol, a controlled substance, or any
61 other drug or any combination thereof, as described in section
62 two, article five, chapter seventeen-c of this code, which is a
63 proximate cause of the damages suffered by the plaintiff;

64 (2) A defendant whose acts or omissions constitute criminal
65 conduct which is a proximate cause of the damages suffered by
66 the plaintiff; or

67 (3) A defendant whose conduct constitutes an illegal
68 disposal of hazardous waste, as described in section three, article
69 eighteen, chapter twenty-two of this code, which conduct is a
70 proximate cause of the damages suffered by the plaintiff.

71 (i) This section does not apply to the following statutes:

72 (1) Article twelve-a, chapter twenty-nine of this code;

73 (2) Chapter forty-six of this code; and

74 (3) Article seven-b, chapter fifty-five of this code.

**§55-7-13d. Determination of fault; imputed fault; plaintiff's
involvement in felony criminal act; burden of
proof; limitations; applicability; severability.**

1 (a) *Determination of fault of parties and nonparties.*

2 (1) In assessing percentages of fault, the trier of fact shall
3 consider the fault of all persons who contributed to the alleged
4 damages regardless of whether the person was or could have
5 been named as a party to the suit.

6 (2) Fault of a nonparty shall be considered if the plaintiff
7 entered into a settlement agreement with the nonparty or if a
8 defending party gives notice no later than one hundred-eight
9 days after service of process upon said defendant that a nonparty
10 was wholly or partially at fault. Notice shall be filed with the
11 court and served upon all parties to the action designating the
12 nonparty and setting forth the nonparty's name and last-known
13 address, or the best identification of the nonparty which is
14 possible under the circumstances, together with a brief statement
15 of the basis for believing such nonparty to be at fault;

16 (3) In all instances where a nonparty is assessed a percentage
17 of fault, any recovery by a plaintiff shall be reduced in
18 proportion to the percentage of fault chargeable to such
19 nonparty. Where a plaintiff has settled with a party or nonparty
20 before verdict, that plaintiff's recovery will be reduced in
21 proportion to the percentage of fault assigned to the settling
22 party or nonparty.

23 (4) Nothing in this section is meant to eliminate or diminish
24 any defenses or immunities, which exist as of the effective date
25 of this section, except as expressly noted herein;

26 (5) Assessments of percentages of fault for nonparties are
27 used only as a vehicle for accurately determining the fault of
28 named parties. Where fault is assessed against nonparties,
29 findings of such fault do not subject any nonparty to liability in
30 that or any other action, or may not be introduced as evidence of
31 liability or for any other purpose in any other action; and

32 (6) In all actions involving fault of more than one person,
33 unless otherwise agreed by all parties to the action, the court
34 shall instruct the jury to answer special interrogatories or, if
35 there is no jury, shall make findings, indicating the percentage of
36 the total fault that is allocated to each party and nonparty
37 pursuant to this article. For this purpose, the court may

38 determine that two or more persons are to be treated as a single
39 person.

40 (b) *Imputed fault.* – Nothing in this section may be construed
41 as precluding a person from being held liable for the portion of
42 comparative fault assessed against another person who was
43 acting as an agent or servant of such person, or if the fault of the
44 other person is otherwise imputed or attributed to such person by
45 statute or common law. In any action where any party seeks to
46 impute fault to another, the court shall instruct the jury to answer
47 special interrogatories or, if there is no jury, shall make findings,
48 on the issue of imputed fault.

49 (c) *Plaintiff's involvement in felony criminal act.* – In any
50 civil action, a defendant is not liable for damages that the
51 plaintiff suffers as a result of the negligence or gross negligence
52 of a defendant if such damages arise out of the plaintiff's
53 commission, attempt to commit or fleeing from the commission
54 of a felony criminal act: *Provided*, That the plaintiff has been
55 convicted of such felony, or if deceased, the jury makes a finding
56 that the decedent committed such felony.

57 (d) *Burden of proof.* – The burden of alleging and proving
58 comparative fault shall be upon the person who seeks to
59 establish such fault.

60 (e) *Limitations.* – Nothing in this section creates a cause of
61 action. Nothing in this section alters, in any way, the immunity
62 of any person as established by statute or common law.

63 (f) *Applicability.* – This section applies to all causes of
64 action arising or accruing on or after the effective date of its
65 enactment.

66 (g) *Severability.* – The provisions of this section are
67 severable from one another, so that if any provision of this
68 section is held void, the remaining provisions of this section
69 shall remain valid.



CHAPTER 60

(Com. Sub. for H. B. 2128 - By Delegate(s) Howell, Hamrick, Householder, Statler, Moffatt, Walters, Arvon, Blair, Kessinger, Border and Frich)

[Passed March 12, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended, relating to permitting those individuals who hold a valid current concealed weapons permit to keep firearms in their motor vehicles on the State Capitol Complex grounds if the vehicle is locked and the weapon is out of normal view.

Be it enacted by the Legislature of West Virginia:

That §61-6-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-19. Willful disruption of governmental processes; offenses occurring at State Capitol Complex; penalties.

1 (a) If any person willfully interrupts or molests the orderly
2 and peaceful process of any department, division, agency or
3 branch of state government or of its political subdivisions, he or
4 she is guilty of a misdemeanor and, upon conviction thereof,
5 shall be fined not more than \$100, or confined in jail not more
6 than six months, or both fined and confined: *Provided*, That any
7 assembly in a peaceable, lawful and orderly manner for a redress
8 of grievances shall not be a violation of this section.

9 (b) It is unlawful for any person to bring upon the State
10 Capitol Complex any weapon as defined in section two, article
11 seven of this chapter: *Provided*, That a person who holds a valid,

12 current concealed weapons permit issued by a sheriff of this state
13 or the appropriate authority of another jurisdiction may keep a
14 firearm in his or her motor vehicle upon the State Capitol
15 Complex if the vehicle is locked and the weapon is out of normal
16 view. It is unlawful for any person to willfully deface any trees,
17 wall, floor, stairs, ceiling, column, statue, monument, structure,
18 surface, artwork or adornment in the State Capitol Complex. It
19 is unlawful for any person or persons to willfully block or
20 otherwise willfully obstruct any public access, stair or elevator
21 in the State Capitol Complex after being asked by a
22 law-enforcement officer acting in his or her official capacity to
23 desist: *Provided*, That, in order to preserve the constitutional
24 right of the people to assemble, it is not willful blocking or
25 willful obstruction for persons gathered in a group or crowd if
26 the persons move to the side or part to allow other persons to
27 pass by the group or crowd to gain ingress or egress: *Provided*,
28 *however*, That this subsection does not apply to a
29 law-enforcement officer acting in his or her official capacity.

30 Any person who violates this subsection is guilty of a
31 misdemeanor and, upon conviction thereof, shall be fined not
32 less than \$100 or confined in jail not more than six months, or
33 both.

CHAPTER 61

**(S. B. 250 - By Senators Trump, Blair, Carmichael, M. Hall,
Leonhardt, Miller, Snyder, Unger, Williams and Plymale)**

[Passed March 14, 2015; in effect from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §19-21A-4a of the Code of West Virginia, 1931, as amended, relating to the administration of the

West Virginia Conservation Agency programs; providing that conservation district supervisors have their applications to participate in West Virginia Conservation Agency financial assistance programs evaluated and approved or rejected by the West Virginia Conservation Agency; prohibiting conservation district supervisor from voting for authorization, approval or ratification of a contract in which he or she or an immediate family member is beneficially interested; and requiring State Conservation Committee to propose rules for legislative approval.

Be it enacted by the Legislature of West Virginia:

That §19-21A-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-4a. Administration of West Virginia Conservation Agency programs; legislative rules.

1 (a) If a conservation district supervisor applies to participate
2 in a West Virginia Conservation Agency financial assistance
3 program, then his or her application for that particular program
4 shall be evaluated for approval or denial by the West Virginia
5 Conservation Agency.

6 (b) A conservation district supervisor may not vote for the
7 authorization, approval or ratification of a contract in which he
8 or she or an immediate family member is beneficially interested.

9 (c) The State Conservation Committee shall propose rules
10 for legislative approval pursuant to article three, chapter twenty-
11 nine-a of this code to establish:

12 (1) The criteria, ranking and standards required for an
13 applicant to qualify to participate in West Virginia Conservation
14 Agency programs;

15 (2) A process to disclose the recipients of the award; and

16 (3) The process for an unsuccessful qualified applicant to
17 appeal an award.

18 (d) The State Conservation Committee may propose
19 emergency rules as necessary to implement the provisions of this
20 section.

CHAPTER 62

(H. B. 2926 - By Delegate(s) Folk, Ashley and Walters)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §46A-3-114 of the Code of West Virginia, 1931, as amended, relating to modification charges in connection with a real estate secured consumer credit sale or consumer loan; and providing for a minimum and maximum modification charge that may be collected.

Be it enacted by the Legislature of West Virginia:

That §46A-3-114 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-114. Deferral and modification charges.

1 (1) With respect to a precomputed consumer credit sale or
2 consumer loan, refinancing or consolidation, the parties before

3 or after default may agree in writing to a deferral of all or part of
4 one or more unpaid installments, and the seller or lender may
5 make and collect a deferral charge not exceeding the amount of
6 the sales finance charge or loan finance charge attributable to the
7 first of the deferred monthly installment periods multiplied by
8 number of months in the deferral period (the period in which no
9 payment is required or made by reason of a deferral): *Provided*,
10 That, no installment on which a delinquency charge has been
11 collected or partial payment made shall be deferred unless the
12 amount of the delinquency charge or partial payment is first
13 applied to the deferral charge. If prepayment in full occurs
14 during a deferral period, the portion of the deferral charge
15 attributable to the unexpired full months in the deferral period
16 shall be also rebated.

17 (2) The seller or lender, in addition to the deferral charge,
18 may make appropriate additional charges, and the amount of
19 these charges which is not paid in cash may be added to the
20 amount deferred for the purpose of calculating the deferral
21 charge.

22 (3) The parties may agree in writing at the time of a
23 precomputed consumer credit sale or consumer loan, refinancing
24 or consolidation that if an installment is not paid within ten days
25 after its due date as originally scheduled or as deferred, the seller
26 or lender may unilaterally grant a deferral and make charges as
27 provided in this section. No deferral charge may be made for a
28 period after the date on which the seller or lender elects to
29 accelerate the maturity of the agreement.

30 (4) With respect to a real estate secured consumer credit sale
31 or consumer loan, the parties before or after default may agree
32 in writing to a modification or amendment of, or allonge to, the
33 consumer credit sale or consumer loan, and the seller or lender
34 may make and collect a modification charge equal to the greater
35 of \$250 or one percent of the outstanding balance of the

36 consumer credit sale or consumer loan at the time of the
37 modification, amendment or allonge: *Provided*, That, no
38 modification charge may be made where prohibited by federal
39 law or regulation.

40 (5) The commissioner shall prescribe by rule the method or
41 procedure for the calculation of deferral charges consistent with
42 the other provisions of this chapter where the precomputed
43 consumer credit sale or consumer loan is payable in unequal or
44 irregular installments.

CHAPTER 63

**(Com. Sub. for S. B. 542 - By Senators D. Hall,
Carmichael, M. Hall, Gaunch, Trump, Blair and Nohe)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §46A-2-125, §46A-2-126 and §46A-2-128 of the Code of West Virginia, 1931, as amended; to amend and reenact §46A-3-112 and §46A-3-113 of said code; to amend and reenact §46A-5-101 and §46A-5-106 of said code; and to amend said code by adding thereto a new section, designated §46A-5-107, all relating to clarifying permitted and prohibited actions with regard to the prohibition on oppression and abuse in the course of debt collection; clarifying permitted and prohibited actions with regard to the prohibition of unreasonable publication; clarifying permitted and prohibited actions and communications with regard to the prohibition on the use of unfair or unconscionable means in the course of debt collection; increasing permitted delinquency charges; modifying damages and penalties for violations; modifying the limitation of actions brought under this chapter;

adjusting time allowed after discovery to correct an error without liability in certain circumstances; adjusting damages for inflation; and specifying venue of an action or proceeding brought by a consumer.

Be it enacted by the Legislature of West Virginia:

That §46A-2-125, §46A-2-126 and §46A-2-128 of the Code of West Virginia, as amended, be amended and reenacted; that §46A-3-112 and §46A-3-113 of said code be amended and reenacted; that §46A-5-101 and §46A-5-106 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §46A-5-107, all to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-125. Oppression and abuse.

- 1 No debt collector shall unreasonably oppress or abuse any
- 2 person in connection with the collection of or attempt to collect
- 3 any claim alleged to be due and owing by that person or another.
- 4 Without limiting the general application of the foregoing, the
- 5 following conduct is deemed to violate this section:
 - 6 (a) The use of profane or obscene language or language that
 - 7 is intended to unreasonably abuse the hearer or reader;
 - 8 (b) Engaging any person in telephone conversation without
 - 9 disclosure of the caller's identity and with the intent to annoy,
 - 10 harass or threaten any person at the called number;
 - 11 (c) Causing expense to any person in the form of long
 - 12 distance telephone tolls, telegram fees or other charges incurred
 - 13 by a medium of communication, by concealment of the true
 - 14 purpose of the communication; and
 - 15 (d) Calling any person more than thirty times per week or
 - 16 engaging any person in telephone conversation more than ten

17 times per week, or at unusual times or at times known to be
18 inconvenient, with intent to annoy, abuse, oppress or threaten
19 any person at the called number. In determining whether a debt
20 collector's conduct violates this section, the debt collector's
21 conduct will be evaluated from the standpoint of a reasonable
22 person. In the absence of knowledge of circumstances to the
23 contrary, a debt collector shall assume that the convenient time
24 for communicating with a consumer is after eight o'clock
25 antemeridian and before nine o'clock postmeridian, local time at
26 the consumer's location.

§46A-2-126. Unreasonable publication.

1 No debt collector shall unreasonably publicize information
2 relating to any alleged indebtedness or consumer. For purposes
3 of this section, a debt collector does not unreasonably publicize
4 information relating to any alleged indebtedness by identifying
5 themselves to the debtor by name, identifying the debt
6 collector's employer by name, if expressly requested by the
7 debtor, or by providing a telephone number or other contact
8 information to the debtor. Without limiting the general
9 application of the foregoing, the following conduct is deemed to
10 violate this section:

11 (a) The communication to any employer or his agent before
12 judgment has been rendered of any information relating to an
13 employee's indebtedness other than through proper legal action,
14 process or proceeding;

15 (b) The disclosure, publication or communication of
16 information relating to a consumer's indebtedness to any relative
17 or family member of the consumer if such person is not residing
18 with the consumer, except through proper legal action or process
19 or at the express and unsolicited request of the relative or family
20 member;

21 (c) The disclosure, publication or communication of any
22 information relating to a consumer's indebtedness to any other
23 person other than a credit reporting agency, by publishing or
24 posting any list of consumers, commonly known as "deadbeat
25 lists", except lists to prevent the fraudulent use of credit accounts
26 or credit cards, by advertising for sale any claim to enforce
27 payment thereof, or in any manner other than through proper
28 legal action, process or proceeding; and

29 (d) The use of any form of communication to the consumer,
30 which ordinarily may be seen by any other persons, that displays
31 or conveys any information about the alleged claim other than
32 the name, address and phone number of the debt collector.

33 Nothing in this chapter shall prohibit a creditor or debt
34 collector from communicating with any person other than the
35 consumer for the purpose of acquiring or confirming the
36 consumer's location information provided they do so in a
37 manner consistent with the provisions of 15 U. S. C. § 1692b, as
38 the same may be amended from time to time. For purposes of
39 this section, "communication" or "communicating" or any
40 derivation of those terms shall not include the filing of a
41 complaint or other document, pleading or filing with any court.

§46A-2-128. Unfair or unconscionable means.

1 No debt collector may use unfair or unconscionable means
2 to collect or attempt to collect any claim. Without limiting the
3 general application of the foregoing, the following conduct is
4 deemed to violate this section:

5 (a) The seeking or obtaining of any written statement or
6 acknowledgment in any form that specifies that a consumer's
7 obligation is one incurred for necessities of life where the
8 original obligation was not in fact incurred for such necessities;

9 (b) The seeking or obtaining of any written statement or
10 acknowledgment in any form containing an affirmation of any
11 obligation by a consumer who has been declared bankrupt except
12 where such affirmation is obtained pursuant to applicable
13 bankruptcy law;

14 (c) The collection or the attempt to collect from the
15 consumer all or any part of the debt collector's fee or charge for
16 services rendered: *Provided*, That attorney's fees, court costs and
17 other reasonable collection costs and charges necessary for the
18 collection of any amount due upon delinquent educational loans
19 made by any institution of higher education within this state may
20 be recovered when the terms of the obligation so provide.
21 Recovery of attorney's fees and collection costs may not exceed
22 thirty-three and one-third percent of the amount due and owing
23 to any such institution: *Provided, however*, That nothing
24 contained in this subsection shall be construed to limit or
25 prohibit any institution of higher education from paying
26 additional attorney fees and collection costs as long as such
27 additional attorney fees and collection costs do not exceed an
28 amount equal to five percent of the amount of the debt actually
29 recovered and such additional attorney fees and collection costs
30 are deducted or paid from the amount of the debt recovered for
31 the institution or paid from other funds available to the
32 institution;

33 (d) The collection of or the attempt to collect any interest or
34 other charge, fee or expense incidental to the principal obligation
35 unless such interest or incidental fee, charge or expense is
36 expressly authorized by the agreement creating or modifying the
37 obligation and by statute or regulation;

38 (e) Any communication with a consumer made more than
39 seventy-two hours after the debt collector receives written
40 notice, either on paper or electronically, from the consumer or
41 his or her attorney that the consumer is represented by an

42 attorney specifically with regard to the subject debt. To be
43 effective under this subsection, such notice must clearly state the
44 attorney's name, address and telephone number and be sent to
45 the debt collector's registered agent, identified by the debt
46 collector at the office of the West Virginia Secretary of State or,
47 if not registered with the West Virginia Secretary of State, then
48 to the debt collector's principal place of business.
49 Communication with a consumer is not prohibited under this
50 subsection if the attorney fails to answer correspondence, return
51 phone calls or discuss the obligation in question, or if the
52 attorney consents to direct communication with the consumer.
53 Regular account statements provided to the consumer and
54 notices required to be provided to the consumer pursuant to
55 applicable law shall not constitute prohibited communications
56 under this section; and

57 (f) When the debt is beyond the statute of limitations for
58 filing a legal action for collection, failing to provide the
59 following disclosure informing the consumer in its initial written
60 communication with such consumer that:

61 (1) When collecting on a debt that is not past the date for
62 obsolescence provided for in section 605(a) of the Fair Credit
63 Reporting Act, 15 U. S. C. 1681c: "The law limits how long you
64 can be sued on a debt. Because of the age of your debt, (INSERT
65 OWNER NAME) cannot sue you for it. If you do not pay the
66 debt, (INSERT OWNER NAME) may report or continue to
67 report it to the credit reporting agencies as unpaid"; and

68 (2) When collecting on debt that is past the date for
69 obsolescence provided for in section 605(a) of the Fair Credit
70 Reporting Act, 15 U. S. C. 1681c: "The law limits how long you
71 can be sued on a debt. Because of the age of your debt, (INSERT
72 OWNER NAME) cannot sue you for it and (INSERT OWNER
73 NAME) cannot report it to any credit reporting agencies."

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

1 (1) With respect to a precomputed consumer credit sale or
2 consumer loan, refinancing or consolidation, the parties may
3 contract for a delinquency charge on any installment not paid in
4 full within ten days after its scheduled due date in an amount not
5 exceeding the greater of:

6 (a) Five percent of the unpaid amount of the installment, not
7 to exceed \$30; or

8 (b) An amount equivalent to the deferral charge that would
9 be permitted to defer the unpaid amount of the installment for
10 the period that it is delinquent.

11 (2) A delinquency charge under subdivision (a), subsection
12 (1) of this section may be collected only once on an installment
13 however long it remains in default. No delinquency charge may
14 be collected with respect to a deferred installment unless the
15 installment is not paid in full within ten days after its deferred
16 due date. A delinquency charge may be collected at the time it
17 accrues or at any time thereafter.

18 (3) No delinquency charge may be collected on an
19 installment which is paid in full within ten days after its
20 scheduled or deferred installment due date, even though an
21 earlier maturing installment or a delinquency or deferral charge
22 on an earlier installment may not have been paid in full. For
23 purposes of this subsection, payments shall be applied first to
24 current installments, then to delinquent installments and then to
25 delinquency and other charges.

26 (4) If two installments, or parts thereof, of a precomputed
27 consumer credit sale or consumer loan are in default for ten days
28 or more, the creditor may elect to convert such sale or loan from
29 a precomputed sale or loan to one in which the sales finance
30 charge or loan finance charge is based on unpaid balances. In
31 such event, the creditor shall make a rebate pursuant to the
32 provisions on rebate upon prepayment, refinancing or
33 consolidation as of the maturity date of any installment then
34 delinquent and thereafter may make a sales finance charge or
35 loan finance charge as authorized by the appropriate provisions
36 on sales finance charges or loan finance charges for consumer
37 credit sales or consumer loans. The amount of the rebate may not
38 be reduced by the amount of any permitted minimum charge. If
39 the creditor proceeds under this subsection, any delinquency or
40 deferral charges made with respect to installments due at or after
41 the maturity date of the delinquent installments shall be rebated
42 and no further delinquency or deferral charges shall be made.

43 (5) The commissioner shall prescribe by rule the method or
44 procedure for the calculation of delinquency charges consistent
45 with the other provisions of this chapter where the precomputed
46 consumer credit sale or consumer loan is payable in unequal or
47 irregular installments.

§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

1 (1) In addition to the continuation of the sales finance charge
2 or loan finance charge on a delinquent installment with respect
3 to a nonprecomputed consumer credit sale or consumer loan,
4 refinancing or consolidation, repayable in installments, the
5 parties may contract for a delinquency charge on any installment
6 not paid in full within ten days after its scheduled due date of
7 five percent of the unpaid amount of the installment, not to
8 exceed \$30.

9 (2) A delinquency charge under subsection (1) of this section
10 may be collected only once on an installment however long it
11 remains in default. A delinquency charge may be collected at the
12 time it accrues or at any time thereafter.

13 (3) No delinquency charge may be collected on an
14 installment which is paid in full within ten days after its
15 scheduled or deferred installment due date, even though an
16 earlier maturing installment or a delinquency or deferral charge
17 on an earlier installment may not have been paid in full. For
18 purposes of this subsection, payments shall be applied first to
19 current installments, then to delinquent installments and then to
20 delinquency and other charges.

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.

§46A-5-101. Effect of violations on rights of parties; limitation of actions.

1 (1) If a creditor or debt collector has violated the provisions
2 of this chapter applying to collection of excess charges, security
3 in sales and leases, disclosure with respect to consumer leases,
4 receipts, statements of account and evidences of payment,
5 limitations on default charges, assignment of earnings,
6 authorizations to confess judgment, illegal, fraudulent or
7 unconscionable conduct, any prohibited debt collection practice,
8 or restrictions on interest in land as security, assignment of
9 earnings to regulated consumer lender, security agreement on
10 household goods for benefit of regulated consumer lender, and
11 renegotiation by regulated consumer lender of a loan discharged
12 in bankruptcy, the consumer has a cause of action to recover: (a)
13 Actual damages; and (b) a right in an action to recover from the
14 person violating this chapter a penalty of \$1,000 per violation:
15 *Provided*, That the aggregate amount of the penalty awarded
16 shall not exceed the greater of \$175,000 or the total alleged
17 outstanding indebtedness: *Provided, however*, That in a class

18 action the aggregate limits on the amount of the penalty set forth
19 above shall be applied severally to each named plaintiff and each
20 class member such that no named plaintiff nor any class member
21 may recover in excess of the greater of \$175,000 or the total
22 alleged outstanding indebtedness. With respect to violations
23 arising from consumer credit sales, consumer leases, or
24 consumer loans, or from sales as defined in article six of this
25 chapter, no action pursuant to this subsection may be brought
26 more than four years after the violations occurred. This
27 limitations period shall apply to all actions filed on or after
28 September 1, 2015.

29 (2) If a creditor has violated the provisions of this chapter
30 respecting authority to make regulated consumer loans, the loan
31 is void and the consumer is not obligated to pay either the
32 principal or the loan finance charge. If he has paid any part of
33 the principal or of the finance charge, he has a right to recover in
34 an action the payment from the person violating this chapter or
35 from an assignee of that person's rights who undertakes direct
36 collection of payments or enforcement of rights arising from the
37 debt. With respect to violations arising from regulated consumer
38 loans made pursuant to revolving loan accounts, no action
39 pursuant to this subsection may be brought more than four years
40 after the violation occurred. With respect to violations arising
41 from other regulated consumer loans, no action pursuant to this
42 subsection may be brought more than four years after the
43 violation occurred. This limitations period shall apply to all
44 actions filed on or after September 1, 2015.

45 (3) A consumer is not obligated to pay a charge in excess of
46 that allowed by this chapter and if he has paid an excess charge,
47 he has a right to a refund. A refund may be made by reducing the
48 consumer's obligation by the amount of the excess charge. If the
49 consumer has paid an amount in excess of the lawful obligation
50 under the agreement, the consumer may recover in an action the
51 excess amount from the person who made the excess charge or

52 from an assignee of that person's rights who undertakes direct
53 collection of payments from or enforcement of rights against the
54 consumer arising from the debt.

55 (4) If a creditor or debt collector has contracted for or
56 received a charge in excess of that allowed by this chapter, the
57 consumer may, in addition to recovering such excess charge,
58 also recover from the creditor or the person liable in an action a
59 penalty of \$1,000 per violation: *Provided*, That the aggregate
60 amount of the penalty awarded shall not exceed the greater of
61 \$175,000 or the total alleged outstanding indebtedness:
62 *Provided, however*, That in a class action the aggregate limits on
63 the amount of the penalty set forth above shall be applied
64 severally to each named plaintiff and each class member such
65 that no named plaintiff nor any class member may recover in
66 excess of the greater of \$175,000 or the total alleged outstanding
67 indebtedness. With respect to excess charges arising from
68 consumer credit sales, consumer leases, or consumer loans, no
69 action pursuant to this subsection may be brought more than four
70 years after the time the excess charge was made.. This
71 limitations period shall apply to all actions filed on or after
72 September 1, 2015.

73 (5) Except as otherwise provided, a violation of this chapter
74 does not impair rights on a debt.

75 (6) If an employer discharges an employee in violation of the
76 provisions prohibiting discharge, the employee may within
77 ninety days bring a civil action for recovery of wages lost as a
78 result of the violation and for an order requiring the
79 reinstatement of the employee. Damages recoverable shall not
80 exceed lost wages for six weeks.

81 (7) A creditor or debt collector has no liability for a penalty
82 under subsection (1) or (4) of this section if, after discovering an
83 error and prior to the institution of an action under this section

84 or the receipt of written notice of the error, the creditor notifies
85 the person concerned of the error and corrects the error: (a)
86 Within fifteen days if the error affects no more than two persons;
87 or (b) within sixty days if the error affects more than two
88 persons. If the violation consists of a prohibited agreement,
89 giving the consumer a corrected copy of the writing containing
90 the error is sufficient notification and correction. If the violation
91 consists of an excess charge, correction shall be made by an
92 adjustment or refund.

93 (8) If the creditor or debt collector establishes by a
94 preponderance of evidence that a violation is unintentional or the
95 result of a bona fide error of fact notwithstanding the
96 maintenance of procedures reasonably adapted to avoid any such
97 violation or error, no liability is imposed under subsections (1),
98 (2) and (4) of this section and the validity of the transaction is
99 not affected.

§46A-5-106. Adjustment of damages for inflation.

1 In any claim brought under this chapter applying to illegal,
2 fraudulent or unconscionable conduct or any prohibited debt
3 collection practice, the court may adjust the damages awarded
4 pursuant to section one hundred one of this article to account for
5 inflation from 12:01 a.m. on September 1, 2015, to the time of
6 the award of damages in an amount equal to the consumer price
7 index. Consumer price index means the last consumer price
8 index for all consumers published by the United States
9 Department of Labor.

§46A-5-107. Venue.

1 Any civil action or other proceeding brought by a consumer
2 to recover actual damages or a penalty, or both, from creditor or
3 a debt collector, founded upon illegal, fraudulent or
4 unconscionable conduct, or prohibited debt collection practice,

5 or both, shall be brought either in the circuit court of the county
6 in which the plaintiff has his or her legal residence at the time of
7 the civil action, the circuit court of the county in which the
8 plaintiff last resided in the state of West Virginia, or in the
9 circuit court of the county in which the creditor or debt collector
10 has its principal place of business or, if the creditor or debt
11 collector is an individual, in the circuit court of the county of his
12 or her legal residence. With respect to causes of action arising
13 under this chapter, the venue provisions of this section shall be
14 exclusive of and shall supersede the venue provisions of any
15 other West Virginia statute or rule.

CHAPTER 64

(Com. Sub. for S. B. 315 - By Senator Mullins)

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §46A-6-101, §46A-6-102, §46A-6-105 and §46A-6-106 of the Code of West Virginia, 1931, as amended, all relating to civil actions filed under the Consumer Protection Act; providing statement of legislative intent that courts be guided by federal court and agency interpretations of similar federal statutes; clarifying who may bring private cause of action; establishing requirement of out-of-pocket loss proximately caused by alleged violation in actions for damages; and providing right to demand a jury trial.

Be it enacted by the Legislature of West Virginia:

That §46A-6-101, §46A-6-102, §46A-6-105 and §46A-6-106 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. GENERAL CONSUMER PROTECTION.**§46A-6-101. Legislative declarations; statutory construction.**

1 (1) The Legislature hereby declares that the purpose of this
2 article is to complement the body of federal law governing unfair
3 competition and unfair, deceptive and fraudulent acts or
4 practices in order to protect the public and foster fair and honest
5 competition. It is the intent of the Legislature that, in construing
6 this article, the courts be guided by the policies of the Federal
7 Trade Commission and interpretations given by the Federal
8 Trade Commission and the federal courts to Section 5(a)(1) of
9 the Federal Trade Commission Act (15 U. S. C. § 45(a)(1)), as
10 from time to time amended, and to the various other federal
11 statutes dealing with the same or similar matters. To this end,
12 this article shall be liberally construed so that its beneficial
13 purposes may be served.

14 (2) It is, however, the further intent of the Legislature that
15 this article not be construed to prohibit acts or practices which
16 are reasonable in relation to the development and preservation of
17 business or which are not injurious to the public interest, nor
18 does this article repeal by implication the provisions of articles
19 eleven, eleven-a and eleven-b, chapter forty-seven of this code.

§46A-6-102. Definitions.

1 When used in this article, the following words, terms and
2 phrases, and any variations thereof required by the context, shall
3 have the meaning ascribed to them in this article except where
4 the context indicates a different meaning:

5 (1) “Advertisement” means the publication, dissemination or
6 circulation of any matter, oral or written, including labeling,
7 which tends to induce, directly or indirectly, any person to enter
8 into any obligation, sign any contract or acquire any title or

9 interest in any goods or services and includes every word device
10 to disguise any form of business solicitation by using such terms
11 as “renewal”, “invoice”, “bill”, “statement” or “reminder” to
12 create an impression of existing obligation when there is none or
13 other language to mislead any person in relation to any sought-
14 after commercial transaction.

15 (2) “Consumer” means a natural person to whom a sale or
16 lease is made in a consumer transaction and a “consumer
17 transaction” means a sale or lease to a natural person or persons
18 for a personal, family, household or agricultural purpose.

19 (3) “Cure offer” means a written offer of one or more things
20 of value, including, but not limited to, the payment of money,
21 that is made by a merchant or seller and that is delivered by
22 certified mail to a person claiming to have suffered a loss as a
23 result of a transaction or to the attorney for such person.

24 (4) “Merchantable” means, in addition to the qualities
25 prescribed in section three hundred fourteen, article two, chapter
26 forty-six of this code, that the goods conform in all material
27 respects to applicable state and federal statutes and regulations
28 establishing standards of quality and safety of goods and, in the
29 case of goods with mechanical, electrical or thermal
30 components, that the goods are in good working order and will
31 operate properly in normal usage for a reasonable period of time.

32 (5) “Sale” includes any sale, offer for sale or attempt to sell
33 any goods for cash or credit or any services or offer for services
34 for cash or credit.

35 (6) “Trade” or “commerce” means the advertising, offering
36 for sale, sale or distribution of any goods or services and shall
37 include any trade or commerce, directly or indirectly, affecting
38 the people of this state.

39 (7) “Unfair methods of competition and unfair or deceptive
40 acts or practices” means and includes, but is not limited to, any
41 one or more of the following:

42 (A) Passing off goods or services as those of another;

43 (B) Causing likelihood of confusion or of misunderstanding
44 as to the source, sponsorship, approval or certification of goods
45 or services;

46 (C) Causing likelihood of confusion or of misunderstanding
47 as to affiliation, connection or association with or certification
48 by another;

49 (D) Using deceptive representations or designations of
50 geographic origin in connection with goods or services;

51 (E) Representing that goods or services have sponsorship,
52 approval, characteristics, ingredients, uses, benefits or quantities
53 that they do not have or that a person has a sponsorship,
54 approval, status, affiliation or connection that he does not have;

55 (F) Representing that goods are original or new if they are
56 deteriorated, altered, reconditioned, reclaimed, used or
57 secondhand;

58 (G) Representing that goods or services are of a particular
59 standard, quality or grade, or that goods are of a particular style
60 or model if they are of another;

61 (H) Disparaging the goods, services or business of another
62 by false or misleading representation of fact;

63 (I) Advertising goods or services with intent not to sell them
64 as advertised;

65 (J) Advertising goods or services with intent not to supply
66 reasonably expectable public demand, unless the advertisement
67 discloses a limitation of quantity;

68 (K) Making false or misleading statements of fact
69 concerning the reasons for, existence of or amounts of price
70 reductions;

71 (L) Engaging in any other conduct which similarly creates
72 a likelihood of confusion or of misunderstanding;

73 (M) The act, use or employment by any person of any
74 deception, fraud, false pretense, false promise or
75 misrepresentation, or the concealment, suppression or omission
76 of any material fact with intent that others rely upon such
77 concealment, suppression or omission, in connection with the
78 sale or advertisement of any goods or services, whether or not
79 any person has in fact been misled, deceived or damaged
80 thereby;

81 (N) Advertising, printing, displaying, publishing,
82 distributing or broadcasting, or causing to be advertised, printed,
83 displayed, published, distributed or broadcast in any manner, any
84 statement or representation with regard to the sale of goods or
85 the extension of consumer credit including the rates, terms or
86 conditions for the sale of such goods or the extension of such
87 credit, which is false, misleading or deceptive or which omits to
88 state material information which is necessary to make the
89 statements therein not false, misleading or deceptive;

90 (O) Representing that any person has won a prize, one of a
91 group of prizes or any other thing of value if receipt of the prize
92 or thing of value is contingent upon any payment of a service
93 charge, mailing charge, handling charge or any other similar
94 charge by the person or upon mandatory attendance by the
95 person at a promotion or sales presentation at the seller's place
96 of business or any other location: *Provided*, That a person may
97 be offered one item or the choice of several items conditioned on
98 the person listening to a sales promotion or entering a consumer
99 transaction if the true retail value and an accurate description of

100 the item or items are clearly and conspicuously disclosed along
101 with the person's obligations upon accepting the item or items;
102 such description and disclosure shall be typewritten or printed in
103 at least eight point regular type, in upper or lower case, where
104 appropriate; or

105 (P) Violating any provision or requirement of article six-b of
106 this chapter.

107 (8) "Warranty" means express and implied warranties
108 described and defined in sections three hundred thirteen, three
109 hundred fourteen and three hundred fifteen, article two, chapter
110 forty-six of this code and expressions or actions of a merchant
111 which assure the consumer that the goods have described
112 qualities or will perform in a described manner.

§46A-6-105. Exempted transactions.

1 This article does not apply to acts done by the publisher,
2 owner, agent or employee of a newspaper, periodical or radio or
3 television station in the publication or dissemination of an
4 advertisement, when the owner, agent or employee did not have
5 knowledge of the false, misleading or deceptive character of the
6 advertisement, did not prepare the advertisement and did not
7 have a direct financial interest in the sale or distribution of the
8 advertised goods or services.

§46A-6-106. Private causes of action.

1 (a) Subject to subsections (b) and (c) of this section, any
2 person who purchases or leases goods or services and thereby
3 suffers an ascertainable loss of money or property, real or
4 personal, as a result of the use or employment by another person
5 of a method, act or practice prohibited or declared to be unlawful
6 by the provisions of this article may bring an action in the circuit
7 court of the county in which the seller or lessor resides or has his
8 or her principal place of business or is doing business, or as

9 provided for in sections one and two, article one, chapter
10 fifty-six of this code, to recover actual damages or \$200,
11 whichever is greater. The court may, in its discretion, provide
12 such equitable relief it considers necessary or proper. Any party
13 to an action for damages under this subsection has the right to
14 demand a jury trial.

15 (b) No award of damages in an action pursuant to subsection
16 (a) may be made without proof that the person seeking damages
17 suffered an actual out-of-pocket loss that was proximately
18 caused by a violation of this article. If a person seeking to
19 recover damages for a violation of this article alleges that an
20 affirmative misrepresentation is the basis for his or her claim
21 then he or she must prove that the deceptive act or practice
22 caused him or her to enter into the transaction that resulted in his
23 or her damages. If a person seeking to recover damages for a
24 violation of this article alleges that the concealment or omission
25 of information is the basis for his or her claim, then he or she
26 must prove that the person's loss was proximately caused by the
27 concealment or omission.

28 (c) Notwithstanding the provisions of subsections (a) and (b)
29 of this section, no action, counterclaim, cross-claim or
30 third-party claim may be brought pursuant to the provisions of
31 this section until the person has informed the seller or lessor in
32 writing and by certified mail, return receipt requested, of the
33 alleged violation and provided the seller or lessor twenty days
34 from receipt of the notice of violation but ten days in the case a
35 cause of action has already been filed to make a cure offer:
36 *Provided*, That the person shall have ten days from receipt of the
37 cure offer to accept the cure offer or it is deemed refused and
38 withdrawn.

39 (d) If a cure offer is accepted, the seller or lessor has ten
40 days to begin effectuating the agreed upon cure and the cure
41 must be completed within a reasonable time.

42 (e) Any applicable statute of limitations is tolled for the
43 twenty-day period set forth in subsection (c) of this section or for
44 the period the effectuation of the cure offer is being performed,
45 whichever is longer.

46 (f) Nothing in this section prevents a person that has
47 accepted a cure offer from bringing a civil action against a seller
48 or lessor for failing to timely effect the cure offer.

49 (g) Any permanent injunction, judgment or order of the court
50 under section one hundred eight, article seven of this chapter for
51 a violation of section one hundred four of this article is prima
52 facie evidence in an action brought pursuant to the provisions of
53 this section that the respondent used or employed a method, act
54 or practice declared unlawful by section one hundred four of this
55 article.

56 (h) Where an action is brought pursuant to the provisions of
57 this section, it is a complete defense that a cure offer was made,
58 accepted and the agreed upon cure was performed. If the finder
59 of fact determines that the cure offer was accepted and the
60 agreed upon cure performed, the seller or lessor is entitled to
61 reasonable attorney's fees and costs attendant to defending the
62 action.

63 (i) No cure offer is admissible in any proceeding initiated
64 pursuant to the provisions of this article unless the cure offer is
65 delivered by a seller or lessor to the person claiming loss or to
66 any attorney representing such person prior to the filing of the
67 seller or lessee's initial responsive pleading in such proceeding.
68 If the cure offer is timely delivered by the seller or lessor, then
69 the seller or lessee may introduce the cure offer into evidence at
70 trial. The seller or lessor is not liable for the person's attorney's
71 fees and court costs incurred following delivery of the cure offer
72 unless the actual damages found to have been sustained and
73 awarded, without consideration of attorney's fees and court
74 costs, exceed the value of the cure offer.

CHAPTER 65

**(Com. Sub. for H. B. 2395 - By Delegate(s) Westfall,
Pasdon, B. White, Frich, O'Neal and Ashley)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-6M-1, §46A-6M-2, §46A-6M-3, §46A-6M-4, §46A-6M-5 and §46A-6M-6, all relating generally to providing consumers with the right to cancel residential roofing contracts where the contract is expected to be paid from a property and casualty insurance policy; providing definitions; establishing a consumer's right to cancel; creating standard disclosure and notice requirements; providing for advanced payment prohibition, refunds, emergency repairs and unenforceability of contract; prohibiting certain acts; private remedies; and misdemeanor criminal offense and penalty.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §46A-6M-1, §46A-6M-2, §46A-6M-3, §46A-6M-4, §46A-6M-5 and §46A-6M-6, all to read as follows:

ARTICLE 6M. STORM SCAMMER CONSUMER PROTECTION ACT.

§46A-6M-1. Definitions.

1 As used in this article:

2 (1) “Emergency repair” means a repair that is necessary to
3 prevent the risk of imminent injury to a person or further damage
4 to the homeowner’s residence;

5 (2) “Residential real estate” means any real property located
6 in West Virginia, upon which is constructed or intended to be
7 constructed a dwelling;

8 (3) “Roof system” means the components of a roof to
9 include, but not be limited to, covering, framing, insulation,
10 sheathing, ventilation, guttering and weatherproofing; and

11 (4) “Roofing contractor” means a person or entity in the
12 business of contracting or offering to contract with an owner of
13 residential real estate to repair or replace a roof system.

**§46A-6M-2. Consumer’s right to cancel residential roofing
contract.**

1 (a) An owner, who on or after July 1, 2015, enters into a
2 contract with a roofing contractor to provide goods or services
3 related to a roof system of residential real estate and who expects
4 the goods or services to be paid from the proceeds of a property
5 and casualty insurance policy, may cancel the contract prior to
6 midnight of the fifth business day after the owner has received
7 notice from the insurer that all or part of the claim is not a
8 covered loss under the property and casualty insurance policy.

9 (b) The contract with the roofing contract is cancelled when
10 the owner either personally delivers written notice of
11 cancellation to the roofing contractor; deposits the written notice
12 of cancellation in the United States mail, postage prepaid and
13 addressed to the roofing contractor at the address stated in the
14 contract; transmits the notice of cancellation to the roofing
15 contractor by facsimile; or sends an e-mails containing a notice
16 of cancellation.

17 (c) The owner may use any form of notice of cancellation
18 that is sufficient to indicate, by any form of written expression,
19 the intention of the owner not to be bound by the contract.

**§46A-6M-3. Roofing contractor's duty to disclose rights of the
consumer via standard form.**

1 Prior to entering into a contract on or after July 1, 2015, for
2 the provision of goods or services relating to the repair or
3 replacement of any part of a roof system of residential real estate
4 as provided in section two of this article, a roofing contractor
5 shall furnish the owner of the residential real estate with:

6 (1) The mailing address of the roofing contractor through
7 which written communication may be received;

8 (2) The telephone number of the roofing contractor and, if
9 applicable, the facsimile number and e-mail address of the
10 contractor;

11 (3) A statement in at least ten point boldface type that states:
12 "Because you expect all or part of the cost of the roofing repair
13 or replacement to be paid out of the proceeds of a property and
14 casualty insurance policy, you may cancel this contract at any
15 time before midnight on the fifth business day after you have
16 received written notification from your insurer that all or any
17 part of the claim or contract is not a covered loss under the
18 insurance policy. This right to cancel is in addition to any other
19 rights of cancellation you may have under state or federal law or
20 rule or regulation. However, be advised that if you cancel this
21 contract, you are still responsible to pay the reasonable and
22 customary expenses of any emergency repair services you
23 authorized. See the attached Notice of Cancellation form for an
24 explanation of this right."; and

25 (4) A fully completed form in duplicate, under the
26 conspicuous caption "NOTICE OF CANCELLATION," and

27 attached to, but easily detachable from the contract, in at least
28 ten point boldface type that shall read as follows:

29 “NOTICE OF CANCELLATION

30 (enter date of transaction)

31 If you are notified by your insurer that all or any part of the
32 claim or contract is not a covered loss under the insurance
33 policy, you may cancel this contract without penalty or monetary
34 obligation, except where you have authorized emergency repair
35 services for which you are still responsible for payment, before
36 midnight of the fifth business day after you have received notice
37 from your insurer. To cancel this transaction you may use any of
38 the following methods: Mail or otherwise deliver a signed and
39 dated copy of this cancellation notice, or any other written notice
40 of cancellation which you- sign-and date, to (enter physical
41 address of roofing contractor), or e-mail a notice of cancellation
42 to (enter e-mail address of roofing contractor), or transmit a
43 notice of cancellation to (enter facsimile number of roofing
44 contractor), not later than midnight of the fifth day after you
45 receive notice from your insurer. By signing below, you certify
46 that your insurer has denied all or part of your claim.

47 I HEREBY ATTEST THAT I HAVE BEEN NOTIFIED BY
48 THE INSURER THAT ALL OR PART OF MY CLAIM HAS
49 BEEN DENIED AND I HEREBY CANCEL THIS
50 TRANSACTION.

51 (Date)

52 (Buyer’s Signature)”

§46A-6M-4. Advanced payments prohibited; refunds; emergency repairs; unenforceable contract.

1 (a) Except as provided in subsection (c) of this section, on or
2 after July 1, 2015, a roofing contractor may not require any

3 advance payments under a contract for the repair or replacement
4 of any part of a roof system of a residential real estate, when
5 payment is expected to be made from the proceeds of a property
6 or casualty insurance policy until the cancellation period, as
7 provided in section two of this article has expired.

8 (b) Within ten days after a contract has been canceled, as
9 provided in section two of this article, a roofing contractor shall
10 tender to the owner, any payments, partial payments, or deposits
11 made, and any note or other evidence of indebtedness, except as
12 provided in subsection (c) of this section.

13 (c) A roofing contractor that performs any emergency repair
14 services authorized by the owner of residential real estate, may
15 collect a reasonable and customary amount for the emergency
16 repair services performed for the authorizing owner.

17 (d) Any provision in a contract executed on or after July 1,
18 2015, for the repair of a roof system of residential real estate, as
19 provided in sections one and five of this article, that requires the
20 payment of any fee, except for repair services performed under
21 subsection (c) of this section, is not enforceable against any
22 person who has canceled a contract under section two of this
23 article.

§46A-6M-5. Roofing contractors; prohibited acts.

1 (a) Notwithstanding the provisions relating to public
2 adjusters, as defined in section one-e, article twelve-b, chapter
3 thirty-three of this code, on or after July 1, 2015, a roofing
4 contractor may not represent, negotiate, or advertise to represent
5 or negotiate on behalf of an owner of residential real estate on
6 any insurance claim in connection with the repair or replacement
7 of a roof system. Nothing in this subsection may be construed to
8 prohibit a roofing contractor from:

9 (1) Providing an estimate for repair, replacement,
10 construction or reconstruction of the roof system to the owner of
11 residential real estate; or

12 (2) Conferring with an insurance company's representative
13 about damage to the property after a claim has been submitted by
14 the owner of residential real estate.

15 (b) On or after July 1, 2015, a roofing contractor or person
16 representing a roofing contractor may not:

17 (1) Offer to pay or rebate all or any portion of an insurance
18 deductible or claims proceeds as an inducement to the sale of
19 goods or services related to a residential roofing contract;

20 (2) Pay the owner of residential real estate for whom
21 services have been performed pursuant to this article for any
22 reason or any form of compensation, including, but not limited
23 to a:

24 (A) Bonus;

25 (B) Coupon;

26 (C) Credit;

27 (D) Gift;

28 (E) Prize;

29 (F) Referral fee; or

30 (G) Any other tangible item having a monetary value.

§46A-6M-6. Private remedies for violation of article; criminal penalties.

1 (a) If a roofing contractor violates the provisions of this
2 article, the owner or the applicable insurer may bring an action

3 against the roofing contractor in a court of competent
4 jurisdiction for damages sustained by the owner or insurer as a
5 consequence of the roofing contractor's violation.

6 (b) A roofing contractor who willfully violates the
7 provisions of this article is guilty of a misdemeanor and, upon
8 conviction thereof, shall be fined not more than \$5,000 or
9 confined in jail not more than one year, or both fined and
10 confined.

CHAPTER 66

(H. B. 2931 - By Delegate Ashley)

[Passed March 12, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §60A-2-204 of the Code of West Virginia, 1931, as amended, relating to adding drugs to the classification of schedule I drugs.

Be it enacted by the Legislature of West Virginia:

That §60A-2-204 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

1 (a) Schedule I shall consist of the drugs and other
2 substances, by whatever official name, common or usual name,
3 chemical name, or brand name designated, listed in this section.

4 (b) Opiates. Unless specifically excepted or unless listed in
5 another schedule, any of the following opiates, including their

6 isomers, esters, ethers, salts and salts of isomers, esters and
7 ethers, whenever the existence of such isomers, esters, ethers and
8 salts is possible within the specific chemical designation (for
9 purposes of subdivision (34) of this subsection only, the term
10 isomer includes the optical and geometric isomers):

11 (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-
12 phenethyl)-4-piperidiny]—phenylacetamide);

13 (2) Acetylmethadol;

14 (3) Allylprodine;

15 (4) Alphacetylmethadol (except levoalphacetylmethadol also
16 known as levo-alpha-acetylmethadol, levomethadyl acetate, or
17 LAAM);

18 (5) Alphameprodine;

19 (6) Alphamethadol;

20 (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)
21 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
22 (-propanilido) piperidine);

23 (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)
24 ethyl-4-piperidiny]—phenylpropanamide);

25 (9) Benzethidine;

26 (10) Betacetylmethadol;

27 (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)
28 -4-piperidiny]-N-phenylpropanamide);

29 (12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-
30 hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-
31 phenylpropanamide);

32 (13) Betameprodine;

- 33 (14) Betamethadol;
- 34 (15) Betaprodine;
- 35 (16) Clonitazene;
- 36 (17) Dextromoramide;
- 37 (18) Diampromide;
- 38 (19) Diethylthiambutene;
- 39 (20) Difenoxin;
- 40 (21) Dimenoxadol;
- 41 (22) Dimepheptanol;
- 42 (23) Dimethylthiambutene;
- 43 (24) Dioxaphetyl butyrate;
- 44 (25) Dipipanone;
- 45 (26) Ethylmethylthiambutene;
- 46 (27) Etonitazene;
- 47 (28) Etoxeridine;
- 48 (29) Furethidine;
- 49 (30) Hydroxypethidine;
- 50 (31) Ketobemidone;
- 51 (32) Levomoramide;
- 52 (33) Levophenacilmorphan;
- 53 (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
54 piperidyl]-N-phenylpropanamide);

- 55 (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-
56 4- piperidiny]—phenylpropanamide);
- 57 (36) Morpheridine;
- 58 (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 59 (38) Noracymethadol;
- 60 (39) Norlevorphanol;
- 61 (40) Normethadone;
- 62 (41) Norpipanone;
- 63 (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-
64 phenethyl)-4-piperidiny] propanamide);
- 65 (43) PEPAP (1-(2-phenethyl)-4-phenyl-4-
66 acetoxypiperidine);
- 67 (44) Phenadoxone;
- 68 (45) Phenampromide;
- 69 (46) Phenomorphan;
- 70 (47) Phenoperidine;
- 71 (48) Piritramide;
- 72 (49) Proheptazine;
- 73 (50) Properidine;
- 74 (51) Propiram;
- 75 (52) Racemoramide;
- 76 (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-
77 piperidiny]-propanamide);

78 (54) Tilidine;

79 (55) Trimeperidine.

80 (c) *Opium derivatives*. — Unless specifically excepted or
81 unless listed in another schedule, any of the following opium
82 immediate derivatives, its salts, isomers and salts of isomers
83 whenever the existence of such salts, isomers and salts of
84 isomers is possible within the specific chemical designation:

85 (1) Acetorphine;

86 (2) Acetyldihydrocodeine;

87 (3) Benzylmorphine;

88 (4) Codeine methylbromide;

89 (5) Codeine-N-Oxide;

90 (6) Cyprenorphine;

91 (7) Desomorphine;

92 (8) Dihydromorphine;

93 (9) Drotebanol;

94 (10) Etorphine (except HCl Salt);

95 (11) Heroin;

96 (12) Hydromorphinol;

97 (13) Methyldesorphine;

98 (14) Methyldihydromorphine;

99 (15) Morphine methylbromide;

100 (16) Morphine methylsulfonate;

101 (17) Morphine-N-Oxide;

102 (18) Myrophine;

103 (19) Nicocodeine;

104 (20) Nicomorphine;

105 (21) Normorphine;

106 (22) Pholcodine;

107 (23) Thebacon.

108 (d) *Hallucinogenic substances.* — Unless specifically
109 excepted or unless listed in another schedule, any material,
110 compound, mixture or preparation, which contains any quantity
111 of the following hallucinogenic substances, or which contains
112 any of its salts, isomers and salts of isomers, whenever the
113 existence of such salts, isomers, and salts of isomers is possible
114 within the specific chemical designation (for purposes of this
115 subsection only, the term “isomer” includes the optical, position
116 and geometric isomers):

117 (1) Alpha-ethyltryptamine; some trade or other names:
118 tryptamine; Monase; alpha-ethy-1H-indole-3-ethanamine; 3-(2-
119 aminobutyl) indole; alpha-ET; and AET;

120 (2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade or
121 other names: 4-bromo-2,5-dimethoxy-alpha-
122 methylphenethylamine; 4-bromo-2,5-DMA;

123 (3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade or
124 other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane;
125 alpha- desmethyl DOB; 2C-B, Nexus;

126 (4)(A) N-(2-Methoxybenzyl)-4-bromo-2, 5-
127 dimethoxyphenethylamine. The substance has the acronym 25B-
128 NBOMe.

129 (B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)
130 ethanamine (25C-NBOMe).

131 (C) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)
132 ethanamine (25I-NBOMe)

133 (5) 2,5-dimethoxyamphetamine; some trade or other names:
134 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

135 (6) 2,5-dimethoxy-4-ethylamphetamine; some trade or other
136 names: DOET;

137 (7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other
138 name: 2C-T-7);

139 (8) 4-methoxyamphetamine; some trade or other names:
140 4 - m e t h o x y - a l p h a - m e t h y l p h e n e t h y l a m i n e ;
141 paramethoxyamphetamine; PMA;

142 (9) 5-methoxy-3,4-methylenedioxy-amphetamine;

143 (10) 4-methyl-2,5-dimethoxy-amphetamine; some trade and
144 other names: 4-methyl-2,5-dimethoxy-alpha-
145 methylphenethylamine; "DOM"; and "STP";

146 (11) 3,4-methylenedioxy amphetamine;

147 (12) 3,4-methylenedioxymethamphetamine (MDMA);

148 (13) 3,4-methylenedioxy-N-ethylamphetamine (also known
149 as - ethyl-alpha-methyl-3,4 (methylenedioxy)
150 phenethylamine, N-ethyl MDA, MDE, MDEA);

151 (14) N-hydroxy-3,4-methylenedioxyamphetamine (also
152 known as - hydroxy-alpha-methyl-3,4 (methylenedioxy)
153 phenethylamine, and - hydroxy MDA);

154 (15) 3,4,5-trimethoxy amphetamine;

155 (16) 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);

- 156 (17) Alpha-methyltryptamine (other name: AMT);
- 157 (18) Bufotenine; some trade and other names:
158 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-
159 dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin; 5-
160 hydroxy-N,N- dimethyltryptamine; mappine;
- 161 (19) Diethyltryptamine; some trade and other names: N, N-
162 Diethyltryptamine; DET;
- 163 (20) Dimethyltryptamine; some trade or other names: DMT;
- 164 (21) 5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);
- 165 (22) Ibogaine; some trade and other names: 7-Ethyl-6, 6
166 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-
167 pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;
- 168 (23) Lysergic acid diethylamide;
- 169 (24) Marihuana;
- 170 (25) Mescaline;
- 171 (26) Parahexyl-7374; some trade or other names: 3-Hexyl -
172 1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo
173 [b,d] pyran; Synhexyl;
- 174 (27) Peyote; meaning all parts of the plant presently
175 classified botanically as *Lophophora williamsii* Lemaire,
176 whether growing or not, the seeds thereof, any extract from any
177 part of such plant, and every compound, manufacture, salts,
178 immediate derivative, mixture or preparation of such plant, its
179 seeds or extracts;
- 180 (28) N-ethyl-3-piperidyl benzilate;
- 181 (29) N-methyl-3-piperidyl benzilate;
- 182 (30) Psilocybin;

183 (31) Psilocyn;

184 (32) Tetrahydrocannabinols; synthetic equivalents of the
185 substances contained in the plant, or in the resinous extractives
186 of Cannabis, sp. and/or synthetic substances, immediate
187 derivatives and their isomers with similar chemical structure and
188 pharmacological activity such as the following:

189 delta-1 Cis or trans tetrahydrocannabinol, and their optical
190 isomers;

191 delta-6 Cis or trans tetrahydrocannabinol, and their optical
192 isomers;

193 delta-3,4 Cis or trans tetrahydrocannabinol, and its optical
194 isomers;

195 (Since nomenclature of these substances is not
196 internationally standardized, compounds of these structures,
197 regardless of numerical designation of atomic positions
198 covered.)

199 (33) Ethylamine analog of phencyclidine; some trade or
200 other names: N-ethyl-1-phenylcyclohexylamine, (1-
201 phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)
202 ethylamine, cyclohexamine, PCE;

203 (34) Pyrrolidine analog of phencyclidine; some trade or
204 other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

205 (35) Thiophene analog of phencyclidine; some trade or
206 other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-
207 thienylanalog of phencyclidine; TPCP, TCP;

208 (36) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other
209 names: TCPy.

210 (37) 4-methylmethcathinone (Mephedrone);

- 211 (38) 3,4-methylenedioxyprovalerone (MDPV);
- 212 (39) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);
- 213 (40) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)
- 214 (41) 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-C)
- 215 (42) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)
- 216 (43) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-
217 T-2)
- 218 (44) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]
219 ethanamine (2C-T-4)
- 220 (45) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)
- 221 (46) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-
222 N)
- 223 (47) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-
224 P)
- 225 (48) 3,4-Methylenedioxy-N-methylcathinone
226 (Methylone)
- 227 (49) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-
228 T-7, its optical isomers, salts and salts of isomers)
- 229 (50) 5-methoxy-N,N-dimethyltryptamine some trade or other
230 names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-
231 DMT(5-MeO-DMT)
- 232 (51) Alpha-methyltryptamine (other name: AMT)
- 233 (52) 5-methoxy-N,N-diisopropyltryptamine (other name: 5-
234 MeO-DIPT)
- 235 (53) Synthetic Cannabinoids as follows:

236 (A) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
237 yl)phenol {also known as CP 47,497 and homologues};

238 (B) rel-2-[(1S,3R)-3-hydroxycyclohexyl] -5-(2-
239 methylnonan-2-yl)phenol {also known as CP 47,497-C8
240 homolog};

241 (C) [(6aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-
242 methyloctan-2-yl)-6a, 7,10,10a-tetrahydrobenzo[c]chromen-1-
243 ol)] {also known as HU-210};

244 (D) (dexanabinol); (6aS,10aS)-9-(hydroxymethyl)-6,6-
245 dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzol
246 [c]chromen-1-ol {also known as HU-211};

247 (E) 1-Pentyl-3-(1-naphthoyl)indole {also known as JWH-
248 018};

249 (F) 1-Butyl-3-(1-naphthoyl)indole {also known as JWH-
250 073};

251 (G) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-
252 methanone {also known as JWH-015};

253 (H) (1-hexyl-1H-indol-3-yl)-1-naphthalenyl-methanone
254 {also known as JWH-019};

255 (I) [1-[2-(4-morpholinyl) ethyl] -1H-indol-3-yl]-1-
256 naphthalenyl-methanone {also known as JWH-200};

257 (J) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-
258 ethanone {also known as JWH-250};

259 (K) 2-((1S,2S,5S)-5-hydroxy-2-(3-
260 hydroxypropyl)cyclohexyl)-5-(2-methyloctan-2-yl)phenol {also
261 known as CP 55,940};

262 (L) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -
263 methanone {also known as JWH-122};

264 (M) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -
265 methanone {also known as JWH-398;

266 (N) (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone
267 {also known as RCS-4};

268 (O) 1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-
269 methoxyphenyl) ethanone {also known as RCS-8};

270 (P) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081);

271 (Q) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201);
272 and

273 (R) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694).

274 (54) Synthetic cannabinoids or any material, compound,
275 mixture or preparation which contains any quantity of the
276 following substances, including their analogues, congeners,
277 homologues, isomers, salts and salts of analogues, congeners,
278 homologues and isomers, as follows:

279 (A) CP 47,497 AND homologues, 2-[(1R,3S)-3-
280 Hydroxycyclohexyl]-5-(2-methyloctan-2-YL)phenol);

281 (B) HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,
282 6-dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10,
283 10A-tetrahydrobenzo[C]chromen-1-OL)];

284 (C) HU-211, (dexanabinol, (6AS,10AS)-9-(hydroxymethyl)-
285 6,6-Dimethyl-3-(2-methyloctan-2-YL)-
286 6A,7,10,10atetrahydrobenzo[C]chromen-1-OL);

287 (D) JWH-018, 1-pentyl-3-(1-naphthoyl)indole;

288 (E) JWH-019, 1-hexyl-3-(1-naphthoyl)indole;

289 (F) JWH-073, 1-butyl-3-(1-naphthoyl)indole;

290 (G) JWH-200, (1-(2-morpholin-4-ylethyl)indol-3-yl)-
291 Naphthalen-1-ylmethanone;

292 (H) JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl)indole.]

293 (55) Synthetic cannabinoids including any material,
294 compound, mixture or preparation that is not listed as a
295 controlled substance in Schedule I through V, is not a federal
296 Food and Drug Administration approved drug or used within
297 legitimate and approved medical research and which contains
298 any quantity of the following substances, their salts, isomers,
299 whether optical positional or geometric, analogues, homologues
300 and salts of isomers, analogues and homologues, unless
301 specifically exempted, whenever the existence of these salts,
302 isomers, analogues, homologues and salts of isomers, analogues
303 and homologues if possible within the specific chemical
304 designation:

305 (A) Tetrahydrocannabinols meaning tetrahydrocannabinols
306 which are naturally contained in a plant of the genus cannabis as
307 well as synthetic equivalents of the substances contained in the
308 plant or in the resinous extractives of cannabis or synthetic
309 substances, derivatives and their isomers with analogous
310 chemical structure and or pharmacological activity such as the
311 following:

312 (i) DELTA-1 CIS OR trans tetrahydrocannabinol and their
313 Optical isomers.

314 (ii) DELTA-6 CIS OR trans tetrahydrocannabinol and their
315 optical isomers.

316 (iii) DELTA-3,4 CIS or their trans tetrahydrocannabinol and
317 their optical isomers.

318 (B) Naphthoylindoles or any compound containing a 3-(-1-
319 Naphthoyl) indole structure with substitution at the nitrogen atom
320 of the indole ring whether or not further substituted in the indole
321 ring to any extent and whether or not substituted in the naphthyl
322 ring to any extent. This shall include the following:

- 323 (i) JWH 015;
324 (ii) JWH 018;
325 (iii) JWH 019;
326 (iv) JWH 073;
327 (v) JWH 081;
328 (vi) JWH 122;
329 (vii) JWH 200;
330 (viii) JWH 210;
331 (ix) JWH 398;
332 (x) AM 2201;
333 (xi) WIN 55,212.

334 (56) Naphylmethylindoles or any compound containing a
335 1-indol-3-yl-(1-naphthyl) methane structure with a substitution at
336 the nitrogen atom of the indole ring whether or not further
337 substituted in the indole ring to any extent and whether or not
338 substituted in the naphthyl ring to any extent. This shall include,
339 but not be limited to, JWH 175 and JWH 184.

340 (57) Naphthoylpyrroles or any compound containing a 3-(1-
341 Naphthoyl) pyrrole structure with substitution at the nitrogen
342 atom of the pyrrole ring whether or not further substituted in the
343 pyrrole ring to any extent and whether or not substituted in the
344 naphthyl ring to any extent. This shall include, but not be limited
345 to, JWH 147 and JWH 307.

346 (58) Naphthylmethylindenes or any compound containing a
347 Naphthylideneindene structure with substitution at the 3-
348 Position of the indene ring whether or not further substituted in
349 the indene ring to any extent and whether or not substituted in

350 the naphthyl ring to any extent. This shall include, but not be
351 limited to, JWH 176.

352 (59) Phenylacetylindoles or any compound containing a 3-
353 Phenylacetylindole structure with substitution at the nitrogen
354 atom of the indole ring whether or not further substituted in the
355 indole ring to any extent and whether or not substituted in the
356 phenyl ring to any extent. This shall include the following:

357 (A) RCS-8, SR-18 OR BTM-8;

358 (B) JWH 250;

359 (C) JWH 203;

360 (D) JWH 251;

361 (E) JWH 302.

362 (60) Cyclohexylphenols or any compound containing a 2-(3-
363 hydroxycyclohexyl) phenol structure with a substitution at the 5-
364 position of the phenolic ring whether or not substituted in the
365 cyclohexyl ring to any extent. This shall include the following:

366 (A) CP 47,497 and its homologues and analogs;

367 (B) Cannabicyclohexanol;

368 (C) CP 55,940.

369 (61) Benzoylindoles or any compound containing a 3-
370 (benzoyl) indole structure with substitution at the nitrogen atom
371 of the indole ring whether or not further substituted in the indole
372 ring to any extent and whether or not substituted in the phenyl
373 ring to any extent. This shall include the following:

374 (A) AM 694;

375 (B) Pravadoline WIN 48,098;

376 (C) RCS 4;

377 (D) AM 679.

378 (62) [2,3-dihydro-5 methyl-3-(4-morpholinylmethyl)pyrrolo
379 [1,2,3-DE]-1,4-benzoxazin-6-YL]-1-napthalenymethanone. This
380 shall include WIN 55,212-2.

381 (63) Dibenzopyrans or any compound containing a 11-
382 hydroxydelta 8-tetrahydrocannabinol structure with substitution
383 on the 3-pentyl group. This shall include HU-210, HU-211, JWH
384 051 and JWH 133.

385 (64) Adamantoylindoles or any compound containing a 3-(-
386 1- Adamantoyl) indole structure with substitution at the nitrogen
387 atom of the indole ring whether or not further substituted in the
388 adamantoyl ring system to any extent. This shall include
389 AM1248.

390 (65) Tetramethylcyclopropylindoles or any compound
391 containing A 3-tetramethylcyclopropylindole structure with
392 substitution at the nitrogen atom of the indole ring whether or
393 not further substituted in the indole ring to any extent and
394 whether or not substituted in the tetramethylcyclopropyl ring to
395 any extent. This shall include UR-144 and XLR-11.

396 (66) N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide.
397 This shall include AKB48.

398 (67) Any other synthetic chemical compound that is a
399 Cannabinoid receptor type 1 agonist as demonstrated by binding
400 studies and functional assays that is not listed in Schedules II,
401 III, IV and V, not federal Food and Drug Administration
402 approved drug or used within legitimate, approved medical
403 research. Since nomenclature of these substances is not
404 internationally standardized, any immediate precursor or
405 immediate derivative of these substances shall be covered.

406 (68) Tryptamines:

407 (A) 5-methoxy-N-methyl-N-isopropyltryptamine (5-MeO-
408 MiPT)

409 (B) 4-hydroxy-N,N-diisopropyltryptamine (4-HO-DiPT)

410 (C) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-
411 MiPT)

412 (D) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET)

413 (E) 4-acetoxy-N,N-diisopropyltryptamine (4-AcO-DiPT)

414 (F) 5-methoxy- α -methyltryptamine (5-MeO-AMT)

415 (G) 4-methoxy-N,N-Dimethyltryptamine (4-MeO-DMT)

416 (H) 4-hydroxy Diethyltryptamine (4-HO-DET)

417 (I) 5-methoxy-N,N-diallyltryptamine (5-MeO-DALT)

418 (J) 4-acetoxy-N,N-Dimethyltryptamine (4-AcO DMT)

419 (K) 4-hydroxy Diethyltryptamine (4-HO-DET)

420 (e) *Depressants*. — Unless specifically excepted or unless
421 listed in another schedule, any material, compound, mixture, or
422 preparation which contains any quantity of the following
423 substances having a depressant effect on the central nervous
424 system, including its salts, isomers and salts of isomers
425 whenever the existence of such salts, isomers and salts of
426 isomers is possible within the specific chemical designation:

427 (1) Mecloqualone;

428 (2) Methaqualone.

429 (f) *Stimulants*. — Unless specifically excepted or unless
430 listed in another schedule, any material, compound, mixture, or
431 preparation which contains any quantity of the following

432 substances having a stimulant effect on the central nervous
433 system, including its salts, isomers and salts of isomers:

434 (1) Aminorex; some other names: aminoxaphen; 2-amino-5-
435 phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

436 (2) Cathinone; some trade or other names: 2-amino-1-
437 phenyl-1- propanone, alpha-aminopropiophenone, 2-
438 aminopropiophenone and norephedrone;

439 (3) Fenethylamine;

440 (4) Methcathinone, its immediate precursors and immediate
441 derivatives, its salts, optical isomers and salts of optical isomers;
442 some other names: (2-(methylamino)-propiophenone; alpha-
443 (methylamino)propiophenone; 2-(methylamino)-1-
444 phenylpropan-1- one; alpha—methylaminopropiophenone;
445 monomethylpropion; 3,4-methylenedioxypropylvalerone and/or
446 mephedrone; 3,4-methylenedioxypropylvalerone (MPVD);
447 ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-
448 422; AL- 463 and UR1432;

449 (5) (+-) cis-4-methylaminorex; ((+)-cis-4,5-dihydro-4-
450 methyl- 5-phenyl-2-oxazolamine);

451 (6) N-ethylamphetamine;

452 (7) N,N-dimethylamphetamine; also known as N,N-alpha-
453 trimethylbenzeneethanamine; N,N-alpha-
454 trimethylphenethylamine.

455 (8) Alpha-pyrrolidinopentiophenone, also known as alpha-
456 PVP, optical isomers, salts and salts of isomers.

457 (9) Substituted amphetamines:

458 (A) 2-Fluoroamphetamine

459 (B) 3-Fluoroamphetamine

460 (C) 4-Fluoroamphetamine

461 (D) 2-chloroamphetamine

462 (E) 3-chloroamphetamine

463 (F) 4-chloroamphetamine

464 (G) 2-Fluoromethamphetamine

465 (H) 3-Fluoromethamphetamine

466 (I) 4-Fluoromethamphetamine

467 (J) 4-chloromethamphetamine

468 (g) Temporary listing of substances subject to emergency
469 scheduling. Any material, compound, mixture or preparation
470 which contains any quantity of the following substances:

471 (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide
472 (benzylfentanyl), its optical isomers, salts, and salts of isomers.

473 (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-
474 phenylpropanamide (thienylfentanyl), its optical isomers, salts
475 and salts of isomers.

476 (3) N-benzylpiperazine, also known as BZP.

477 (h) The following controlled substances are included in
478 Schedule I:

479 (1) Synthetic Cathinones or any compound, except
480 bupropion or compounds listed under a different schedule, or
481 compounds used within legitimate and approved medical
482 research, structurally derived from 2-Aminopropan-1-one by
483 substitution at the 1-position with Monocyclic or fused
484 polycyclic ring systems, whether or not the compound is further
485 modified in any of the following ways:

486 (A) By substitution in the ring system to any extent with
487 Alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl or halide
488 Substituents whether or not further substituted in the ring system
489 by one or more other univalent substituents.

490 (B) By substitution at the 3-position with an acyclic alkyl
491 substituent.

492 (C) By substitution at the 2-amino nitrogen atom with alkyl,
493 dialkyl, benzyl or methoxybenzyl groups.

494 (D) By inclusion of the 2-amino nitrogen atom in a cyclic
495 structure.

496 (2) Any other synthetic chemical compound that is a
497 Cannabinoid receptor type 1 agonist as demonstrated by binding
498 studies and functional assays that is not listed in Schedules II,
499 III, IV and V, not federal Food and Drug Administration
500 approved drug or used within legitimate, approved medical
501 research.

CHAPTER 67

**(H. B. 2733 - By Delegate(s) Ellington
and Householder)**

[Passed March 12, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2015.]

AN ACT to amend and reenact §60A-2-208 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-9-3, §60A-9-4, §60A-9-4a and §60A-9-5 of said code; and to amend and reenact §60A-10-16 of said code, all relating to removing certain combinations of drugs containing hydrocodone from Schedule III of the controlled substances law; updating the

controlled substances monitoring law and extending the expiration date of provisions relating to the Multi-/State Real-Time Tracking System.

Be it enacted by the Legislature of West Virginia:

That §60A-2-208 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60A-9-3, §60A-9-4, §60A-9-4a and §60A-9-5 of said code be amended and reenacted; and that §60A-10-16 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-208. Schedule III.

1 (a) Schedule III consists of the drugs and other substances,
2 by whatever official name, common or usual name, chemical
3 name or brand name designated, listed in this section.

4 (b) *Stimulants.* — Unless specifically excepted or unless
5 listed in another schedule, any material, compound, mixture or
6 preparation which contains any quantity of the following
7 substances having a stimulant effect on the central nervous
8 system, including its salts, isomers (whether optical, position or
9 geometric) and salts of such isomers whenever the existence of
10 the salts, isomers and salts of isomers is possible within the
11 specific chemical designation:

12 (1) Those compounds, mixtures or preparations in dosage
13 unit form containing any stimulant substances listed in Schedule
14 II which compounds, mixtures or preparations were listed on
15 August 25, 1971, as excepted compounds under 21 C.F.R.
16 §C.F.R. §1308.32, and any other drug of the quantitative
17 composition shown in that list for those drugs or which is the
18 same except that it contains a lesser quantity of controlled
19 substances;

20 (2) Benzphetamine;

21 (3) Chlorphentermine;

22 (4) Clortermine;

23 (5) Phendimetrazine.

24 (c) *Depressants*. — Unless specifically excepted or unless
25 listed in another schedule, any material, compound, mixture or
26 preparation which contains any quantity of the following
27 substances having a depressant effect on the central nervous
28 system:

29 (1) Any compound, mixture or preparation containing:

30 (A) Amobarbital;

31 (B) Secobarbital;

32 (C) Pentobarbital; or any salt of pentobarbital and one or
33 more other active medicinal ingredients which are not listed in
34 any schedule;

35 (2) Any suppository dosage form containing:

36 (A) Amobarbital;

37 (B) Secobarbital;

38 (C) Pentobarbital; or any salt of any of these drugs and
39 approved by the food and drug administration for marketing only
40 as a suppository;

41 (3) Any substance which contains any quantity of a
42 derivative of barbituric acid or any salt of barbituric acid;

43 (4) Aprobarbital;

44 (5) Butobarbital (secbutobarbital);

45 (6) Butalbital (including, but not limited to, Fioricet);

46 (7) Butobarbital (butethal);

- 47 (8) Chlorhexadol;
- 48 (9) Embutramide;
- 49 (10) Gamma Hydroxybutyric Acid preparations;
- 50 (11) Ketamine, its salts, isomers and salts of isomers [Some
51 other names for ketamine: (+)-2-(2-chlorophenyl)-2-
52 (methylamino)-cyclohexanone];
- 53 (12) Lysergic acid;
- 54 (13) Lysergic acid amide;
- 55 (14) Methyprylon;
- 56 (15) Sulfondiethylmethane;
- 57 (16) Sulfonethylmethane;
- 58 (17) Sulfonmethane;
- 59 (18) Thiamylal;
- 60 (19) Thiopental;
- 61 (20) Tiletamine and zolazepam or any salt of tiletamine and
62 zolazepam; some trade or other names for a
63 tiletamine-zolazepam combination product: Telazol; some trade
64 or other names for tiletamine: 2-(ethylamino)-2-
65 (2-thienyl)-cyclohexanone; some trade or other names for
66 zolazepam: 4-(2-fluorophenyl)-6, 8-dihydro-1, 3,
67 8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one,
68 flupyrazapon; and
- 69 (21) Vinbarbital.
- 70 (d) Nalorphine.
- 71 (e) *Narcotic drugs*. — Unless specifically excepted or unless
72 listed in another schedule:

73 (1) Any material, compound, mixture or preparation
74 containing any of the following narcotic drugs, or their salts
75 calculated as the free anhydrous base or alkaloid, in limited
76 quantities as set forth below:

77 (A) Not more than 1.8 grams of codeine per 100 milliliters
78 and not more than 90 milligrams per dosage unit, with an equal
79 or greater quantity of an isoquinoline alkaloid of opium;

80 (B) Not more than 1.8 grams of codeine per 100 milliliters
81 or not more than 90 milligrams per dosage unit, with one or
82 more active, nonnarcotic ingredients in recognized therapeutic
83 amounts;

84 (C) Not more than 1.8 grams of dihydrocodeine per 100
85 milliliters and not more than 90 milligrams per dosage unit, with
86 one or more active, nonnarcotic ingredients in recognized
87 therapeutic amounts;

88 (D) Not more than 300 milligrams of ethylmorphine per 100
89 milliliters or not more than 15 milligrams per dosage unit, with
90 one or more active, nonnarcotic ingredients in recognized
91 therapeutic amounts;

92 (E) Not more than 500 milligrams of opium per 100
93 milliliters or per 100 grams or not more than 25 milligrams per
94 dosage unit, with one or more active, nonnarcotic ingredients in
95 recognized therapeutic amounts;

96 (F) Not more than 50 milligrams of morphine per 100
97 milliliters or per 100 grams, with one or more active,
98 nonnarcotic ingredients in recognized therapeutic amounts.

99 (2) Any material, compound, mixture or preparation
100 containing buprenorphine or its salts (including, but not limited
101 to, Suboxone).

102 (f) *Anabolic steroids*. — Unless specifically excepted or
103 unless listed in another schedule, any material, compound,
104 mixture, or preparation containing any quantity of anabolic
105 steroids, including its salts, isomers and salts of isomers
106 whenever the existence of the salts of isomers is possible within
107 the specific chemical designation.

108 (g) Human growth hormones.

109 (h) Dronabinol (synthetic) in sesame oil and encapsulated in
110 a soft gelatin capsule in a United States food and drug
111 administration approved drug product. (Some other names for
112 dronabinol: (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6,
113 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1- ol or
114 (-)-delta-9-(trans)-tetrahydrocannabinol).

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-3. Reporting system requirements; implementation; central repository requirement.

1 (a) The Board of Pharmacy shall implement a program
2 wherein a central repository is established and maintained which
3 shall contain such information as is required by the provisions of
4 this article regarding Schedule II, III, and IV controlled
5 substance prescriptions written or filled in this state. In
6 implementing this program, the Board of Pharmacy shall consult
7 with the West Virginia State Police, the licensing boards of
8 practitioners affected by this article and affected practitioners.

9 (b) The program authorized by subsection (a) of this section
10 shall be designed to minimize inconvenience to patients,
11 prescribing practitioners and pharmacists while effectuating the
12 collection and storage of the required information. The board
13 shall allow reporting of the required information by electronic
14 data transfer where feasible, and where not feasible, on reporting
15 forms promulgated by the board. The information required to be

16 submitted by the provisions of this article shall be required to be
17 filed no more frequently than within twenty-four hours.

18 (c) (1) The board shall provide for the electronic
19 transmission of the information required to be provided by this
20 article by and through the use of a toll-free telephone line.

21 (2) A dispenser, who does not have an automated
22 record-keeping system capable of producing an electronic report
23 in the established format may request a waiver from electronic
24 reporting. The request for a waiver shall be made to the board in
25 writing and shall be granted if the dispenser agrees in writing to
26 report the data by submitting a completed "Pharmacy Universal
27 Claim Form" as defined by legislative rule.

§60A-9-4. Required information.

1 (a) Whenever a medical services provider dispenses a
2 controlled substance listed in Schedule II, III or IV as established
3 under the provisions of article two of this chapter or whenever
4 a prescription for the controlled substance is filled by: (i) A
5 pharmacist or pharmacy in this state; (ii) a hospital, or other
6 health care facility, for out-patient use; or (iii) a pharmacy or
7 pharmacist licensed by the Board of Pharmacy, but situated
8 outside this state for delivery to a person residing in this state,
9 the medical services provider, health care facility, pharmacist or
10 pharmacy shall, in a manner prescribed by rules promulgated by
11 the board under this article, report the following information, as
12 applicable:

13 (1) The name, address, pharmacy prescription number and
14 Drug Enforcement Administration controlled substance
15 registration number of the dispensing pharmacy or the
16 dispensing physician or dentist;

17 (2) The full legal name, address and birth date of the person
18 for whom the prescription is written;

19 (3) The name, address and Drug Enforcement
20 Administration controlled substances registration number of the
21 practitioner writing the prescription;

22 (4) The name and national drug code number of the Schedule
23 II, III, and IV controlled substance dispensed;

24 (5) The quantity and dosage of the Schedule II, III, and IV
25 controlled substance dispensed;

26 (6) The date the prescription was written and the date filled;

27 (7) The number of refills, if any, authorized by the
28 prescription;

29 (8) If the prescription being dispensed is being picked up by
30 someone other than the patient on behalf of the patient, the first
31 name, last name and middle initial, address and birth date of the
32 person picking up the prescription as set forth on the person's
33 government-issued photo identification card shall be retained in
34 either print or electronic form until such time as otherwise
35 directed by rule promulgated by the board; and

36 (9) The source of payment for the controlled substance
37 dispensed.

38 (b) The board may prescribe by rule promulgated under this
39 article the form to be used in prescribing a Schedule II, III, and
40 IV substance if, in the determination of the board, the
41 administration of the requirements of this section would be
42 facilitated.

43 (c) Products regulated by the provisions of article ten of this
44 chapter shall be subject to reporting pursuant to the provisions of
45 this article to the extent set forth in said article.

46 (d) Reporting required by this section is not required for a
47 drug administered directly to a patient by a practitioner.

48 Reporting is, however, required by this section for a drug
49 dispensed to a patient by a practitioner: *Provided*, That the
50 quantity dispensed may not exceed an amount adequate to treat
51 the patient for a maximum of seventy-two hours with no greater
52 than two seventy-two-hour cycles dispensed in any fifteen-day
53 period of time.

§60A-9-4a. Verification of identity.

1 Prior to releasing a Schedule II, III, or IV controlled
2 substance sold at retail, a pharmacist or pharmacy shall verify
3 the full legal name, address and birth date of the person picking
4 up the controlled substance dispensed by requiring the
5 presentation of a valid government-issued photo identification
6 card. This information shall be reported in accordance with the
7 provisions of this article.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

1 (a) (1) The information required by this article to be kept by
2 the board is confidential and not subject to the provisions of
3 chapter twenty-nine-b of this code or obtainable as discovery in
4 civil matters absent a court order and is open to inspection only
5 by inspectors and agents of the board members of the West
6 Virginia State Police expressly authorized by the Superintendent
7 of the West Virginia State Police to have access to the
8 information, authorized agents of local law-enforcement
9 agencies as members of a federally affiliated drug task force,
10 authorized agents of the federal Drug Enforcement
11 Administration, duly authorized agents of the Bureau for
12 Medical Services, duly authorized agents of the Office of the
13 Chief Medical Examiner for use in post-mortem examinations,
14 duly authorized agents of licensing boards of practitioners in this
15 state and other states authorized to prescribe Schedules II, III,
16 and IV controlled substances, prescribing practitioners and
17 pharmacists and persons with an enforceable court order or

18 regulatory agency administrative subpoena: *Provided*, That all
19 law-enforcement personnel who have access to the Controlled
20 Substances Monitoring Program database shall be granted access
21 in accordance with applicable state laws and the board's
22 legislative rules, shall be certified as a West Virginia
23 law-enforcement officer and shall have successfully completed
24 training approved by the board. All information released by the
25 board must be related to a specific patient or a specific
26 individual or entity under investigation by any of the above
27 parties except that practitioners who prescribe or dispense
28 controlled substances may request specific data related to their
29 Drug Enforcement Administration controlled substance
30 registration number or for the purpose of providing treatment to
31 a patient: *Provided, however*, That the West Virginia Controlled
32 Substances Monitoring Program Database Review Committee
33 established in subsection (b) of this section is authorized to
34 query the database to comply with said subsection.

35 (2) Subject to the provisions of subdivision (1) of this
36 subsection, the board shall also review the West Virginia
37 Controlled Substance Monitoring Program database and issue
38 reports that identify abnormal or unusual practices of patients
39 who exceed parameters as determined by the advisory committee
40 established in this section. The board shall communicate with
41 prescribers and dispensers to more effectively manage the
42 medications of their patients in the manner recommended by the
43 advisory committee. All other reports produced by the board
44 shall be kept confidential. The board shall maintain the
45 information required by this article for a period of not less than
46 five years. Notwithstanding any other provisions of this code to
47 the contrary, data obtained under the provisions of this article
48 may be used for compilation of educational, scholarly or
49 statistical purposes, and may be shared with the West Virginia
50 Department of Health and Human Resources for those purposes,
51 as long as the identities of persons or entities and any personally
52 identifiable information, including protected health information,

53 contained therein shall be redacted, scrubbed or otherwise
54 irreversibly destroyed in a manner that will preserve the
55 confidential nature of the information. No individual or entity
56 required to report under section four of this article may be
57 subject to a claim for civil damages or other civil relief for the
58 reporting of information to the board as required under and in
59 accordance with the provisions of this article.

60 (3) The board shall establish an advisory committee to
61 develop, implement and recommend parameters to be used in
62 identifying abnormal or unusual usage patterns of patients in this
63 state. This advisory committee shall:

64 (A) Consist of the following members: A physician licensed
65 by the West Virginia Board of Medicine, a dentist licensed by
66 the West Virginia Board of Dental Examiners, a physician
67 licensed by the West Virginia Board of Osteopathy, a licensed
68 physician certified by the American Board of Pain Medicine, a
69 licensed physician board certified in medical oncology
70 recommended by the West Virginia State Medical Association,
71 a licensed physician board certified in palliative care
72 recommended by the West Virginia Center on End of Life Care,
73 a pharmacist licensed by the West Virginia Board of Pharmacy,
74 a licensed physician member of the West Virginia Academy of
75 Family Physicians, an expert in drug diversion and such other
76 members as determined by the board.

77 (B) Recommend parameters to identify abnormal or unusual
78 usage patterns of controlled substances for patients in order to
79 prepare reports as requested in accordance with subsection (a),
80 subdivision (2) of this section.

81 (C) Make recommendations for training, research and other
82 areas that are determined by the committee to have the potential
83 to reduce inappropriate use of prescription drugs in this state,
84 including, but not limited to, studying issues related to diversion
85 of controlled substances used for the management of opioid
86 addiction.

87 (D) Monitor the ability of medical services providers, health
88 care facilities, pharmacists and pharmacies to meet the
89 twenty-four hour reporting requirement for the Controlled
90 Substances Monitoring Program set forth in section three of this
91 article, and report on the feasibility of requiring real-time
92 reporting.

93 (E) Establish outreach programs with local law enforcement
94 to provide education to local law enforcement on the
95 requirements and use of the Controlled Substances Monitoring
96 Program database established in this article.

97 (b) The board shall create a West Virginia Controlled
98 Substances Monitoring Program Database Review Committee of
99 individuals consisting of two prosecuting attorneys from West
100 Virginia counties, two physicians with specialties which require
101 extensive use of controlled substances and a pharmacist who is
102 trained in the use and abuse of controlled substances. The review
103 committee may determine that an additional physician who is an
104 expert in the field under investigation be added to the team when
105 the facts of a case indicate that the additional expertise is
106 required. The review committee, working independently, may
107 query the database based on parameters established by the
108 advisory committee. The review committee may make
109 determinations on a case-by-case basis on specific unusual
110 prescribing or dispensing patterns indicated by outliers in the
111 system or abnormal or unusual usage patterns of controlled
112 substances by patients which the review committee has
113 reasonable cause to believe necessitates further action by law
114 enforcement or the licensing board having jurisdiction over the
115 prescribers or dispensers under consideration. The review
116 committee shall also review notices provided by the chief
117 medical examiner pursuant to subsection (h), section ten, article
118 twelve, chapter sixty-one of this code and determine on a
119 case-by-case basis whether a practitioner who prescribed or
120 dispensed a controlled substance resulting in or contributing to
121 the drug overdose may have breached professional or

122 occupational standards or committed a criminal act when
123 prescribing the controlled substance at issue to the decedent.
124 Only in those cases in which there is reasonable cause to believe
125 a breach of professional or occupational standards or a criminal
126 act may have occurred, the review committee shall notify the
127 appropriate professional licensing agency having jurisdiction
128 over the applicable prescriber or dispenser and appropriate
129 law-enforcement agencies and provide pertinent information
130 from the database for their consideration. The number of cases
131 identified shall be determined by the review committee based on
132 a number that can be adequately reviewed by the review
133 committee. The information obtained and developed may not be
134 shared except as provided in this article and is not subject to the
135 provisions of chapter twenty-nine-b of this code or obtainable as
136 discovering in civil matters absent a court order.

137 (c) The board is responsible for establishing and providing
138 administrative support for the advisory committee and the West
139 Virginia Controlled Substances Monitoring Program Database
140 Review Committee. The advisory committee and the review
141 committee shall elect a chair by majority vote. Members of the
142 advisory committee and the review committee may not be
143 compensated in their capacity as members but shall be
144 reimbursed for reasonable expenses incurred in the performance
145 of their duties.

146 (d) The board shall promulgate rules with advice and consent
147 of the advisory committee, in accordance with the provisions of
148 article three, chapter twenty-nine-a of this code. The legislative
149 rules must include, but shall not be limited to, the following
150 matters:

151 (1) Identifying parameters used in identifying abnormal or
152 unusual prescribing or dispensing patterns;

153 (2) Processing parameters and developing reports of
154 abnormal or unusual prescribing or dispensing patterns for
155 patients, practitioners and dispensers;

156 (3) Establishing the information to be contained in reports
157 and the process by which the reports will be generated and
158 disseminated; and

159 (4) Setting up processes and procedures to ensure that the
160 privacy, confidentiality, and security of information collected,
161 recorded, transmitted and maintained by the review committee
162 is not disclosed except as provided in this section.

163 (e) All practitioners, as that term is defined in section one
164 hundred-one, article two of this chapter who prescribe or
165 dispense schedule II, III, or IV controlled substances shall have
166 online or other form of electronic access to the West Virginia
167 Controlled Substances Monitoring Program database;

168 (f) Persons or entities with access to the West Virginia
169 Controlled Substances Monitoring Program database pursuant to
170 this section may, pursuant to rules promulgated by the board,
171 delegate appropriate personnel to have access to said database;

172 (g) Good faith reliance by a practitioner on information
173 contained in the West Virginia Controlled Substances
174 Monitoring Program database in prescribing or dispensing or
175 refusing or declining to prescribe or dispense a schedule II, III,
176 or IV controlled substance shall constitute an absolute defense
177 in any civil or criminal action brought due to prescribing or
178 dispensing or refusing or declining to prescribe or dispense; and

179 (h) A prescribing or dispensing practitioner may notify law
180 enforcement of a patient who, in the prescribing or dispensing
181 practitioner's judgment, may be in violation of section four
182 hundred ten, article four of this chapter, based on information
183 obtained and reviewed from the controlled substances
184 monitoring database. A prescribing or dispensing practitioner
185 who makes a notification pursuant to this subsection is immune
186 from any civil, administrative or criminal liability that otherwise
187 might be incurred or imposed because of the notification if the
188 notification is made in good faith.

189 (i) Nothing in the article may be construed to require a
190 practitioner to access the West Virginia Controlled Substances
191 Monitoring Program database except as provided in section
192 five-a of this article.

193 (j) The board shall provide an annual report on the West
194 Virginia Controlled Substance Monitoring Program to the
195 Legislative Oversight Commission on Health and Human
196 Resources Accountability with recommendations for needed
197 legislation no later than January 1 of each year.

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADI- CATION ACT.

§60A-10-16. Expiration of enactments made during 2012 regular session.

1 The provisions of this article enacted during the 2012 regular
2 legislative session establishing the Multi-State Real-Time
3 Tracking System shall expire on June 30, 2017.



CHAPTER 68

(Com. Sub. for S. B. 352 - By Senator Walters)

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §19-4-1, §19-4-2, §19-4-3, §19-4-4,
§19-4-5, §19-4-13, §19-4-16 and §19-4-22 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §24A-1-3
of said code, all relating to cooperative associations; clarifying
definitions; expanding scope of cooperative associations to goods
and services, including recycling; limiting scope of recycling
cooperatives; expanding membership of cooperative associations;

and revising exemptions for motor carriers to allow nonprofit recycling cooperatives.

Be it enacted by the Legislature of West Virginia:

That §19-4-1, §19-4-2, §19-4-3, §19-4-4, §19-4-5, §19-4-13, §19-4-16 and §19-4-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24A-1-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 4. COOPERATIVE ASSOCIATIONS.

§19-4-1. Definitions.

1 As used in this article:

2 (a) “Agricultural products” means horticultural, viticultural,
3 forestry, dairy, livestock, poultry, bee and any farm products in
4 their natural form or processed.

5 (b) “Goods and services” means food and beverages, arts and
6 crafts, woodworking and furniture-making, and recycling,
7 composting and repurposing materials.

8 (c) “Member” means a member of an association without
9 capital stock and a holder of common stock in an association
10 organized with capital stock.

11 (d) “Cooperative association” or “association” means any
12 corporation organized under this article. Each association shall
13 also comply with the requisite business corporation provisions
14 of chapter thirty-one-d or thirty-one-f of this code, or the
15 nonprofit corporation provisions of chapter thirty-one-e of this
16 code.

17 Except within a thirty-five mile radius of a facility that has
18 been permitted and classified by the West Virginia Department

19 of Environmental Protection as a mixed waste processing
20 resource recovery facility, a recycling cooperative association
21 may be organized as a nonprofit corporation pursuant to chapter
22 thirty-one-e of this code. Any such recycling cooperative
23 association is limited to owning or using one motor vehicle for
24 the collection and transportation of recyclable goods. The
25 recyclable goods must be generated by members of the recycling
26 cooperative association.

27 (e) “Qualified person” means a person who is engaged in the
28 producing, preserving, harvesting, drying, processing,
29 manufacturing, canning, packing, grading, storing, handling,
30 utilizing, marketing, financing, selling, distributing, shipping,
31 procuring or providing of agricultural products, or other goods
32 and services, or the by-products thereof.

33 (f) “Qualified activity” means those engaged in the
34 producing, preserving, harvesting, drying, processing,
35 manufacturing, canning, packing, grading, storing, handling,
36 utilizing, marketing, financing, selling, distributing, shipping,
37 procuring or providing of agricultural products, or other goods
38 and services, or the by-products thereof.

§19-4-2. Who may organize.

1 Three or more qualified persons engaged in the production
2 of agricultural products or the provision of goods and services
3 may form a cooperative association with or without capital
4 stock. Three or more cooperative associations may form an
5 agricultural credit association, with or without capital stock,
6 under this article and in compliance with the credit union
7 provisions of chapter thirty-one-c of this code.

§19-4-3. Purposes.

1 A cooperative association may be organized to engage in one
2 or more qualified activities in connection with the marketing or

3 selling of agricultural products or the goods and services of its
4 members or those purchased from other persons; or in
5 connection with the manufacturing, selling or supplying to its
6 members of machinery, equipment or supplies; or in securing
7 and disseminating market information; or in the financing
8 directly, through agricultural credit associations, and/or
9 otherwise, the above-enumerated activities; or in any one or
10 more of the activities specified herein. An agricultural credit
11 association may be organized hereunder to finance qualified
12 persons or to finance any cooperative association, or both,
13 whether formed under the laws of this or any other state.

§19-4-4. Powers.

1 A cooperative association shall have the following powers:

2 (a) To engage in any qualified activity in connection with
3 any agricultural products or goods and services provided; or any
4 activity in connection with the purchase, hiring or use by its
5 members of supplies, machinery or equipment; or in securing
6 and disseminating market information; or in the financing,
7 directly, through agricultural credit associations any qualified
8 activities. All transactions with nonmembers shall be on terms
9 fixed by the association and nonmembers shall not otherwise
10 participate in any benefits derived from such transactions;

11 (b) To borrow money without limitation as to amount of
12 corporate indebtedness or liability, and to make advance
13 payments and advances to members; to execute, issue, draw,
14 make, accept, endorse and guarantee, without limitation,
15 promissory notes, bills of exchange, drafts, warrants, certificates,
16 mortgages, and any other form of obligation or negotiable or
17 transferable bills of any kind; to become the surety, guarantor,
18 maker, and/or endorser for accommodation or otherwise of bills,
19 notes, securities and other evidences of debt of any association
20 or person, anything in any other statutes or law of this state to
21 the contrary notwithstanding;

22 (c) To act as the agent or representative of any member or
23 members in any of the above-mentioned activities;

24 (d) To purchase or otherwise acquire, and to hold, own and
25 exercise all rights of ownership in, and to sell, transfer or pledge,
26 or guarantee the payment of dividends or interest on, or the
27 retirement or redemption of, shares of the capital stock or bonds
28 of any corporation or association engaged in any related activity
29 or in the warehousing or handling or marketing of any of the
30 products handled by the association;

31 (e) To establish reserves and to invest the funds thereof in
32 bonds or in such other property as may be provided in the
33 bylaws;

34 (f) To buy, hold and exercise all privileges of ownership
35 over real or personal property as may be necessary or convenient
36 for the conduct and operation of any of the business of the
37 association, or incidental thereto;

38 (g) To establish, secure, own and develop patents,
39 trademarks and copyrights;

40 (h) To do each and every thing necessary, suitable or proper
41 for the accomplishment of any one of the purposes or the
42 attainment of any one or more of the subjects herein enumerated,
43 or conducive to or not contrary to the interest or benefit of the
44 association; and to contract accordingly; and, in addition, to
45 exercise and possess all powers, rights and privileges necessary
46 or incidental to the purposes for which the association is
47 organized or to the activities in which it is engaged, and any
48 other rights, powers, and privileges granted by the laws of this
49 state to ordinary corporations, except such as are inconsistent
50 with the purposes of this article; and to do any such thing
51 anywhere. An agricultural credit association shall have all of the
52 powers given to a cooperative association under the provisions

53 of subdivision (b), section four of this article, and in general
54 shall have power to do and perform any act or thing, not
55 inconsistent with law, which may be appropriate to promote and
56 attain the objects and purposes of such credit association.

§19-4-5. Members.

1 (a) Under the terms and conditions prescribed in the bylaws
2 adopted by it, a cooperative association may admit as members,
3 or issue common stock to, only qualified persons, employees,
4 volunteers and persons engaged in qualified activities, including
5 the production, sale, creation, distribution, aggregation or
6 cooperative marketing of the agricultural products or the goods
7 and services to be handled by or through the association, and any
8 lessor or landlord who receives as rent all or any part of a crop
9 raised on the leased premises; and under the terms and
10 conditions prescribed in the bylaws adopted by it, an agricultural
11 credit association may admit any person as a member.

12 (b) If a member of a nonstock association be other than a
13 natural person, the member may be represented by an individual,
14 associate, officer or manager or member thereof, duly authorized
15 in writing.

16 (c) One association organized hereunder may become a
17 member or stockholder of any other association or associations
18 organized under this article or similar laws of any state.

§19-4-13. Stock; membership certificate; voting; liability; limitations on transfer and ownership.

1 (a) When a member of an association established without
2 capital stock has paid his or her membership fee in full, he or she
3 shall receive a certificate of membership. An association shall
4 have power to issue one or more classes of stock, or one or more
5 series of stock within any class thereof, any or all of which
6 classes may be of stock with par value or stock without par

7 value, with such voting powers, full or limited, or without voting
8 powers and in such series, and with such designations,
9 preferences and relative, participating, optional or other special
10 rights, and qualifications, limitations or restrictions thereof, as
11 shall be stated and expressed in the articles of incorporation, or
12 in any amendment thereto, or in the resolution or resolutions
13 providing for the issue of such stock adopted by the board of
14 directors pursuant to authority expressly vested in it by the
15 provisions of the articles of incorporation or of any amendment
16 thereto.

17 (b) No association shall issue stock to a member until it has
18 been fully paid for. The promissory notes of the members may
19 be accepted by the association as full or partial payment. The
20 association shall hold the stock as security for the payment of the
21 note; but such retention as security shall not affect the member's
22 right to vote.

23 (c) No member shall be liable for the debts of the association
24 to an amount exceeding the sum remaining unpaid on his or her
25 membership fee or his or her subscription to the capital stock,
26 including any unpaid balance on any promissory notes given in
27 payment thereof.

28 (d) An association in its bylaws may limit the amount of
29 common stock which one member may own. No member or
30 stockholder shall be entitled to more than one vote, regardless of
31 the number of shares of common stock owned by him or her.

32 (e) Any association organized with stock under this article
33 may issue preferred stock, with or without the right to vote. Such
34 stock may be sold to any person, member or nonmember, and
35 may be redeemable or retireable by the association on such terms
36 and conditions as may be provided for by the articles of
37 incorporation and printed on the face of the certificate. The
38 bylaws shall prohibit the transfer of the common stock of the

39 association to persons who are not qualified persons, or
40 organizations that are not engaged in qualified activities handled
41 by the association, or to persons or organizations that are not
42 members of credit associations financing such products; and
43 such restrictions shall be printed upon every certificate of stock
44 subject thereto.

45 (f) Other kinds and classes of stock may be issued in
46 compliance with the provisions of the articles of incorporation,
47 the terms of the bylaws, or special resolutions of the board of
48 directors.

49 (g) The association may, at any time, as specified in the
50 bylaws, except when the debts of the association exceed fifty
51 percent of the assets thereof, buy in or purchase its common
52 stock at the book value thereof, as conclusively determined by
53 the board of directors, and pay for it in cash within one year
54 thereafter.

§19-4-16. Marketing contract.

1 The association and its members may take and execute
2 marketing contracts, requiring the members to sell, for any
3 period of time, not over twenty years, all or any specified part of
4 their agricultural products, goods and services or specified
5 commodities exclusively to or through the association, or any
6 facilities to be created by the association. If they contract a sale
7 to the association, it shall be conclusively held that title to the
8 products, goods and services passes absolutely and unreservedly,
9 except for recorded liens, to the association upon delivery, or at
10 any other specified time if expressly and definitely agreed in
11 such contract. The contract may provide, among other things,
12 that the association may sell or resell the products, goods and
13 services delivered by its members, with or without taking title
14 thereto, and pay over to its members the resale price, after
15 deducting all necessary selling, overhead and other costs and

16 expenses, including interest or dividends on stock, not exceeding
17 eight percent per annum, and reserves for retiring the stock, if
18 any; and any other proper reserves; or any other deductions.

§19-4-22. Interest in other corporations or associations; warehouse receipts as collateral.

1 (a) An association may organize, form, operate, own,
2 control, have an interest in, own stock of, or be a member of any
3 other corporation or corporations, with or without capital stock,
4 and engaged in qualified activities regarding the agricultural
5 products, goods and services handled by the association, or the
6 by-products thereof.

7 (b) If such corporations are warehousing corporations, they
8 may issue legal warehouse receipts to the association against the
9 commodities, goods and services delivered by it, or to any other
10 person, and such legal warehouse receipts shall be considered as
11 adequate collateral to the extent of the usual and current value of
12 the commodity represented thereby. In case such warehouse is
13 licensed or licensed and bonded under the laws of this or any
14 other state or the United States, its warehouse receipt delivered
15 to the association on commodities of the association or its
16 members, or delivered by the association or its members, shall
17 not be challenged or discriminated against because of ownership
18 or control, wholly or in part, by the association.

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

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

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

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

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

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

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

32 (6) Motor vehicles used exclusively for volunteer fire
33 department service;

34 (7) Motor vehicles used exclusively in the transportation of
35 coal from mining operations to loading facilities for further
36 shipment by rail or water carriers: *Provided*, That the vehicles
37 and their operators are subject to the safety rules promulgated by

38 the commission and the vehicles that are exempted by this
39 subdivision and are also operated by common carriers by motor
40 vehicle or contract carriers by motor vehicle, and their operators
41 are subject to the insurance rules promulgated by the
42 commission;

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

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

67 (10) Motor vehicles specifically preempted from state
68 economic regulation of intrastate motor carrier operations by the
69 provisions of 49 U. S. C. §14501 as amended by Title I, Section
70 103 of the federal Interstate Commerce Commission
71 Termination Act of 1995: *Provided*, That the vehicles and their

72 operators are subject to the safety regulations promulgated by the
73 commission and the vehicles that are exempted by this
74 subdivision and are also operated by common carriers by motor
75 vehicle or contract carriers by motor vehicle, and their operators
76 are subject to the insurance rules promulgated by the
77 commission;

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

82 (12) Motor vehicles designated by the West Virginia
83 Division of Public Transit operated by organizations that receive
84 federal grants from the Federal Transit Administration:
85 *Provided*, That the vehicles and their operators are subject to the
86 safety and insurance rules promulgated by the commission.

CHAPTER 69

(S. B. 507 - By Senators Trump and Plymale)

[Passed March 6, 2015; in effect from passage.]
[Approved by the Governor on March 13, 2015.]

AN ACT to amend and reenact §31-20-5e of the Code of West Virginia, 1931, as amended, relating to allowing emails and other types of electronic communications to and from regional jail inmates be monitored, intercepted, recorded and disclosed; and providing exception for attorney-client privileged communications.

Be it enacted by the Legislature of West Virginia:

That §31-20-5e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND
CORRECTIONAL FACILITY AUTHORITY.**

**§31-20-5e. Monitoring of inmate telephone calls and electronic
communications; procedures and restrictions;
attorney-client privilege protected and exempted.**

1 (a) The executive director or his or her designee is
2 authorized to monitor, intercept, record and disclose the content
3 of telephone calls and, if available to inmates, emails and other
4 forms of electronic communications to or from inmates housed
5 in regional jails in accordance with the following provisions:

6 (1) All inmates housed in regional jails shall be notified in
7 writing that their telephone conversations, emails and other
8 forms of electronic communications may be monitored,
9 intercepted, recorded and disclosed;

10 (2) Only the executive director and his or her designee shall
11 have access to recordings of inmates' telephone calls, emails and
12 other forms of electronic communications unless disclosed
13 pursuant to subdivision (4) of this subsection;

14 (3) Notice shall be prominently placed on or immediately
15 near every telephone or other communication device that may be
16 monitored;

17 (4) The contents of inmates' telephone calls, emails and
18 other forms of electronic communications may be disclosed to
19 the appropriate law-enforcement agency only if the disclosure is:

20 (A) Necessary to safeguard the orderly operation of the
21 regional jails;

22 (B) Necessary for the investigation of a crime;

23 (C) Necessary for the prevention of a crime;

24 (D) Necessary for the prosecution of a crime;

25 (E) Required by an order of a court of competent
26 jurisdiction; or

27 (F) Necessary to protect persons from physical harm or the
28 threat of physical harm;

29 (5) Recordings of telephone calls may be destroyed after
30 twelve months unless further retention is required for disclosure
31 pursuant to subdivision (4) of this subsection or, in the discretion
32 of the executive secretary, for other good cause.

33 (b) To safeguard the sanctity of the attorney-client privilege,
34 an adequate number of telephone lines that are not monitored
35 shall be made available for telephone calls between inmates and
36 their attorneys. Such calls shall not be monitored, intercepted,
37 recorded or disclosed in any matter. If inmates have access to
38 email or other forms of electronic communications, the
39 executive director shall develop a system that allows inmates to
40 confidentially communicate with their attorneys thereby
41 safeguarding the sanctity of the attorney-client privilege.

CHAPTER 70

**(S. B. 518 - By Senators Blair, Carmichael,
Snyder, Trump and Unger)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §7-12-7 of the Code of West Virginia, 1931, as amended, relating generally to granting county and municipal economic development authorities the authority to

invest funds received from the sale, lease or other disposition of real or personal property owned by such authority in a manner determined by the authority's board of directors to be in the best interest of the authority under an investment policy adopted and maintained by the board that is consistent with the standards of the Uniform Prudent Investor Act; requiring that for short-term investments the board of directors shall consult with the State Treasurer prior to investing funds; and requiring that for long-term investments, the board shall consult with the Investment Management Board and compare the rate of return on investment for the previous three years and compare the expense loads for the past three years, and if the comparison for the Investment Management Board is more favorable, the board must invest the funds with the Investment Management Board.

Be it enacted by the Legislature of West Virginia:

That §7-12-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-7. Powers generally.

1 (a) The development authority is hereby given power and
2 authority as follows: (1) To make and adopt all necessary bylaws
3 and rules for its organization and operations not inconsistent
4 with laws; (2) to elect its own officers, to appoint committees
5 and to employ and fix compensation for personnel necessary for
6 its operation; (3) to enter into contracts with any person, agency,
7 governmental department, firm or corporation, including both
8 public and private corporations, and generally to do any and all
9 things necessary or convenient for the purpose of promoting,
10 developing and advancing the business prosperity and economic
11 welfare of the county in which it is intended to operate, its

12 citizens and industrial complex, including, without limiting any
13 of the foregoing, the construction of any building or structure for
14 lease to the federal government or any of its agencies or
15 departments, and in connection therewith to prepare and submit
16 bids and negotiate with the federal government or such agencies
17 or departments in accordance with plans and specifications and
18 in the manner and on the terms and conditions and subject to any
19 requirements, regulations, rules and laws of the United States of
20 America for the construction of said buildings or structures and
21 the leasing thereof to the federal government or such agencies or
22 departments; (4) to amend or supplement any contracts or leases
23 or to enter into new, additional or further contracts or leases
24 upon such terms and conditions, for such consideration and for
25 such term of duration, with or without option of renewal, as may
26 be agreed upon by the authority and such person, agency,
27 governmental department, firm or corporation; (5) unless
28 otherwise provided for in, and subject to the provisions of, such
29 contracts, or leases, to operate, repair, manage and maintain such
30 buildings and structures and provide adequate insurance of all
31 types and in connection with the primary use thereof and
32 incidental thereto to provide such services, such as barber shops,
33 newsstands, drugstores and restaurants, and to effectuate such
34 incidental purposes, grant leases, permits, concessions or other
35 authorizations to any person or persons, upon such terms and
36 conditions, for such consideration and for such term of duration
37 as may be agreed upon by the authority and such person, agency,
38 governmental department, firm or corporation; (6) to delegate
39 any authority given to it by law to any of its officers,
40 committees, agents or employees; (7) to apply for, receive and
41 use grants-in-aid, donations and contributions from any source
42 or sources and to accept and use bequests, devises, gifts and
43 donations from any person, firm or corporation; (8) to acquire
44 real property by gift, purchase or construction, or in any other
45 lawful manner, and hold title thereto in its own name and to sell,
46 lease or otherwise dispose of all or part of such real property

47 which it may own, either by contract or at public auction, upon
48 the approval by the board of directors of the development
49 authority: *Provided*, That the funds received by the authority as
50 a result of selling, leasing or otherwise disposing of all or part of
51 such real property owned by the authority may be invested by
52 the authority in a manner determined by the authority's board of
53 directors to be in the best interest of the authority under an
54 investment policy adopted and maintained by the board that is
55 consistent with the standards of the Uniform Prudent Investor
56 Act set forth in article six-c, chapter forty-four of this code:
57 *Provided, however*, That for short-term investments the board of
58 directors shall consult with the State Treasurer prior to investing
59 funds; for long-term investments, the board shall consult with
60 the Investment Management Board and compare the rate of
61 return on investment for the previous three years and compare
62 the expense loads for the past three years; if the comparison for
63 the Investment Management Board is more favorable, the Board
64 must invest the funds with the Investment Management Board;
65 (9) to purchase or otherwise acquire, own, hold, sell, lease and
66 dispose of all or part of any personal property which it may own,
67 either by contract or at public auction: *Provided further*, That the
68 funds received by the authority as a result of selling, leasing or
69 otherwise disposing of all or part of such personal property
70 owned by the authority may be invested by the authority in a
71 manner determined by the authority's board of directors to be in
72 the best interest of the authority under an investment policy
73 adopted and maintained by the board that is consistent with the
74 standards of the Uniform Prudent Investor Act set forth in article
75 six-c, chapter forty-four of this code: *And provided further*, That
76 for short-term investments the board of directors shall consult
77 with the State Treasurer prior to investing funds; for long-term
78 investments, the board shall consult with the Investment
79 Management Board and compare the rate of return on investment
80 for the previous three years and compare the expense loads for
81 the past three years; if the comparison for the Investment

82 Management Board is more favorable, the board must invest the
83 funds with the Investment Management Board; (10) pursuant to
84 a determination by the board that there exists a continuing need
85 for programs to alleviate and prevent unemployment within the
86 county in which the authority is intended to operate or aid in the
87 rehabilitation of areas in said county which are underdeveloped,
88 decaying or otherwise economically depressed and that moneys
89 or funds of the authority are necessary therefor, to borrow money
90 and execute and deliver the authority's negotiable notes,
91 mortgage bonds, other bonds, debentures and other evidences of
92 indebtedness therefor, on such terms as the authority shall
93 determine and give such security therefor as shall be requisite,
94 including giving a mortgage or deed of trust on its real or
95 personal property and facilities in connection with the issuance
96 of mortgage bonds; (11) to raise funds by the issuance and sale
97 of revenue bonds in the manner provided by the applicable
98 provisions of article sixteen, chapter eight of this code, it being
99 hereby expressly provided that a development authority created
100 under this article is a governing body within the definition of that
101 term as used in article sixteen, chapter eight of this code; and
102 (12) to expend its funds in the execution of the powers and
103 authority herein given, which expenditures, by the means
104 authorized herein, are hereby determined and declared as a
105 matter of legislative finding to be for a public purpose and use,
106 in the public interest, and for the general welfare of the people
107 of West Virginia, to alleviate and prevent economic deterioration
108 and to relieve the existing critical condition of unemployment
109 existing within the state.

110 (b) The amendment of this section enacted in the year 1998
111 is intended to clarify the intent of the Legislature as to the
112 manner in which an authority may sell, lease or otherwise
113 dispose of real and personal property owned by an authority and
114 shall be retroactive to the date of the prior enactment of this
115 section.

116 (c) Notwithstanding any provision of this code to the
117 contrary, any development authority participating in the
118 Appalachian Region Interstate Compact pursuant to chapter
119 seven-a of this code may agree to a revenue and economic
120 growth-sharing arrangement with respect to tax revenues and
121 other income and revenues generated by any facility owned by
122 an authority. Any development authority or member locality may
123 be located in any jurisdiction participating in the Appalachian
124 Region Interstate Compact or a similar agreement for interstate
125 cooperation for economic and workforce development
126 authorized by law. The obligations of the parties to any such
127 agreement shall not be debt within the meaning of section eight,
128 article X of the Constitution of West Virginia. Any such
129 agreement shall be approved by a majority vote of the governing
130 bodies of the member localities reaching such an agreement but
131 does not require any other approval.

132 (d) “Member localities” means the counties, municipalities
133 or combination thereof which are members of an authority.

CHAPTER 71

**(Com. Sub. for H. B. 2549 - By Delegate(s) Lane,
E. Nelson, Walters, Stansbury, B. White, Rowe,
McCuskey, Guthrie, Byrd and Pushkin)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §7-5-16 of the Code of West Virginia, 1931, as amended, relating to changing the deadline of disclosure of county financial statements; and requiring publication as a Class I-0 legal advertisement of the county financial statements.

Be it enacted by the Legislature of West Virginia:

That §7-5-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. FISCAL AFFAIRS.

§7-5-16. Preparation, publication and disposition of financial statements.

1 (a) The county commission of every county, by October 15
2 of each fiscal year, shall prepare on a form to be prescribed by
3 the State Tax Commissioner, and cause to be published a
4 statement revealing: (1) The receipts and expenditures of the
5 county during the previous fiscal year arranged under descriptive
6 headings; (2) the name of each firm, corporation, and person
7 who received more than \$50 from any fund during the previous
8 fiscal year, together with the amount received and the purpose
9 for which paid; and (3) all debts of the county, the purpose for
10 which each debt was contracted, its due date, and to what date
11 the interest thereon has been paid: *Provided*, That all salaries,
12 receipts and expenditures to all county employees by office or
13 department may be published in the aggregate.

14 (b) The county commission shall transmit to any resident of
15 the county requesting a copy of the published statement for the
16 fiscal year designated, supplemented by a list of the names of
17 each firm, corporation and person who received less than \$50
18 from any fund during the fiscal year showing the amount paid to
19 each, the purpose for which paid and an itemization of the
20 salaries, receipts and expenditures to all county employees by
21 office or department otherwise published in the aggregate.

22 (c) If a county commission willfully fails or refuses to
23 perform the duties required in this section, every member of the
24 commission, concurring in the failure or refusal, is guilty of a
25 misdemeanor and, upon conviction thereof, shall be fined not
26 less than \$50 nor more than \$100; and the prosecuting attorney

27 of any county shall, when the failure or refusal shall come to the
28 prosecuting attorney's knowledge, immediately present the
29 evidence thereof to the grand jury if in session, and if not in
30 session, the prosecuting attorney shall institute proper criminal
31 proceedings before a magistrate against any offender, and cause
32 the failure or refusal to be investigated by the next succeeding
33 grand jury.

34 (d) Where in subsections (a) and (b), salaries, receipts and
35 expenditures are published in the aggregate, the county
36 commission shall, upon written request, provide to any resident
37 of the county an itemized accounting of the salaries, receipts and
38 expenditures.

39 (e) By October 15 of each fiscal year, each county
40 commission shall publish the financial statement as a Class I-0
41 legal advertisement in compliance with the provisions of article
42 three, chapter fifty-nine of this code, and the publication area for
43 such publication shall be the county.

CHAPTER 72

**(S. B. 581 - By Senators M. Hall, Walters, Blair,
Boley, Boso, Facemire, Kessler, Laird, Mullins, Plymale,
Stollings, Sypolt, Takubo, Unger and Yost)**

[Passed March 13, 2015; in effect July 1, 2015.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend and reenact §5B-2-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17-1-3 of said code, all relating to transferring administration of the courtesy patrol program and the Courtesy Patrol Fund from Division of Tourism to Division of Highways; authorizing expenditures to

fund the courtesy patrol program to be made pursuant to appropriation of the Legislature from the State Road Fund; eliminating requirement that moneys be transferred from the Tourism Promotion Fund to the Courtesy Patrol Fund; providing for the disposition of balances in the fund upon transfer; providing sources of funding for the program; and providing for the uses of moneys in the fund.

Be it enacted by the Legislature of West Virginia:

That §5B-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17-1-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12. Tourism Promotion Fund created; use of funds.

1 (a) There is hereby continued in the State Treasury the
2 special revenue fund known as the Tourism Promotion Fund
3 created under prior enactment of section nine, article one of this
4 chapter.

5 (b) Seventy-five percent of the moneys deposited in the fund
6 each year shall be used solely for marketing, advertising and
7 public relations efforts for building the brand identity of Wild,
8 Wonderful, West Virginia and promoting travel and tourism
9 within the state at the discretion and direction of the
10 Commissioner of the Division of Tourism: *Provided*, That no
11 less than one percent of these funds be expended, with the
12 approval of the Secretary of Commerce, to effectively promote
13 and market the state's parks, state forests, state recreation areas
14 and wildlife recreational resources. "Direct advertising" means
15 advertising which includes, but is not limited to, television,
16 radio, mailings, newspaper, magazines, digital marketing,
17 including the Internet and social media, and outdoor billboards
18 or any combination thereof.

19 (c) The balance of the moneys deposited in the fund shall be
20 used for direct advertising within the state's travel regions as
21 defined by the commission. The funds shall be made available
22 to these districts beginning July 1, 1995, according to legislative
23 rules authorized for promulgation by the Tourism Commission.

24 (d) No member of the commission or of any committee
25 created by the commission to evaluate applications for
26 advertising or other grants may participate in the discussion of,
27 or action upon, an application for or an award of any grant in
28 which the member has a direct financial interest.

ARTICLE 1. DEFINITIONS.

§17-1-3. "Road"; "public road"; "highway".

1 The words or terms "road", "public road" or "highway" shall
2 be deemed to include, but shall not be limited to, the right-of-
3 way, roadbed and all necessary culverts, sluices, drains, ditches,
4 waterways, embankments, slopes, retaining walls, bridges,
5 tunnels and viaducts necessary for the maintenance of travel,
6 dispatch of freight and communication between individuals and
7 communities; and such public road or highway shall be taken to
8 include any road to which the public has access and which it is
9 not denied the right to use, or any road or way leading from any
10 other public road over the land of another person, and which
11 shall have been established pursuant to law. Any road shall be
12 conclusively presumed to have been established when it has been
13 used by the public for a period of ten years or more, and public
14 moneys or labor have been expended thereon, whether there be
15 any record of its conveyance, dedication or appropriation to
16 public use or not. In the absence of any other mark or record, the
17 center of the traveled way shall be taken as the center of the road
18 and the right-of-way shall be designated therefrom an equal
19 distance on each side, but a road may be constructed on any part
20 of the located right-of-way when it is deemed advisable so to do.

21 The Legislature notes that there are public highways that run
22 over the surface of this land, over and through the navigable
23 streams, rivers and waterways on this earth and above the
24 surface of this earth in the form of highways in the sky,
25 commonly known as airways. The Legislature finds that each of
26 these types of public highways are essential to the development
27 of this state and that the health and safety of each of the citizens
28 of this state are affected daily by the availability of each of these
29 three types of public highways, and that it is the best interests of
30 the people of this state that each of these be recognized and
31 included within the meaning of public highways. The Legislature
32 further recognizes that airports are an important and integral part
33 of the public highways existing above the surface of this state,
34 and that airports are necessary to access such highways, and
35 therefore airports, including runways, taxiways, parking ramps,
36 access roads and air traffic control facilities located at airports,
37 are hereby declared to be part of the public highway system of
38 this state.

39 The Legislature finds that a courtesy patrol program
40 providing assistance to motorists on the state's highways is one
41 of a most beneficial public safety service to residents of the state
42 using public highways and serves as a showing of the state's
43 hospitality and good will to tourists visiting the state. For that
44 reason, on July 1, 2015:

45 (1) The administration of the courtesy patrol program shall
46 be transferred to the Division of Highways and expenditures
47 made by the division to fund the courtesy patrol program
48 providing assistance to motorists on the state's highways shall be
49 made pursuant to appropriation of the Legislature from the State
50 Road Fund or as otherwise provided by law; and

51 (2) The administration of the special revenue account in the
52 State Treasury known as the Courtesy Patrol Fund shall be
53 transferred to the Division of Highways: *Provided*, That any
54 balances remaining in the Courtesy Patrol Fund at the end of

55 fiscal year 2015 shall be transferred and deposited into the
56 Tourism Promotion Fund. After the June 30, 2015, expenditures
57 from the Courtesy Patrol Fund shall be used solely to fund the
58 courtesy patrol program providing assistance to motorists on the
59 state's highways. Amounts collected in the Courtesy Patrol Fund
60 which are found, from time to time, to exceed funds needed for
61 the purposes set forth in this subdivision may be transferred to
62 other accounts or funds and redesignated for other purposes by
63 appropriation of the Legislature. Moneys paid into the fund may
64 be derived from the following sources:

65 (A) Any gifts, grants, bequests, transfers, appropriations or
66 other donations which may be received from any governmental
67 entity or unit or any person, firm, foundation, corporation or
68 other private entity;

69 (B) Any appropriations by the Legislature which may be
70 made for the purposes of this section; and

71 (C) All interest or other return accruing to the fund.

72 Any moneys remaining in the fund at the end of a fiscal year
73 shall remain in the fund and be available for expenditure during
74 the ensuing fiscal year.



CHAPTER 73

(S. B. 415 - By Senator Trump)

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §51-2-1 of the Code of West Virginia,
1931, as amended, relating to adding circuit judges to certain

judicial circuits; providing for currently serving circuit judges to remain in office until December 31, 2016; and providing for the terms of office of circuit judges elected in the year 2016.

Be it enacted by the Legislature of West Virginia:

That §51-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

1 (a) The state shall be divided into the following judicial
2 circuits with the following number of judges:

3 (1) The counties of Brooke, Hancock and Ohio shall
4 constitute the first circuit and shall have four judges;

5 (2) The counties of Marshall, Tyler and Wetzel shall
6 constitute the second circuit and shall have two judges;

7 (3) The counties of Doddridge, Pleasants and Ritchie shall
8 constitute the third circuit and shall have one judge;

9 (4) The counties of Wood and Wirt shall constitute the
10 fourth circuit and shall have three judges;

11 (5) The counties of Calhoun, Jackson, Mason and Roane
12 shall constitute the fifth circuit and shall have two judges:
13 *Provided*, That effective January 1, 2017, said circuit court shall
14 have three judges; said additional circuit judge to be elected at
15 the regularly scheduled election(s) to be held in the year 2016
16 and every eighth year thereafter;

17 (6) The county of Cabell shall constitute the sixth circuit and
18 shall have four judges;

19 (7) The county of Logan shall constitute the seventh circuit
20 and shall have two judges;

21 (8) The county of McDowell shall constitute the eighth
22 circuit and shall have two judges;

23 (9) The county of Mercer shall constitute the ninth circuit
24 and shall have three judges;

25 (10) The county of Raleigh shall constitute the tenth circuit
26 and shall have three judges: *Provided*, That effective January 1,
27 2017, said circuit court shall have four judges; said additional
28 circuit judge to be elected at the regularly scheduled election(s)
29 to be held in the year 2016 and every eighth year thereafter;

30 (11) The counties of Greenbrier and Pocahontas shall
31 constitute the eleventh circuit and shall have two judges;

32 (12) The county of Fayette shall constitute the twelfth circuit
33 and shall have two judges;

34 (13) The county of Kanawha shall constitute the thirteenth
35 circuit and shall have seven judges;

36 (14) The counties of Braxton, Clay, Gilmer and Webster
37 shall constitute the fourteenth circuit and shall have two judges;

38 (15) The county of Harrison shall constitute the fifteenth
39 circuit and shall have three judges;

40 (16) The county of Marion shall constitute the sixteenth
41 circuit and shall have two judges;

42 (17) The county of Monongalia shall constitute the
43 seventeenth circuit and shall have three judges;

44 (18) The county of Preston shall constitute the eighteenth
45 circuit and shall have one judge;

46 (19) The counties of Barbour and Taylor shall constitute the
47 nineteenth circuit and shall have one judge;

48 (20) The county of Randolph shall constitute the twentieth
49 circuit and shall have one judge;

50 (21) The counties of Grant, Mineral and Tucker shall
51 constitute the twenty-first circuit and shall have two judges;

52 (22) The counties of Hampshire, Hardy and Pendleton shall
53 constitute the twenty-second circuit and shall have two judges;

54 (23) The counties of Berkeley, Jefferson and Morgan shall
55 constitute the twenty-third circuit and shall have five judges:
56 *Provided*, That effective January 1, 2017, said circuit court shall
57 have six judges; said additional circuit judge to be elected at the
58 regularly scheduled election(s) to be held in the year 2016 and
59 every eighth year thereafter;

60 (24) The county of Wayne shall constitute the twenty-fourth
61 circuit and shall have two judges;

62 (25) The counties of Lincoln and Boone shall constitute the
63 twenty-fifth circuit and shall have two judges;

64 (26) The counties of Lewis and Upshur shall constitute the
65 twenty-sixth circuit and shall have one judge: *Provided*, That
66 effective January 1, 2017, said circuit court shall have two
67 judges; said additional circuit judge to be elected at the regularly
68 scheduled election(s) to be held in the year 2016 and every
69 eighth year thereafter;

70 (27) The county of Wyoming shall constitute the
71 twenty-seventh circuit and shall have one judge;

72 (28) The county of Nicholas shall constitute the
73 twenty-eighth circuit and shall have one judge;

74 (29) The county of Putnam shall constitute the twenty-ninth
75 circuit and shall have two judges;

76 (30) The county of Mingo shall constitute the thirtieth circuit
77 and shall have one judge; and

78 (31) The counties of Monroe and Summers shall constitute
79 the thirty-first circuit and shall have one judge.

80 (b) The Kanawha County circuit court shall be a court of
81 concurrent jurisdiction with each single judge circuit where the
82 sitting judge in the single judge circuit is unavailable by reason
83 of sickness, vacation or other reason.

84 (c) Any judge in office on the effective date of the
85 reenactment of this section shall continue as a judge of the
86 circuit as constituted under prior enactments of this section,
87 unless sooner removed or retired as provided by law, until
88 December 31, 2016.

89 (d) The term of office of all circuit court judges shall be for
90 eight years. The term of office for all circuit court judges elected
91 during an election conducted in the year 2016 shall commence
92 on January 1, 2017, and end on December 31, 2024.

93 (e) For election purposes, in every judicial circuit having two
94 or more judges there shall be numbered divisions corresponding
95 to the number of circuit judges in each circuit. Each judge shall
96 be elected at large from the entire circuit. In each numbered
97 division of a judicial circuit, the candidates for nomination or
98 election shall be voted upon and the votes cast for the candidates
99 in each division shall be tallied separately from the votes cast for
100 candidates in other numbered divisions within the circuit. The
101 candidate receiving the highest number of the votes cast within
102 a numbered division shall be nominated or elected, as the case
103 may be.

104 (f) Judges serving a judicial circuit comprised of four or
105 more counties with two or more judges shall not be residents of
106 the same county.

107 (g) The Supreme Court of Appeals shall, by rule, establish
108 the terms of court of circuit judges.

CHAPTER 74

**(S. B. 479 - By Senators Trump, Carmichael, Maynard,
Miller, Woelfel, Snyder, Ferns, Palumbo, Nohe, Beach, Gaunch,
Karnes, D. Hall, Kirkendoll, Romano, Williams and Leonhardt)**

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §51-2A-3 of the Code of West Virginia, 1931, as amended, relating to adding family court judges to certain family court circuits of the state; providing for terms of office; and providing for election of new family court judges at the regular elections held in the year 2016.

Be it enacted by the Legislature of West Virginia:

That §51-2A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. FAMILY COURTS.

§51-2A-3. Number of family court judges; assignment of family court judges by family court circuits.

1 (a) Beginning on January 1, 2009, forty-five family court
2 judges shall serve throughout the state, allocated among a total
3 of twenty-seven family court circuits as follows:

4 (1) The counties of Brooke, Hancock and Ohio shall
5 constitute the first family court circuit and have two family court
6 judges;

7 (2) The counties of Marshall, Wetzel and Tyler shall
8 constitute the second family court circuit and have one family
9 court judge;

10 (3) The counties of Pleasants and Wood shall constitute the
11 third family court circuit and have two family court judges;

12 (4) The counties of Roane, Calhoun, Gilmer and Ritchie
13 shall constitute the fourth family court circuit and have one
14 family court judge;

15 (5) The counties of Mason, Jackson and Wirt shall constitute
16 the fifth family court circuit and have two family court judges;

17 (6) The county of Cabell shall constitute the sixth family
18 court circuit and have two family court judges;

19 (7) The county of Wayne shall constitute the seventh family
20 court circuit and have one family court judge;

21 (8) The county of Mingo shall constitute the eighth family
22 court circuit and have one family court judge;

23 (9) The county of Logan shall constitute the ninth family
24 court circuit and have two family court judges;

25 (10) The counties of Lincoln and Boone shall constitute the
26 tenth family court circuit and have two family court judges;

27 (11) The county of Kanawha shall constitute the eleventh
28 family court circuit and have five family court judges;

29 (12) The counties of McDowell and Mercer shall constitute
30 the twelfth family court circuit and have three family court
31 judges;

32 (13) The counties of Raleigh, Summers and Wyoming shall
33 constitute the thirteenth family court circuit and have three
34 family court judges;

35 (14) The county of Fayette shall constitute the fourteenth
36 family court circuit and have one family court judge;

37 (15) The counties of Greenbrier and Monroe shall constitute
38 the fifteenth family court circuit and have one family court
39 judge;

40 (16) The counties of Clay and Nicholas shall constitute the
41 sixteenth family court circuit and have one family court judge;

42 (17) The counties of Braxton, Lewis and Upshur shall
43 constitute the seventeenth family court circuit and have one
44 family court judge;

45 (18) The counties of Harrison and Doddridge shall constitute
46 the eighteenth family court circuit and have two family court
47 judges;

48 (19) The county of Marion shall constitute the nineteenth
49 family court circuit and have one family court judge;

50 (20) The counties of Monongalia and Preston shall constitute
51 the twentieth family court circuit and have two family court
52 judges;

53 (21) The counties of Barbour and Taylor shall constitute the
54 twenty-first family court circuit and have one family court judge;

55 (22) The counties of Tucker and Randolph shall constitute
56 the twenty-second family court circuit and have one family court
57 judge;

58 (23) The counties of Mineral, Hampshire and Morgan shall
59 constitute the twenty-third family court circuit and have one
60 family court judge;

61 (24) The counties of Berkeley and Jefferson shall constitute
62 the twenty-fourth family court circuit and have three family
63 court judges;

64 (25) The counties of Hardy, Pendleton and Grant shall
65 constitute the twenty-fifth family court circuit and have one
66 family court judge;

67 (26) The county of Putnam shall constitute the twenty-sixth
68 family court circuit and have one family court judge; and

69 (27) The counties of Webster and Pocahontas shall constitute
70 the twenty-seventh family court circuit and have one family
71 court judge.

72 (b) Beginning on January 1, 2017, forty-seven family court
73 judges shall serve throughout the state, allocated among a total
74 of twenty-seven family court circuits as follows:

75 (1) The counties of Brooke, Hancock and Ohio shall
76 constitute the first family court circuit and have two family court
77 judges;

78 (2) The counties of Marshall, Wetzel and Tyler shall
79 constitute the second family court circuit and have one family
80 court judge;

81 (3) The counties of Pleasants and Wood shall constitute the
82 third family court circuit and have two family court judges;

83 (4) The counties of Roane, Calhoun, Gilmer and Ritchie
84 shall constitute the fourth family court circuit and have one
85 family court judge;

86 (5) The counties of Mason, Jackson and Wirt shall constitute
87 the fifth family court circuit and have two family court judges;

88 (6) The county of Cabell shall constitute the sixth family
89 court circuit and have three family court judges;

90 (7) The county of Wayne shall constitute the seventh family
91 court circuit and have one family court judge;

92 (8) The county of Mingo shall constitute the eighth family
93 court circuit and have one family court judge;

94 (9) The county of Logan shall constitute the ninth family
95 court circuit and have two family court judges;

96 (10) The counties of Lincoln and Boone shall constitute the
97 tenth family court circuit and have two family court judges;

98 (11) The county of Kanawha shall constitute the eleventh
99 family court circuit and have five family court judges;

100 (12) The counties of McDowell and Mercer shall constitute
101 the twelfth family court circuit and have three family court
102 judges;

103 (13) The counties of Raleigh, Summers and Wyoming shall
104 constitute the thirteenth family court circuit and have three
105 family court judges;

106 (14) The county of Fayette shall constitute the fourteenth
107 family court circuit and have one family court judge;

108 (15) The counties of Greenbrier and Monroe shall constitute
109 the fifteenth family court circuit and have one family court
110 judge;

111 (16) The counties of Clay and Nicholas shall constitute the
112 sixteenth family court circuit and have one family court judge;

113 (17) The counties of Braxton, Lewis and Upshur shall
114 constitute the seventeenth family court circuit and have one
115 family court judge;

116 (18) The counties of Harrison and Doddridge shall constitute
117 the eighteenth family court circuit and have two family court
118 judges;

119 (19) The county of Marion shall constitute the nineteenth
120 family court circuit and have one family court judge;

121 (20) The counties of Monongalia and Preston shall constitute
122 the twentieth family court circuit and have two family court
123 judges;

124 (21) The counties of Barbour and Taylor shall constitute the
125 twenty-first family court circuit and have one family court judge;

126 (22) The counties of Tucker and Randolph shall constitute
127 the twenty-second family court circuit and have one family court
128 judge;

129 (23) The counties of Mineral, Hampshire and Morgan shall
130 constitute the twenty-third family court circuit and have two
131 family court judges;

132 (24) The counties of Berkeley and Jefferson shall constitute
133 the twenty-fourth family court circuit and have three family
134 court judges;

135 (25) The counties of Hardy, Pendleton and Grant shall
136 constitute the twenty-fifth family court circuit and have one
137 family court judge;

138 (26) The county of Putnam shall constitute the twenty-sixth
139 family court circuit and have one family court judge; and

140 (27) The counties of Webster and Pocahontas shall constitute
141 the twenty-seventh family court circuit and have one family
142 court judge.

143 (c) Family court judges taking office January 1, 2017, shall
144 be elected at the regularly scheduled election(s) occurring in the
145 year 2016 and shall serve for a term of eight years.

146 (d) The Legislature has the authority and may determine to
147 realign the family court circuits and has the authority and may
148 determine to increase or decrease the number of family court
149 judges within a family court circuit, from time to time. Any
150 person appointed or elected to the office of family court judge
151 acknowledges the authority of the Legislature to realign family
152 court circuits and the authority of the Legislature to increase or
153 decrease the number of family court judges within a family court
154 circuit.

CHAPTER 75

**(Com. Sub. for S. B. 7 - By Senators Stollings,
Boley, Ferns, Gaunch, D. Hall, M. Hall, Walters, Blair, Plymale,
Unger, Kirkendoll, Kessler, Facemire, Cole (Mr. President),
Takubo and Williams)**

[Passed February 12, 2015; in effect July 1, 2015.]

[Approved by the Governor on February 24, 2015.]

AN ACT to amend and reenact §18-2-9 of the Code of West Virginia, 1931, as amended, relating to required instruction in cardiopulmonary resuscitation (CPR) and first aid in public school health education subjects; adding care for conscious choking first aid instruction; adding requirement for recognition of symptoms of drug and alcohol overdose in health curriculum; eliminating misdemeanor crime and penalties for violation of section; requiring minimum of thirty minutes instruction prior to graduation in cardiopulmonary resuscitation and psychomotor skills necessary to perform after certain date; defining

“psychomotor skills”; requiring CPR instruction be based on program established by American Heart Association or American Red Cross or other recognized guidelines; authorizing various persons and community members by whom instruction may be given; encouraging such community members to provide training and instructional resources; authorizing school districts to exceed minimum requirements; and requiring authorized CPR/automated external defibrillator instructor for instruction that results in certification being earned.

Be it enacted by the Legislature of West Virginia:

That §18-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-9. Required courses of instruction.

1 (a) In all public, private, parochial and denominational
2 schools located within this state there shall be given prior to the
3 completion of the eighth grade at least one year of instruction in
4 the history of the State of West Virginia. The schools shall
5 require regular courses of instruction by the completion of the
6 twelfth grade in the history of the United States, in civics, in the
7 Constitution of the United States and in the government of the
8 State of West Virginia for the purpose of teaching, fostering and
9 perpetuating the ideals, principles and spirit of political and
10 economic democracy in America and increasing the knowledge
11 of the organization and machinery of the government of the
12 United States and of the State of West Virginia. The state board
13 shall, with the advice of the state superintendent, prescribe the
14 courses of study covering these subjects for the public schools.
15 It shall be the duty of the officials or boards having authority
16 over the respective private, parochial and denominational

17 schools to prescribe courses of study for the schools under their
18 control and supervision similar to those required for the public
19 schools. To further such study, every high school student eligible
20 by age for voter registration shall be afforded the opportunity to
21 register to vote pursuant to section twenty-two, article two,
22 chapter three of this code.

23 (b) The state board shall cause to be taught in all of the
24 public schools of this state the subject of health education,
25 including instruction in any of the grades six through twelve as
26 considered appropriate by the county board, on: (1) The
27 prevention, transmission and spread of acquired immune
28 deficiency syndrome and other sexually transmitted diseases; (2)
29 substance abuse, including the nature of alcoholic drinks and
30 narcotics, tobacco products and other potentially harmful drugs,
31 with special instruction as to their effect upon the human system
32 and upon society in general; (3) the importance of healthy eating
33 and physical activity to maintaining healthy weight; and (4)
34 education concerning cardiopulmonary resuscitation and first
35 aid, including instruction in the care for conscious choking, and
36 recognition of symptoms of drug or alcohol overdose. The
37 course curriculum requirements and materials for the instruction
38 shall be adopted by the state board by rule in consultation with
39 the Department of Health and Human Resources. The state board
40 shall prescribe a standardized health education assessment to be
41 administered within health education classes to measure student
42 health knowledge and program effectiveness.

43 (c) An opportunity shall be afforded to the parent or
44 guardian of a child subject to instruction in the prevention,
45 transmission and spread of acquired immune deficiency
46 syndrome and other sexually transmitted diseases to examine the
47 course curriculum requirements and materials to be used in the
48 instruction. The parent or guardian may exempt the child from

49 participation in the instruction by giving notice to that effect in
50 writing to the school principal.

51 (d) After July 1, 2015, the required instruction in
52 cardiopulmonary resuscitation in subsection (b) of this section
53 shall include at least thirty minutes of instruction for each
54 student prior to graduation on the proper administration of
55 cardiopulmonary resuscitation (CPR) and the psychomotor skills
56 necessary to perform cardiopulmonary resuscitation. The term
57 “psychomotor skills” means the use of hands-on practicing to
58 support cognitive learning. Cognitive-only training does not
59 qualify as “psychomotor skills”. The CPR instruction must be
60 based on an instructional program established by the American
61 Heart Association or the American Red Cross or another
62 program which is nationally recognized and uses the most
63 current national evidence-based Emergency Cardiovascular
64 Care guidelines and incorporates psychomotor skills
65 development into the instruction. A licensed teacher is not
66 required to be a certified trainer of cardiopulmonary
67 resuscitation to facilitate, provide or oversee such instruction.
68 The instruction may be given by community members, such as
69 emergency medical technicians, paramedics, police officers,
70 firefighters, licensed nurses and representatives of the American
71 Heart Association or the American Red Cross. These community
72 members are encouraged to provide necessary training and
73 instructional resources such as cardiopulmonary resuscitation
74 kits and other material at no cost to the schools. The
75 requirements of this subsection are minimum requirements. A
76 local school district may offer CPR instruction for longer periods
77 of time and may enhance the curriculum and training
78 components, including, but not limited to, incorporating into the
79 instruction the use of an automated external defibrillator (AED):
80 *Provided*, That any instruction that results in a certification being
81 earned must be taught by an authorized CPR/AED instructor.

CHAPTER 76

(H. B. 2607 - By Delegate(s) Sponaugle and Shott)

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

***Note:** The title of this Act was amended, but the amended language was inadvertently omitted during the enrollment process. Therefore, the Governor not having received and signed a true and correct copy of the Act as passed by both houses, H. B. 2607 did not become law.

CHAPTER 77

(H. B. 2606 - By Delegate(s) Sponaugle and Shott)

[Passed March 11, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §61-6-1b of the Code of West Virginia, 1931, as amended, relating to clarifying the potential sentence for disorderly conduct.

Be it enacted by the Legislature of West Virginia:

That §61-6-1b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-1b. Disorderly conduct; penalty.

- 1 (a) Any person who, in a public place, any office or office
- 2 building of the State of West Virginia, or in the State Capitol

3 complex, or on any other property owned, leased, occupied or
4 controlled by the State of West Virginia, a mobile home park, a
5 public parking area, a common area of an apartment building or
6 dormitory, or a common area of a privately owned commercial
7 shopping center, mall or other group of commercial retail
8 establishments, disturbs the peace of others by violent, profane,
9 indecent or boisterous conduct or language or by the making of
10 unreasonably loud noise that is intended to cause annoyance or
11 alarm to another person, and who persists in such conduct after
12 being requested to desist by a law-enforcement officer acting in
13 his or her lawful capacity, is guilty of disorderly conduct, a
14 misdemeanor and, upon conviction thereof, may be confined in
15 jail for twenty-four hours or fined not more than \$100: *Provided*,
16 That nothing in this subsection should be construed as a
17 deterrence to the lawful and orderly public right to demonstrate
18 in support or protest of public policy issues.

19 (b) For purposes of this section:

20 (1) “Mobile home park” means a privately owned residential
21 housing area or subdivision wherein the dwelling units are
22 comprised mainly of mobile homes and wherein the occupants
23 of such dwelling units share common elements for purposes of
24 ingress and egress, parking, recreation and other like residential
25 purposes.

26 (2) “Mobile home” means a moveable or portable unit,
27 designed and constructed to be towed on its own chassis
28 (comprised of frame and wheels) and designed to be connected
29 to utilities for year-round occupancy. The term includes: (A)
30 Units containing parts that may be folded, collapsed or
31 telescoped when being towed and that may be expanded to
32 provide additional cubic capacity; and (B) units composed of
33 two or more separately towable components designed to be
34 joined into one integral unit capable of being separated again
35 into the components for repeated towing.

36 (3) “Public parking area” means an area, whether publicly or
37 privately owned or maintained, open to the use of the public for
38 parking motor vehicles.

CHAPTER 78

**(Com. Sub. for H. B. 2502 - By Delegate(s) Espinosa,
Upson, Gearheart, Cooper, Ambler, O’ Neal, Miller,
Sobonya, Shott, Arvon and Blair)**

[Passed March 11, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to persons possessing deadly weapons on school buses or on the premises of educational facilities; authorizing active law-enforcement officers in certain circumstances to possess a firearm or deadly weapon on a school bus, on school property or at school sponsored functions; authorizing retired law-enforcement officers in certain circumstances to carry deadly weapons on a school bus, on school property or at school sponsored functions when certain conditions are met; and establishing reporting requirements for the school principal.

Be it enacted by the Legislature of West Virginia:

That §61-7-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver’s license; possessing deadly weapons on

premises housing courts of law and family law courts.

1 (a) The Legislature finds that the safety and welfare of the
2 citizens of this state are inextricably dependent upon assurances
3 of safety for children attending and persons employed by schools
4 in this state and for persons employed by the judicial department
5 of this state. It is for the purpose of providing assurances of
6 safety that subsections (b), (g) and (h) of this section are enacted
7 as a reasonable regulation of the manner in which citizens may
8 exercise the rights accorded to them pursuant to section twenty-
9 two, article three of the Constitution of the State of West
10 Virginia.

11 (b) (1) It is unlawful for a person to possess a firearm or
12 other deadly weapon on a school bus as defined in section one,
13 article one, chapter seventeen-a of this code, or in or on a public
14 or private primary or secondary education building, structure,
15 facility or grounds including a vocational education building,
16 structure, facility or grounds where secondary vocational
17 education programs are conducted or at a school-sponsored
18 function.

19 (2) This subsection does not apply to:

20 (A) A law-enforcement officer employed by a federal, state,
21 county or municipal law enforcement agency;

22 (B) A retired law-enforcement officer who:

23 (i) Is employed by a state, county or municipal law
24 enforcement agency;

25 (ii) Is covered for liability purposes by his or her employer;

26 (iii) Is authorized by a county board of education and the
27 school principal to serve as security for a school;

28 (iv) Meets all the requirements to carry a firearm as a
29 qualified retired law-enforcement officer under the Law
30 Enforcement Officer Safety Act of 2004, as amended, pursuant
31 to 18 U.S.C. §926C(c); and

32 (v) Meets all of the requirements for handling and using a
33 firearm established by his or her employer, and has qualified
34 with his or her firearm to those requirements;

35 (C) A person specifically authorized by the board of
36 education of the county or principal of the school where the
37 property is located to conduct programs with valid educational
38 purposes;

39 (D) A person who, as otherwise permitted by the provisions
40 of this article, possesses an unloaded firearm or deadly weapon
41 in a motor vehicle or leaves an unloaded firearm or deadly
42 weapon in a locked motor vehicle;

43 (E) Programs or raffles conducted with the approval of the
44 county board of education or school which include the display of
45 unloaded firearms;

46 (F) The official mascot of West Virginia University,
47 commonly known as the Mountaineer, acting in his or her
48 official capacity; or

49 (G) The official mascot of Parkersburg South High School,
50 commonly known as the Patriot, acting in his or her official
51 capacity.

52 (3) A person violating this subsection is guilty of a felony
53 and, upon conviction thereof, shall be imprisoned in a state
54 correctional facility for a definite term of years of not less than
55 two years nor more than ten years, or fined not more than
56 \$5,000, or both fined and imprisoned.

57 (c) A school principal subject to the authority of the State
58 Board of Education who discovers a violation of subsection (b)
59 of this section shall report the violation as soon as possible to:

60 (1) The State Superintendent of Schools. The State Board of
61 Education shall keep and maintain these reports and may
62 prescribe rules establishing policy and procedures for making
63 and delivering the reports as required by this subsection; and

64 (2) The appropriate local office of the Division of Public
65 Safety, county sheriff or municipal police agency.

66 (d) In addition to the methods of disposition provided by
67 article five, chapter forty-nine of this code, a court which
68 adjudicates a person who is fourteen years of age or older as
69 delinquent for a violation of subsection (b) of this section may
70 order the Division of Motor Vehicles to suspend a driver's
71 license or instruction permit issued to the person for a period of
72 time as the court considers appropriate, not to extend beyond the
73 person's nineteenth birthday. If the person has not been issued
74 a driver's license or instruction permit by this state, a court may
75 order the Division of Motor Vehicles to deny the person's
76 application for a license or permit for a period of time as the
77 court considers appropriate, not to extend beyond the person's
78 nineteenth birthday. A suspension ordered by the court pursuant
79 to this subsection is effective upon the date of entry of the order.
80 Where the court orders the suspension of a driver's license or
81 instruction permit pursuant to this subsection, the court shall
82 confiscate any driver's license or instruction permit in the
83 adjudicated person's possession and forward to the Division of
84 Motor Vehicles.

85 (e) (1) If a person eighteen years of age or older is convicted
86 of violating subsection (b) of this section, and if the person does
87 not act to appeal the conviction within the time periods described
88 in subdivision (2) of this subsection, the person's license or
89 privilege to operate a motor vehicle in this state shall be revoked
90 in accordance with the provisions of this section.

91 (2) The clerk of the court in which the person is convicted as
92 described in subdivision (1) of this subsection shall forward to

93 the commissioner a transcript of the judgment of conviction. If
94 the conviction is the judgment of a magistrate court, the
95 magistrate court clerk shall forward the transcript when the
96 person convicted has not requested an appeal within twenty days
97 of the sentencing for the conviction. If the conviction is the
98 judgment of a circuit court, the circuit clerk shall forward a
99 transcript of the judgment of conviction when the person
100 convicted has not filed a notice of intent to file a petition for
101 appeal or writ of error within thirty days after the judgment was
102 entered.

103 (3) If, upon examination of the transcript of the judgment of
104 conviction, the commissioner determines that the person was
105 convicted as described in subdivision (1) of this subsection, the
106 commissioner shall make and enter an order revoking the
107 person's license or privilege to operate a motor vehicle in this
108 state for a period of one year or, in the event the person is a
109 student enrolled in a secondary school, for a period of one year
110 or until the person's twentieth birthday, whichever is the greater
111 period. The order shall contain the reasons for the revocation and
112 the revocation period. The order of suspension shall advise the
113 person that because of the receipt of the court's transcript, a
114 presumption exists that the person named in the order of
115 suspension is the same person named in the transcript. The
116 commissioner may grant an administrative hearing which
117 substantially complies with the requirements of the provisions of
118 section two, article five-a, chapter seventeen-c of this code upon
119 a preliminary showing that a possibility exists that the person
120 named in the notice of conviction is not the same person whose
121 license is being suspended. The request for hearing shall be
122 made within ten days after receipt of a copy of the order of
123 suspension. The sole purpose of this hearing is for the person
124 requesting the hearing to present evidence that he or she is not
125 the person named in the notice. If the commissioner grants an
126 administrative hearing, the commissioner shall stay the license

127 suspension pending the commissioner's order resulting from the
128 hearing.

129 (4) For the purposes of this subsection, a person is convicted
130 when he or she enters a plea of guilty or is found guilty by a
131 court or jury.

132 (f) (1) It is unlawful for a parent, guardian or custodian of a
133 person less than eighteen years of age who knows that the person
134 is in violation of subsection (b) of this section or has reasonable
135 cause to believe that the person's violation of subsection (b) is
136 imminent, to fail to immediately report his or her knowledge or
137 belief to the appropriate school or law-enforcement officials.

138 (2) A person violating this subsection is guilty of a
139 misdemeanor and, upon conviction thereof, shall be fined not
140 more than \$1,000, or shall be confined in jail not more than one
141 year, or both fined and confined.

142 (g) (1) It is unlawful for a person to possess a firearm or
143 other deadly weapon on the premises of a court of law, including
144 family courts.

145 (2) This subsection does not apply to:

146 (A) A law-enforcement officer acting in his or her official
147 capacity; and

148 (B) A person exempted from the provisions of this
149 subsection by order of record entered by a court with jurisdiction
150 over the premises or offices.

151 (3) A person violating this subsection is guilty of a
152 misdemeanor and, upon conviction thereof, shall be fined not
153 more than \$1,000, or shall be confined in jail not more than one
154 year, or both fined and confined.

155 (h) (1) It is unlawful for a person to possess a firearm or
156 other deadly weapon on the premises of a court of law, including
157 family courts, with the intent to commit a crime.

158 (2) A person violating this subsection is guilty of a felony
159 and, upon conviction thereof, shall be imprisoned in a state
160 correctional facility for a definite term of years of not less than
161 two years nor more than ten years, or fined not more than
162 \$5,000, or both fined and imprisoned.

163 (i) Nothing in this section may be construed to be in conflict
164 with the provisions of federal law.

CHAPTER 79

**(Com. Sub. for S. B. 284 - By Senators Nohe, Plymale, Sypolt,
Walters, Blair, Williams, Prezioso and D. Hall)**

[Passed March 12, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-7-16, relating to dangerous weapons generally; requiring certification of responsible persons seeking federal authorization to possess certain firearms by a chief law-enforcement officer when person is not legally proscribed therefrom; clarifying what criteria may be considered when certification is sought from law enforcement that applicant is not prohibited from securing or possessing firearms covered by the National Firearms Act; defining terms; and allowing circuit court appeals or adverse decisions.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-7-16, to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.**§61-7-16. Chief officer certification to transfer or make certain firearms; definitions; appeal.**

1 (a) When certification of a chief law-enforcement officer is
2 required by federal law or regulation for the making, transfer,
3 receipt or possession of a firearm, the chief law-enforcement
4 officer shall, within thirty days of receipt of such a request,
5 provide such certification upon determining that to his or her
6 knowledge the applicant is not prohibited by federal, state or
7 local law from making, transferring, receiving or possessing the
8 firearm for which application is being made and is not the
9 subject of a proceeding that could result in the applicant being
10 prohibited by law from receiving or possessing a firearm. If the
11 chief law-enforcement officer is unable to make a certification
12 as contemplated by this section, he or she shall provide the
13 applicant written notification of the action setting forth the
14 reasons therefor.

15 (b) For purposes of this section:

16 (1) “Chief law-enforcement officer” means any official, or
17 his or her designee, that the Bureau of Alcohol, Tobacco,
18 Firearms and Explosives, or any successor agency, identifies by
19 regulation or otherwise as eligible to provide the required law-
20 enforcement certification for the making, transfer, receipt or
21 possession of a firearm.

22 (2) “Certification” means written confirmation by the chief
23 law-enforcement officer necessary under federal law that the
24 applicant seeking to make, transfer, receive or possess a firearm
25 is not to the chief law-enforcement officer’s knowledge
26 prohibited by federal, state or local law from making,
27 transferring, receiving or possessing the designated firearm.

28 (3) “Firearm” has the same meaning as provided in the
29 National Firearms Act, 26 U. S. C. §5845 (a).

30 (c) Chief law-enforcement officers and their designees who
31 act in good faith are immune from liability arising from any act
32 or omission related to certifying a responsible person.

33 (d) An applicant whose request for certification is denied
34 may appeal the chief law-enforcement officer’s decision to the
35 circuit court of the applicant’s county of residence. If the circuit
36 court finds that the applicant is not prohibited by law from
37 making, transferring, receiving or possessing a firearm and is not
38 the subject of a proceeding that could result in prohibition, the
39 circuit court shall order the chief law-enforcement officer to
40 issue the certification and may award costs and reasonable
41 attorney’s fees to the applicant.

42 (e) A generalized objection to persons or entities making,
43 transferring, receiving or possessing firearms or particular types
44 of firearms which may be lawfully made, transferred, received
45 or possessed does not constitute a valid basis for refusing
46 certification.

47 (f) In making the certification decision the chief law-
48 enforcement officer shall require of the applicant only such
49 information as is necessary to identify the applicant for purposes
50 of this section or to determine the disposition of an arrest or
51 proceeding relevant to the applicant’s eligibility to lawfully
52 possess or receive a firearm.

CHAPTER 80

**(Com. Sub. for H. B. 2025 - By Delegate(s) Howell, Shott,
Hamrick, Romine, Sobonya, Espinosa, Miller, Weld,
Statler, Kurcaba and Canterbury)**

[Passed February 25, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 3, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-29; and to amend and reenact §62-12-26 of said code, relating to creating the offense of criminal loitering by persons on supervised release; prohibiting loitering by such persons within one thousand feet of a victim's home, schools and facilities providing care and entertainment for children; defining terms; establishing penalties; and prohibiting certain sex offenders on supervised release from loitering within one thousand feet of a school, child care facility, or victim.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-8-29; and that §62-12-26 of said code be amended and reenacted, all to read as follows:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-29. Criminal loitering by persons on supervised release.

- 1 (a) Any person serving a period of supervised release of ten
- 2 years or more pursuant to the provision of section twenty-six,
- 3 article twelve, chapter sixty-two of this code who loiters within
- 4 one thousand feet of the property line of the residence or

5 workplace of a victim of a sexually violent offense for which the
6 person was convicted shall be guilty of a misdemeanor and, upon
7 conviction thereof, shall be confined in jail for not more than
8 thirty days.

9 (b) Any person serving a period of supervised release of ten
10 years or more pursuant to the provisions of section twenty-six,
11 article twelve, chapter sixty-two of this code for an offense
12 where the victim was a minor who loiters within one thousand
13 feet of the property line of a facility or business the principal
14 purpose of which is the education, entertainment or care of
15 minor children, playground, athletic facility or school bus stop
16 shall be guilty of a misdemeanor and, upon conviction thereof,
17 shall be confined in jail for a period of not more than thirty days.

18 (c) A person does not violate the provisions of subsection (a)
19 or (b) of this section unless he or she has previously been asked
20 to leave the proscribed location by an authorized person and
21 thereafter refuses to leave or leaves and thereafter returns to the
22 proscribed location.

23 (d) As used in this section:

24 (1) "Authorized person" means:

25 (A) A law-enforcement officer acting in his or her official
26 capacity;

27 (B) A security officer employed by a business or facility to
28 protect persons or property acting in his or her employment
29 capacity;

30 (C) An owner, manager or employee of a facility or business
31 having a principal purpose the caring for, education or
32 entertainment of minors;

33 (D) A victim or parent, guardian or lawful temporary or
34 permanent custodian thereof;

35 (E) An employee of a county Board of Education acting in
36 his or her employment capacity.

37 (2) "Facility or business, the principal purpose of which is
38 the education, entertainment or care of minor children" means:

39 (A) A pre-school, primary, intermediate, middle or high
40 school, either public or private;

41 (B) A childcare facility;

42 (C) A park;

43 (D) An athletic facility used by minors;

44 (E) A school bus stop.

45 (3) "Loitering" means to enter or remain on property while
46 having no legitimate purpose or, if a legitimate purpose exists,
47 remaining on that property beyond the time necessary to fulfill
48 that purpose.

49 (e) Nothing in this section shall be construed to prohibit or
50 limit a person's presence within one thousand feet of a location
51 or facility referenced in this section if the person is there present
52 for the purposes of supervision, counseling or other activity in
53 which the person is directed to participate as a condition of
54 supervision or where the person has the express permission of
55 his supervising officer to be present.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, any defendant convicted after the effective date of this

3 section of a violation of section twelve, article eight, chapter
4 sixty-one of this code or a felony violation of the provisions of
5 article eight-b, eight-c or eight-d of said chapter shall, as part of
6 the sentence imposed at final disposition, be required to serve, in
7 addition to any other penalty or condition imposed by the court,
8 a period of supervised release of up to fifty years: *Provided*, That
9 the period of supervised release imposed by the court pursuant
10 to this section for a defendant convicted after the effective date
11 of this section as amended and reenacted during the first
12 extraordinary session of the Legislature, 2006, of a violation of
13 section three or seven, article eight-b, chapter sixty-one of this
14 code and sentenced pursuant to section nine-a of said article,
15 shall be no less than ten years: *Provided, however*, That a
16 defendant designated after the effective date of this section as
17 amended and reenacted during the first extraordinary session of
18 the Legislature, 2006, as a sexually violent predator pursuant to
19 the provisions of section two-a, article twelve, chapter fifteen of
20 this code shall be subject, in addition to any other penalty or
21 condition imposed by the court, to supervised release for life:
22 *Provided further*, That pursuant to the provisions of subsection
23 (g) of this section, a court may modify, terminate or revoke any
24 term of supervised release imposed pursuant to subsection (a) of
25 this section.

26 (b) Any person required to be on supervised release between
27 the minimum term of ten years and life pursuant to the provisos
28 of subsection (a) of this section also shall be further prohibited
29 from:

30 (1) Establishing a residence or accepting employment within
31 one thousand feet of a school or child care facility or within one
32 thousand feet of the residence of a victim or victims of any
33 sexually violent offenses for which the person was convicted;

34 (2) Loitering within one thousand feet of a school or child
35 care facility or within one thousand feet of the residence of a
36 victim or victims of any sexually violent offenses for which the

37 person was convicted: *Provided*, That the imposition of this
38 prohibition shall apply to a defendant convicted after the
39 effective date of this section as amended and reenacted during
40 the regular session of the Legislature, 2015: *Provided, however*,
41 That as used herein “loitering” means to enter or remain on
42 property while having no legitimate purpose or, if a legitimate
43 purpose exists, remaining on that property beyond the time
44 necessary to fulfill that purpose: *Provided further*, That nothing
45 in this subdivision shall be construed to prohibit or limit a
46 person’s presence within one thousand feet of a location or
47 facility referenced in this subdivision if the person is present for
48 the purposes of supervision, counseling or other activity in
49 which the person is directed to participate as a condition of
50 supervision or where the person has the express permission of
51 his supervising officer to be present;

52 (3) Establishing a residence or any other living
53 accommodation in a household in which a child under sixteen
54 resides if the person has been convicted of a sexually violent
55 offense against a child, unless the person is one of the following:

56 (i) The child’s parent;

57 (ii) The child’s grandparent; or

58 (iii) The child’s stepparent and the person was the stepparent
59 of the child prior to being convicted of a sexually violent
60 offense, the person’s parental rights to any children in the home
61 have not been terminated, the child is not a victim of a sexually
62 violent offense perpetrated by the person, and the court
63 determines that the person is not likely to cause harm to the child
64 or children with whom such person will reside: *Provided*, That
65 nothing in this subsection shall preclude a court from imposing
66 residency or employment restrictions as a condition of
67 supervised release on defendants other than those subject to the
68 provision of this subsection.

69 (c) The period of supervised release imposed by the
70 provisions of this section shall begin upon the expiration of any
71 period of probation, the expiration of any sentence of
72 incarceration or the expiration of any period of parole
73 supervision imposed or required of the person so convicted,
74 whichever expires later.

75 (d) Any person sentenced to a period of supervised release
76 pursuant to the provisions of this section shall be supervised by
77 a multijudicial circuit probation officer, if available. Until such
78 time as a multijudicial circuit probation officer is available, the
79 offender shall be supervised by the probation office of the
80 sentencing court or of the circuit in which he or she resides.

81 (e) A defendant sentenced to a period of supervised release
82 shall be subject to any or all of the conditions applicable to a
83 person placed upon probation pursuant to the provisions of
84 section nine of this article: *Provided*, That any defendant
85 sentenced to a period of supervised release pursuant to this
86 section shall be required to participate in appropriate offender
87 treatment programs or counseling during the period of
88 supervised release unless the court deems the offender treatment
89 programs or counseling to no longer be appropriate or necessary
90 and makes express findings in support thereof.

91 Within ninety days of the effective date of this section as
92 amended and reenacted during the first extraordinary session of
93 the Legislature, 2006, the Secretary of the Department of Health
94 and Human Resources shall propose rules and emergency rules
95 for legislative approval in accordance with the provisions of
96 article three, chapter twenty-nine-a of this code establishing
97 qualifications for sex offender treatment programs and
98 counselors based on accepted treatment protocols among
99 licensed mental health professionals.

100 (f) The sentencing court may, based upon defendant's ability
101 to pay, impose a supervision fee to offset the cost of supervision.

102 Said fee shall not exceed \$50 per month. Said fee may be
103 modified periodically based upon the defendant's ability to pay.

104 (g) *Modification of conditions or revocation.* — The court
105 may:

106 (1) Terminate a term of supervised release and discharge the
107 defendant released at any time after the expiration of two years
108 of supervised release, pursuant to the provisions of the West
109 Virginia Rules of Criminal Procedure relating to the
110 modification of probation, if it is satisfied that such action is
111 warranted by the conduct of the defendant released and the
112 interests of justice;

113 (2) Extend a period of supervised release if less than the
114 maximum authorized period was previously imposed or modify,
115 reduce or enlarge the conditions of supervised release, at any
116 time prior to the expiration or termination of the term of
117 supervised release, consistent with the provisions of the West
118 Virginia Rules of Criminal Procedure relating to the
119 modification of probation and the provisions applicable to the
120 initial setting of the terms and conditions of post-release
121 supervision;

122 (3) Revoke a term of supervised release and require the
123 defendant to serve in prison all or part of the term of supervised
124 release without credit for time previously served on supervised
125 release if the court, pursuant to the West Virginia Rules of
126 Criminal Procedure applicable to revocation of probation, finds
127 by clear and convincing evidence that the defendant violated a
128 condition of supervised release, except that a defendant whose
129 term is revoked under this subdivision may not be required to
130 serve more than the period of supervised release;

131 (4) Order the defendant to remain at his or her place of
132 residence during nonworking hours and, if the court so directs,

133 to have compliance monitored by telephone or electronic
134 signaling devices, except that an order under this paragraph may
135 be imposed only as an alternative to incarceration.

136 (h) *Written statement of conditions.* — The court shall direct
137 that the probation officer provide the defendant with a written
138 statement at the defendant's sentencing hearing that sets forth all
139 the conditions to which the term of supervised release is subject
140 and that it is sufficiently clear and specific to serve as a guide for
141 the defendant's conduct and for such supervision as is required.

142 (i) *Supervised release following revocation.* — When a term
143 of supervised release is revoked and the defendant is required to
144 serve a term of imprisonment that is less than the maximum term
145 of supervised release authorized under subsection (a) of this
146 section, the court may include a requirement that the defendant
147 be placed on a term of supervised release after imprisonment.
148 The length of such term of supervised release shall not exceed
149 the term of supervised release authorized by this section less any
150 term of imprisonment that was imposed upon revocation of
151 supervised release.

152 (j) *Delayed revocation.* — The power of the court to revoke
153 a term of supervised release for violation of a condition of
154 supervised release and to order the defendant to serve a term of
155 imprisonment and, subject to the limitations in subsection (i) of
156 this section, a further term of supervised release extends beyond
157 the expiration of the term of supervised release for any period
158 necessary for the adjudication of matters arising before its
159 expiration if, before its expiration, a warrant or summons has
160 been issued on the basis of an allegation of such a violation.

CHAPTER 81

**(S. B. 370 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]**

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2015.]

AN ACT to amend and reenact §15-9-1, §15-9-2, §15-9-3 and §15-9-5 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §15-9-6; to amend and reenact §15-9A-1, §15-9A-2 and §15-9A-3 of said code; to amend and reenact §15-9B-1 and §15-9B-2 of said code; to amend and reenact §30-29-2, §30-29-3, §30-29-4, §30-29-5, §30-29-6 and §30-29-7 of said code; and to amend and reenact §62-11C-2, §62-11C-3, §62-11C-4, §62-11C-6 and §62-11C-8 of said code, all relating to codifying provisions relating to the Governor's Committee on Crime, Delinquency and Correction and its subcommittees; reorganizing the committee and certain subcommittees; continuing the Governor's Committee on Crime, Delinquency and Correction and providing for membership, terms and authority of the chair; requiring facility inspection in accordance with the Prison Rape Elimination Act; granting authority to the Governor's Committee on Crime, Delinquency and Correction to establish bylaws, policies and procedures; establishing responsibilities of the Governor's Committee on Crime, Delinquency and Correction; stating legislative findings; designating a staffing agency for the Governor's Committee on Crime, Delinquency and Correction and providing authority and responsibilities; establishing duties of the Director of the Governor's Committee on Crime, Delinquency and Correction; establishing membership criteria and subcommittee status of the Sexual Assault Forensic Examination Commission; establishing powers and duties of the Sexual Assault Forensic Examination

Commission; establishing membership criteria and subcommittee status of the Law-Enforcement Professional Standards Subcommittee; establishing powers and duties of the Law-Enforcement Professional Standards Subcommittee; providing for uses of fees collected for the Law-Enforcement Professional Standards Subcommittee and authorizing adjustments of such fees by legislative rule; establishing the Community Corrections Subcommittee, membership and authority; and making technical edits.

Be it enacted by the Legislature of West Virginia:

That §15-9-1, §15-9-2, §15-9-3 and §15-9-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §15-9-6; that §15-9A-1, §15-9A-2 and §15-9A-3 of said code be amended and reenacted; that §15-9B-1 and §15-9B-2 of said code be amended and reenacted; that §30-29-2, §30-29-3, §30-29-4, §30-29-5, §30-29-6 and §30-29-7 of said code be amended and reenacted; and that §62-11C-2, §62-11C-3, §62-11C-4, §62-11C-6 and §62-11C-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.

§15-9-1. Governor's Committee on Crime, Delinquency and Correction established; Committee designated as state planning.

- 1 (a) The Legislature hereby continues and reconstitutes the
- 2 Governor's Committee on Crime, Delinquency and Correction.

- 3 (b) The committee is composed of the following members:

- 4 (1) The Secretary of the Department of Military Affairs and
- 5 Public Safety, who shall serve as chair;

- 6 (2) The chair of the juvenile justice subcommittee;
- 7 (3) The chair of the community corrections subcommittee
8 created by section two, article eleven-c, chapter sixty-two of this
9 code;
- 10 (4) The chair of the law-enforcement professional standards
11 subcommittee created by section two, article twenty-nine,
12 chapter thirty of this code;
- 13 (5) The chair of the sexual assault forensic examination
14 commission created by section one, article nine-b, chapter fifteen
15 of this code;
- 16 (6) The Superintendent of the State Board of Education;
- 17 (7) A representative of a post-secondary education system in
18 this state to be appointed by the Governor. This person shall be
19 appointed on or before July 1, 2015, for an initial term of two
20 years and then shall be appointed for subsequent terms of four
21 years;
- 22 (8) A representative of a faith-based organization to be
23 appointed by the Governor. This person shall be appointed on or
24 before July 1, 2015, for an initial term of two years and then
25 shall be appointed for subsequent terms of four years;
- 26 (9) The Administrative Director of the Supreme Court of
27 Appeals who shall serve as an ex officio, nonvoting member;
- 28 (10) The Executive Director of the West Virginia
29 Prosecuting Attorneys Institute, established pursuant to section
30 six, article four, chapter seven of this code; and
- 31 (11) The Executive Director of the West Virginia Public
32 Defender Services, established pursuant to section three, article
33 twenty-one, chapter twenty-nine of this code.

34 (c) After initial appointment, members appointed by the
35 Governor pursuant to subsection (b) of this section shall serve
36 for a term of four years from his or her appointment and are
37 eligible for reappointment to that position. A person may not be
38 appointed to the committee who is already a member of the
39 committee by virtue of his or her title or occupation.

40 (d) All members appointed to the committee shall serve until
41 his or her successor has been duly appointed.

42 (e) The Legislature hereby designates the Governor's
43 Committee on Crime, Delinquency and Correction as the state
44 planning agency required for participation by the State of West
45 Virginia in programs provided by the Omnibus Crime Control
46 and Safe Streets Act of 1968, as amended (42 United States
47 Code, sections 3701 through 3796c, inclusive) and the Juvenile
48 Justice and Delinquency Prevention Act of 1974, as amended (42
49 United States Code, section 5601).

50 (f) The chair of the Governor's Committee on Crime,
51 Delinquency and Corrections shall:

52 (1) Appoint members and fill vacancies in the membership
53 of the subcommittees in accordance with the statutory provisions
54 governing such appointments.

55 (2) Call meetings of the committee at least quarterly, and at
56 such other times as he or she may direct, or upon request of a
57 majority of the members of the committee.

58 (g) The Director of the Division of Justice and Community
59 Services shall serve as the Executive Director of the Governor's
60 Committee on Crime, Delinquency and Correction and of its
61 subcommittees and the Division of Justice and Community
62 Services shall provide staff support.

§15-9-2. Facility inspection.

1 The Governor's Committee on Crime, Delinquency and
2 Correction or its designee shall annually visit and inspect jails,
3 detention facilities, correctional facilities, facilities which may
4 hold juveniles involuntarily or any other juvenile facility which
5 may temporarily house juveniles on a voluntary or involuntary
6 basis for the purpose of compliance with standards promulgated
7 by the juvenile facilities standards commission, pursuant to
8 section nine-a, article twenty, chapter thirty-one of this code and
9 with the Juvenile Justice and Delinquency Prevention Act of
10 1974, as amended, and compliance with the Prison Rape
11 Elimination Act, pursuant to 42 U. S. C §15601, and related
12 statutes or regulations.

§15-9-3. Ascertaining compliance with applicable standards in juvenile detention and correctional facilities.

1 The Governor's Committee on Crime, Delinquency and
2 Correction or its designee shall ascertain the compliance of
3 juvenile detention and juvenile correctional facilities operated by
4 or under contract with the Division of Juvenile Services, created
5 pursuant to section two, article five-e, chapter forty-nine of this
6 code, with standards for the structure, physical plant, operation
7 and maintenance of the facilities, promulgated by the juvenile
8 facility standards commission, pursuant to section nine-a, article
9 twenty, chapter thirty-one of this code: *Provided*, That such
10 review shall not include educational programs in such facilities.

§15-9-5. Authorization to adopt bylaws, policies and procedures, and to promulgate legislative rules.

1 The Governor's Committee on Crime, Delinquency and
2 Correction may adopt and modify bylaws, policies and
3 procedures for the conduct of its meetings and the operation of
4 the committee. The Governor's Committee on Crime,

5 Delinquency and Correction may propose legislative rules, for
6 legislative approval, pursuant to article three, chapter twenty-
7 nine-a of this code, for purposes consistent with this act and any
8 responsibilities assigned to it.

§15-9-6. Other responsibilities of the committee.

1 (a) The committee shall receive reports from the
2 subcommittees and direct those reports to be filed with the
3 Governor and the Joint Committee on Government and Finance
4 on or before September 30 of each year.

5 (b) The committee may direct by vote its executive director,
6 staff or any subcommittee to perform tasks related to the
7 purposes of this article, including seeking funding for programs
8 and grants, implementing criminal justice programs authorized
9 by this code or rule, administering funding and grants,
10 researching findings and recommendations, coordinating
11 resources, and any other task or responsibility related to the
12 purposes of this article.

ARTICLE 9A. DIVISION OF JUSTICE AND COMMUNITY SERVICES.

§15-9A-1. Legislative findings.

1 The West Virginia Division of Justice and Community
2 Services is required to perform certain administrative and
3 executive functions related to the improvement of the criminal
4 justice and juvenile justice systems and various component
5 agencies of state and local government with research and
6 performance data, planning, funding and managing programs
7 supported by federal and state-granted funds, and through its
8 staff activities on behalf of the Governor's Committee on Crime,
9 Delinquency and Correction, to provide regulatory oversight of
10 law enforcement training and certification, community
11 corrections programs established under the provisions of article

12 eleven-c, chapter sixty-two of this code, the monitoring of
13 facilities for compliance with juvenile detention facilities
14 standards established by state and federal law, and the Sexual
15 Assault Forensic Examination Commission created by article
16 nine-b, chapter fifteen of this code. These administrative and
17 executive staffing functions are necessary to provide for
18 planning and coordination of services among the components of
19 the criminal and juvenile justice systems, community corrections
20 and sexual assault forensic examinations; program development
21 and implementation; and administration of grant-funded
22 programs emphasizing safety, prevention, coordination and the
23 general enhancement of the criminal justice system as a whole,
24 as well as such other federal grant-funded activities as the
25 Governor may from time to time designate for administration by
26 the division.

§15-9A-2. Division established; appointment of director.

1 (a) The Division of Justice and Community Services is
2 created. The purpose of the division is to provide executive and
3 administrative support to the Governor's Committee on Crime
4 Delinquency and Correction in the coordination of planning for
5 the criminal justice system, to administer federal and state grant
6 programs assigned to it by the actions of the Governor or
7 Legislature and to perform such other duties as the Legislature
8 may from time to time assign to the division. The division is the
9 designated staffing agency for the Governor's Committee on
10 Crime, Delinquency and Correction, and all of its
11 subcommittees. The division may apply for grants and other
12 funding from federal or state programs, foundations,
13 corporations and organizations which funding is consistent with
14 its responsibilities and the purposes assigned to it or the
15 subcommittees it staffs. The Division of Justice and Community
16 Services is hereby designated as the state administrative agency
17 responsible for criminal justice and juvenile justice systems, and
18 various component agencies of state and local government, for

19 the planning and development of state programs and grants
20 which may be funded by federal, state or other allocations in the
21 areas of community corrections, law-enforcement training and
22 compliance, sexual assault forensic examinations, victim
23 services and juvenile justice.

24 (b) The director of the division shall be named by the
25 Governor to serve at his will and pleasure.

26 (c) The director of the division shall take and subscribe to an
27 oath of office in conformity with article IV, section five of the
28 Constitution of the State of West Virginia.

§15-9A-3. Duties and powers of the director.

1 (a) The director is responsible for the control and
2 supervision of the division.

3 (b) The director shall be charged with executive and
4 administrative responsibility to: (i) Carry out the specific duties
5 imposed on the Governor's Committee on Crime, Delinquency
6 and Correction under the provisions of article nine, chapter
7 fifteen; article twenty-nine, chapter thirty; and article eleven-c,
8 chapter sixty-two of this code; (ii) maintain appropriate liaison
9 with federal, state and local agencies and units of government,
10 or combinations thereof, in order that all programs, projects and
11 activities for strengthening and improving law enforcement and
12 the administration of criminal justice may function effectively at
13 all levels of government;(iii) seek sources of federal grant
14 assistance programs that may benefit the state when authorized
15 by the Governor and manage the dispersal of those funds through
16 grant contracts to subgrantees in a manner consistent with state
17 and federal law, and with sound and accountable management
18 practices for the efficient and effective use of public funds; (iv)
19 seek sources of program or grant assistance from foundations,
20 corporations and organizations which funding is consistent with
21 its responsibilities and the purposes assigned to the director, the

22 Governor's Committee on Crime, Delinquency and Correction,
23 and any of its subcommittees; and (v) serve as the Executive
24 Director of the Governor's Committee on Crime, Delinquency
25 and Correction and its subcommittees.

26 (c) The director may:

27 (1) Employ necessary personnel, assign them the duties
28 necessary for the efficient management and operation of the
29 division;

30 (2) Work to bridge gaps between federal, state and local
31 units of government, as well as private/nonprofit organizations
32 and the general public;

33 (3) Provide staff assistance in the coordination of all facets
34 of the criminal and juvenile justice systems on behalf of the
35 Governor's Committee on Crime Delinquency and Correction,
36 including, but not limited to, law enforcement, jails, corrections,
37 community corrections, juvenile justice, sexual assault forensic
38 examinations and victim services;

39 (4) Acquire criminal justice resources and coordinate the
40 allocation of these resources to state, local and not-for-profit
41 agencies;

42 (5) Maintain a web-based database for all community
43 correction programs;

44 (6) Collect, compile and analyze crime and justice data in
45 the state, generating statistical and analytical products for
46 criminal justice professionals and policy makers to establish a
47 basis for sound policy and practical considerations for the
48 criminal justice system and make such recommendations for
49 system improvement as may be warranted by such research and
50 contract with other persons, firms, corporations or organizations
51 to assist in these responsibilities;

52 (7) Receive and disburse federal and state grants and funding
53 received from foundations, corporations or other entities;

54 (8) Propose legislative rules for legislative approval pursuant
55 to article three, chapter twenty-nine-a of this code which may be
56 necessary to fulfill the functions and responsibilities of the
57 Division of Justice and Community Services and the Governor's
58 Committee on Crime, Delinquency and Correction.

59 (d) Nothing in this chapter shall be construed as authorizing
60 the division to undertake direct operational responsibilities in
61 law enforcement or the administration of criminal justice.

ARTICLE 9B. SEXUAL ASSAULT EXAMINATION NETWORK.

§15-9B-1. Sexual Assault Forensic Examination Commission.

1 (a) The Sexual Assault Forensic Examination Commission
2 is continued as a subcommittee of the Governor's Committee on
3 Crime, Delinquency and Correction. The purpose of the
4 commission is to establish, manage and monitor a statewide
5 system to facilitate the timely and efficient collection of forensic
6 evidence in sexual assault cases. As used in this article, the word
7 "commission" means the Sexual Assault Forensic Examination
8 Commission.

9 (b) Membership on the commission shall consist of the
10 following:

11 (1) A representative chosen from the membership of the
12 West Virginia Prosecuting Attorneys Association who shall be
13 chosen by the president of that organization;

14 (2) A representative chosen from the membership of the
15 West Virginia Association of Counties who shall be chosen by
16 the executive director of that organization;

17 (3) The Commissioner of the Bureau for Public Health, or
18 his or her designee;

19 (4) A representative from the State Police Forensic
20 Laboratory who shall be chosen by the Superintendent of the
21 West Virginia State Police;

22 (5) A representative from the membership of the West
23 Virginia Child Advocacy Network;

24 (6) The President of the West Virginia Hospital Association,
25 or his or her designee;

26 (7) A representative from the membership of the West
27 Virginia Foundation for Rape and Information Services who
28 shall be chosen by the state coordinator of that organization;

29 (8) A representative of the West Virginia University
30 Forensic and Investigative Sciences Program who shall be
31 chosen by the director of that program; and

32 (9) A representative of the Marshall University Forensic
33 Science Center who shall be chosen by the director of that
34 organization.

35 (c) If any of the representative organizations listed in
36 subsection (b) cease to exist, the director of the Division of
37 Justice and Community Services may select a person from a
38 similar organization.

39 (d) The director shall appoint the following additional
40 members of the commission:

41 (1) An emergency room physician licensed to practice and
42 practicing medicine in this state;

43 (2) A victim advocate from a rape crisis center employed in
44 this state;

45 (3) A sexual assault nurse examiner who is engaged in an
46 active practice within this state;

47 (4) A law-enforcement officer in this state with experience
48 in sexual assault investigations;

49 (5) A health care provider with pediatric and child abuse
50 expertise licensed in this state; and

51 (6) A director of a child advocacy center licensed and
52 operating in this state.

53 (e) The commission shall establish mandatory statewide
54 protocols for conducting sexual assault forensic examinations,
55 including designating locations and providers to perform
56 forensic examinations, establishing minimum qualifications and
57 procedures for performing forensic examinations and
58 establishing protocols to assure the proper collection of
59 evidence.

§15-9B-2. Powers and duties of the commission.

1 (a) The commission shall facilitate the recruitment and
2 retention of qualified health care providers that are properly
3 qualified to conduct forensic examinations. The commission
4 shall work with county and regional officials to identify areas of
5 greatest need and develop and implement recruitment and
6 retention programs to help facilitate the effective collection of
7 evidence.

8 (b) The commission shall authorize minimum training
9 requirements for providers conducting exams and establish a
10 basic standard of care for victims of sexual assault. The
11 commission may adopt necessary and reasonable requirements
12 relating to establishment of a statewide training and forensic
13 examination system, including, but not limited to, developing a
14 data collection system to monitor adherence to established

15 standards, assisting exam providers to receive training and
16 support services, advocating the fair and reasonable
17 reimbursement to exam providers and facilitating transportation
18 services for victims to get to and from designated exam
19 locations.

20 (c) The commission shall approve local plans for each area
21 of the state on a county or regional basis. If the commission
22 deems necessary, it may add or remove a county or portion
23 thereof from a region to assure that all areas of the state are
24 included in an appropriate local plan. Upon the failure of any
25 county or local region to propose a plan, the commission may
26 implement a plan for that county or region.

27 (d) Once a plan is approved by the commission, it can only
28 be amended or otherwise altered as provided by the rules
29 authorized pursuant to subsection (e) of this section. Designated
30 facilities and organizations providing services shall give the
31 commission thirty days' advance notice of their intent to
32 withdraw from the plan. If there is a change of circumstances
33 that would require a change in a county or regional plan, the
34 members of the local board and the state commission shall be
35 notified.

36 (e) The commission may adopt and modify bylaws, policies
37 and procedures for the conduct of its meetings and the operation
38 of the committee. The commission may propose rules for
39 legislative approval, in accordance with article three, chapter
40 twenty-nine-a of this code, as are necessary to implement this
41 article.

42 (f) The commission shall elect a chair and a vice chair and
43 such other officers as it deems necessary. Special meetings may
44 be held upon the call of the chair, vice chair or a majority of the
45 members of the commission. A majority of the members of the
46 commission present in person, by proxy or designation, or by
47 electronic means constitutes a quorum.

48 (g) Any member appointed to the commission who is a
49 written designated representative has the full rights of a member,
50 including the right to vote, serve on subcommittees or perform
51 any other function.

52 (h) The commission may make recommendations to the
53 Governor's Committee on Crime, Delinquency and Correction
54 for legislation related to the commission's duties and
55 responsibilities or for research or studies by the Division of
56 Justice and Community Services on topics related to the
57 commission's duties and responsibilities.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-2. Law-enforcement professional standards subcommittee.

1 (a) The Law-Enforcement Professional Standards
2 Subcommittee is continued as a subcommittee of the Governor's
3 Committee on Crime, Delinquency and Correction. The
4 subcommittee has the following responsibilities:

5 (1) Review and administer programs for qualification,
6 training and certification of law-enforcement officers in the
7 state; and

8 (2) Consider applications by law-enforcement officers whose
9 certification is deemed inactive as a result of his or her
10 separation from employment with a law-enforcement agency.

11 (b) The subcommittee shall be comprised of eleven
12 members, including one representative of each of the following:

13 (1) West Virginia State Police;

14 (2) Law-enforcement section of the Department of Natural
15 Resources;

- 16 (3) West Virginia Sheriffs' Association;
- 17 (4) West Virginia Association of Chiefs of Police;
- 18 (5) West Virginia Deputy Sheriffs' Association;
- 19 (6) West Virginia State Lodge Fraternal Order of Police;
- 20 (7) West Virginia Municipal League;
- 21 (8) West Virginia Association of County Officials;
- 22 (9) Human Rights Commission;
- 23 (10) West Virginia Troopers Association; and
- 24 (11) The public at large.

25 (c) The subcommittee shall elect a chairperson and a vice
26 chairperson. Special meetings may be held upon the call of the
27 chairperson, vice chairperson or a majority of the members of
28 the subcommittee. A majority of the members of the
29 subcommittee who are present in person, by proxy or
30 designation, or by electronic means constitutes a quorum. Any
31 member appointed to the subcommittee who is a written
32 designated representative has the full rights of a member,
33 including the right to vote, serve on subcommittees or perform
34 any other function.

§30-29-3. Duties of the subcommittee.

1 (a) The subcommittee shall, by or pursuant to rules proposed
2 for legislative approval in accordance with article three, chapter
3 twenty-nine-a of this code:

- 4 (1) Provide funding for the establishment and support of
5 law- enforcement training academies in the state;

6 (2) Establish standards governing the establishment and
7 operation of the law-enforcement training academies, including
8 regional locations throughout the state, in order to provide access
9 to each law-enforcement agency in the state in accordance with
10 available funds;

11 (3) Establish minimum law-enforcement instructor
12 qualifications;

13 (4) Certify qualified law-enforcement instructors;

14 (5) Maintain a list of approved law-enforcement instructors;

15 (6) Promulgate standards governing the training, firearms
16 qualification and initial and ongoing professional certification of
17 law-enforcement officers and the entry-level law-enforcement
18 training curricula. These standards shall require satisfactory
19 completion of a minimum of four hundred classroom hours as
20 promulgated by legislative rule, shall provide for credit to be
21 given for relevant classroom hours earned pursuant to training
22 other than training at an established law-enforcement training
23 academy if earned within five years immediately preceding the
24 date of application for certification, and shall provide that the
25 required classroom hours can be accumulated on the basis of a
26 part-time curricula spanning no more than twelve months or a
27 full- time curricula;

28 (7) Establish standards governing in-service
29 law-enforcement officer training curricula and in-service
30 supervisory level training curricula;

31 (8) Certify organized criminal enterprise investigation
32 techniques with a qualified anti-racial profiling training course
33 or module;

34 (9) Establish standards governing mandatory training to
35 effectively investigate organized criminal enterprises as defined

36 in article thirteen, chapter sixty-one of this code while
37 preventing racial profiling, as defined in section ten of this
38 article, for entry level training curricula and for law-enforcement
39 officers who have not received such training as certified by the
40 subcommittee as required in this section;

41 (10) Establish procedures for implementation of a course in
42 investigation of organized criminal enterprises which includes an
43 anti-racial training module to be available on the Internet or
44 otherwise to all law-enforcement officers. The procedures shall
45 include the frequency with which a law-enforcement officer
46 shall receive training in investigation of organized criminal
47 enterprises and anti-racial profiling and a time frame for which
48 all law-enforcement officers must receive such training:
49 *Provided*, That all law-enforcement officers in this state shall
50 receive such training no later than July 1, 2012. In order to
51 implement and carry out the intent of this section, the
52 subcommittee may promulgate emergency rules pursuant to
53 section fifteen, article three, chapter twenty-nine-a of this code;

54 (11) Certify or decertify or reactivate law-enforcement
55 officers, as provided in sections five and eleven of this article;

56 (12) Establish standards and procedures for the reporting of
57 complaints and certain disciplinary matters concerning
58 law-enforcement officers and for reviewing the certification of
59 law-enforcement officers. These standards and procedures shall
60 provide for preservation of records and access to records by
61 law-enforcement agencies and conditions as to how the
62 information in those records is to be used regarding an officer's
63 law-enforcement employment by another law-enforcement
64 agency;

65 (A) The subcommittee shall establish and manage a database
66 that is available to all law-enforcement agencies in the state
67 concerning the status of any person's certification.

68 (B) Personnel or personal information not resulting in a
69 criminal conviction is exempt from disclosure pursuant to the
70 provisions of chapter twenty-nine-b of this code.

71 (13) Seek supplemental funding for law-enforcement
72 training academies from sources other than the fees collected
73 pursuant to section four of this article;

74 (14) Any responsibilities and duties as the Legislature may,
75 from time to time, see fit to direct to the subcommittee;

76 (15) Submit, on or before September 30 of each year, to the
77 Governor, the Speaker of the House, the President of the Senate
78 and, upon request, to any individual member of the Legislature
79 a report on its activities during the previous year and an
80 accounting of funds paid into and disbursed from the special
81 revenue account established pursuant to section four of this
82 article;

83 (16) Develop and promulgate rules for state, county and
84 municipal law-enforcement officers, law-enforcement agencies,
85 and communications and emergency operations centers that
86 dispatch law- enforcement officers with regard to the
87 identification, investigation, reporting and prosecution of
88 suspected child abuse and neglect: *Provided*, That such rules and
89 procedures must be consistent with the priority criteria
90 prescribed by generally applicable department procedures; and

91 (17) Make recommendations to the Governor's Committee
92 on Crime, Delinquency and Correction for legislation related to
93 the subcommittee's duties and responsibilities, or for research or
94 studies by the Division of Justice and Community Services on
95 topics related to the subcommittee's duties and responsibilities.

96 (b) In addition to the duties authorized and established by
97 this section, the subcommittee may:

98 (1) Establish training to effectively investigate human
99 trafficking offenses as defined in article two, chapter sixty-one
100 of this code for entry level training curricula and for law-
101 enforcement officers who have not received such training as
102 certified by the committee as required by this section; and

103 (2) Establish procedures for the implementation of a course
104 in investigation of human trafficking offenses. The course may
105 include methods of identifying and investigating human
106 trafficking and methods for assisting trafficking victims. In order
107 to implement and carry out the intent of this subdivision, the
108 committee may promulgate emergency rules pursuant to section
109 fifteen, article three, chapter twenty-nine-a of this code.

**§30-29-4. Special revenue account — Collections; disbursements;
administrative expenses.**

1 (a) A \$2 fee shall be added to the usual court costs of all
2 criminal court proceedings involving violation of any criminal
3 law of the state or any county or municipality thereof, excluding
4 violations of municipal parking ordinances, unless such fee is
5 later modified pursuant to legislative rule.

6 (b) A \$2 fee shall be added to the amount of any cash or
7 property bond posted for violation of any criminal law of the
8 state or any county or municipality thereof, excluding bonds
9 posted solely for violation of municipal parking ordinances,
10 unless such fee is later modified pursuant to legislative rule.
11 Upon forfeiture of such bond, the \$2 fee shall be deposited as
12 provided in subsection (c) of this section.

13 (c) All fees collected pursuant to subsections (a) and (b) of
14 this section shall be deposited in a separate account by the
15 collecting agency. Within ten calendar days following the
16 beginning of each calendar month, the collecting agency shall
17 forward the amount deposited to the State Treasurer. The

18 Treasurer shall deposit all fees so received to a special revenue
19 account. Funds in the account shall be disbursed by the
20 subcommittee for the funding of law-enforcement entry level
21 training programs, professional development programs, the
22 certification of law-enforcement officers and to pay expenses of
23 the Governor's Committee on Crime, Delinquency and
24 Correction or the subcommittee in administering the provisions
25 of this article, which expenses may not in any fiscal year exceed
26 fifteen percent of the funds deposited to said special revenue
27 account during that fiscal year.

28 (d) The fees established by this section may be modified by
29 legislative rule as provided in section three of this article.

**§30-29-5. Certification requirements and power to decertify or
reinstate.**

1 (a) Except as provided in subsections (b) and (g) of this
2 section, a person may not be employed as a law-enforcement
3 officer by any West Virginia law-enforcement agency or by any
4 state institution of higher education or by the Public Service
5 Commission of West Virginia on or after the effective date of
6 this article unless the person is certified, or is certifiable in one
7 of the manners specified in subsections (c) through (e), inclusive,
8 of this section, by the subcommittee as having met the minimum
9 entry level law-enforcement qualification and training program
10 requirements promulgated pursuant to this article: *Provided*,
11 That the provisions of this section do not apply to persons hired
12 by the Public Service Commission as motor carrier inspectors
13 and weight enforcement officers before July 1, 2007.

14 (b) Except as provided in subsection (g) of this section, a
15 person who is not certified, or certifiable in one of the manners
16 specified in subsections (c) through (e), inclusive, of this section,
17 may be conditionally employed as a law-enforcement officer
18 until certified: *Provided*, That within ninety calendar days of the

19 commencement of employment or the effective date of this
20 article if the person is already employed on the effective date, he
21 or she makes a written application to attend an approved
22 law-enforcement training academy. The person's employer shall
23 provide notice, in writing, of the ninety-day deadline to file a
24 written application to the academy within thirty calendar days of
25 that person's commencement of employment. The employer
26 shall provide full disclosure as to the consequences of failing to
27 file a timely written application. The academy shall notify the
28 applicant in writing of the receipt of the application and of the
29 tentative date of the applicant's enrollment. Any applicant who,
30 as the result of extenuating circumstances acceptable to his or
31 her law-enforcement official, is unable to attend the scheduled
32 training program to which he or she was admitted may reapply
33 and shall be admitted to the next regularly scheduled training
34 program. An applicant who satisfactorily completes the program
35 shall, within thirty days of completion, make written application
36 to the subcommittee requesting certification as having met the
37 minimum entry level law-enforcement qualification and training
38 program requirements. Upon determining that an applicant has
39 met the requirements for certification, the subcommittee shall
40 forward to the applicant documentation of certification. An
41 applicant who fails to complete the training program to which he
42 or she is first admitted, or was admitted upon reapplication, may
43 not be certified by the subcommittee: *Provided, however,* That
44 an applicant who has completed the minimum training required
45 by the subcommittee may be certified as a law-enforcement
46 officer, notwithstanding the applicant's failure to complete
47 additional training hours required in the training program to
48 which he or she originally applied.

49 (c) Any person who is employed as a law-enforcement
50 officer on the effective date of this article and is a graduate of
51 the West Virginia basic police training course, the West Virginia
52 State Police cadet training program, or other approved
53 law-enforcement training academy, is certifiable as having met

54 the minimum entry level law-enforcement training program
55 requirements and is exempt from the requirement of attending a
56 law-enforcement training academy. To receive certification, the
57 person shall make written application within ninety calendar
58 days of the effective date of this article to the subcommittee
59 requesting certification. The subcommittee shall review the
60 applicant's relevant scholastic records and, upon determining
61 that the applicant has met the requirements for certification, shall
62 forward to the applicant documentation of certification.

63 (d) Any person who is employed as a law-enforcement
64 officer on the effective date of this article and is not a graduate
65 of the West Virginia basic police training course, the West
66 Virginia State Police Cadet Training Program or other approved
67 law-enforcement training academy, is certifiable as having met
68 the minimum entry level law-enforcement training program
69 requirements and is exempt from the requirement of attending a
70 law-enforcement training academy if the person has been
71 employed as a law-enforcement officer for a period of not less
72 than five consecutive years immediately preceding the date of
73 application for certification. To receive certification, the person
74 shall make written application within ninety calendar days
75 following the effective date of this article to the subcommittee
76 requesting certification. The application shall include notarized
77 statements as to the applicant's years of employment as a
78 law-enforcement officer. The subcommittee shall review the
79 application and, upon determining that the applicant has met the
80 requirements for certification, shall forward to the applicant
81 documentation of certification.

82 (e) Any person who begins employment on or after the
83 effective date of this article as a law-enforcement officer is
84 certifiable as having met the minimum entry level
85 law-enforcement training program requirements and is exempt
86 from attending a law-enforcement training academy if the person
87 has satisfactorily completed a course of instruction in law

88 enforcement equivalent to or exceeding the minimum applicable
89 law-enforcement training curricula promulgated by the
90 subcommittee. To receive certification, the person shall make
91 written application within ninety calendar days following the
92 commencement of employment to the subcommittee requesting
93 certification. The application shall include a notarized statement
94 of the applicant's satisfactory completion of the course of
95 instruction in law enforcement, a notarized transcript of the
96 applicant's relevant scholastic records and a notarized copy of
97 the curriculum of the completed course of instruction. The
98 subcommittee shall review the application and, if it finds the
99 applicant has met the requirements for certification, shall
100 forward to the applicant documentation of certification. The
101 subcommittee may set the standards for required records to be
102 provided by or on behalf of the applicant officer to verify his or
103 her training, status, or certification as a law-enforcement officer.
104 The subcommittee may allow an applicant officer to participate
105 in the approved equivalent certification program to gain
106 certification as a law-enforcement officer in this state.

107 (f) Except as provided in subdivisions (1) through (3),
108 inclusive, of this subsection, any person who is employed as a
109 law-enforcement officer on or after the effective date of this
110 article and fails to be certified shall be automatically terminated
111 and no further emoluments shall be paid to such officer by his or
112 her employer. Any person terminated shall be entitled to reapply,
113 as a private citizen, to the subcommittee for training and
114 certification, and upon being certified may again be employed as
115 a law-enforcement officer in this state: *Provided*, That if a
116 person is terminated under this subsection because an application
117 was not timely filed to the academy, and the person's employer
118 failed to provide notice or disclosure to that person as set forth
119 in subsection (b) of this section, the employer shall pay the full
120 cost of attending the academy if the person's application to the
121 subcommittee as a private citizen is subsequently approved.

122 (1) Any person who is employed as a law-enforcement
123 officer on or after the effective date of this article and fails to be
124 certified as a result of hardship and/or circumstance beyond his
125 or her control may apply to the director of a training academy for
126 reentry to the next available academy.

127 (2) Any person who is employed as a law-enforcement
128 officer on or after the effective date of this article and fails to be
129 certified as a result of voluntary separation from an academy
130 program shall be automatically terminated and no further
131 emoluments may be paid to such officer by his or her employer.
132 Any person terminated as a result of voluntary separation from
133 an academy program may not be conditionally employed as a
134 law-enforcement officer for a period of two years from the date
135 of voluntary separation.

136 (3) Any person who is employed as a law-enforcement
137 officer on or after the effective date of this article and fails to be
138 certified as a result of dismissal from an academy program shall
139 be automatically terminated and no further emoluments may be
140 paid to such officer by his or her employer. Any person
141 terminated as a result of dismissal from an academy program
142 may not be conditionally employed as a law-enforcement officer
143 for a period of five years from the date of dismissal and
144 receiving approval from the subcommittee.

145 (g) Nothing in this article may be construed as prohibiting
146 any governing body, Civil Service Commission or chief
147 executive of any West Virginia law-enforcement agency from
148 requiring their law-enforcement officers to meet qualifications
149 and satisfactorily complete a course of law-enforcement
150 instruction which exceeds the minimum entry level
151 law-enforcement qualification and training curricula
152 promulgated by the subcommittee.

153 (h) The subcommittee, or its designee, may decertify or
154 reactivate a law-enforcement officer pursuant to the procedure
155 contained in this article and legislative rules promulgated by the
156 subcommittee.

157 (i) Any person aggrieved by a decision of the subcommittee
158 made pursuant to this article may contest the decision in
159 accordance with the provisions of article five, chapter
160 twenty-nine-a of this code.

161 (j) The subcommittee may issue subpoenas for the
162 attendance of witnesses and the production of necessary
163 evidence or documents in any proceeding, review or
164 investigation relating to certification or hearing before the
165 subcommittee.

§30-29-6. Review of certification.

1 Certification of each West Virginia law-enforcement officer
2 shall be reviewed annually following the first certification and
3 until such time as the officer may achieve exempt rank.
4 Certification may be revoked, suspended or not renewed if any
5 law-enforcement officer fails to attend annually an in-service
6 approved law-enforcement training program, or if a
7 law-enforcement officer achieving exempt rank fails to attend
8 biennially an approved in-service supervisory level training
9 program. When a law-enforcement officer is a member of the
10 United States Air Force, Army, Coast Guard, Marines or Navy,
11 or a member of the national guard or reserve military forces of
12 any such armed forces, and has been called to active duty,
13 resulting in separation from a law-enforcement agency for more
14 than twelve months but less than twenty-four months, he or she
15 shall attend and complete the mandated in-service training for
16 the period and rank and qualify with his or her firearm within
17 ninety days from his or her reappointment as a law-enforcement
18 officer by a law-enforcement agency.

§30-29-7. Compliance.

- 1 The subcommittee and the executive of each West Virginia
- 2 law-enforcement agency shall ensure employee compliance with
- 3 this article.

CHAPTER 62. CRIMINAL PROCEDURE.**ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.****§62-11C-2. Community Corrections Subcommittee.**

- 1 (a) A Community Corrections Subcommittee of the
- 2 Governor's Committee on Crime, Delinquency and Correction
- 3 is continued and continues to be assigned responsibility for
- 4 screening community corrections programs for approval for
- 5 funding by the subcommittee and for making disbursement of
- 6 funds for approved community corrections programs.

- 7 (b) The subcommittee shall be comprised of the following
- 8 members:
 - 9 (1) A representative of the Division of Corrections;
 - 10 (2) A representative of the Regional Jail and Correctional
 - 11 Facility Authority;
 - 12 (3) A representative of the Bureau for Behavioral Health and
 - 13 Health Facilities;
 - 14 (4) A person representing the interests of victims of crime;
 - 15 (5) An attorney employed by a public defender corporation;
 - 16 (6) An attorney who is licensed to practice and practicing
 - 17 criminal law in this state;

18 (7) A prosecuting attorney or assistant prosecuting attorney
19 actively engaged as such in this state;

20 (8) A representative of the West Virginia Coalition Against
21 Domestic Violence; and

22 (9) At the discretion of the Supreme Court of Appeals, the
23 Administrator of the Supreme Court of Appeals, a probation
24 officer and a circuit judge may serve on the subcommittee as ex
25 officio, nonvoting members.

26 (c) The subcommittee shall elect a chairperson and a vice
27 chairperson. The subcommittee shall meet quarterly. Special
28 meetings may be held upon the call of the chairperson, vice
29 chairperson or a majority of the members of the subcommittee.
30 A majority of the members of the subcommittee constitutes a
31 quorum.

32 (d) The subcommittee may adopt bylaws, policies and
33 procedures for the operation of the subcommittee.

34 (e) The subcommittee may propose legislative rules for
35 legislative approval pursuant to article three, to chapter twenty-
36 nine-a of this code for policies and procedures consistent with
37 the duties and responsibilities which are or may be assigned to
38 it.

39 (f) Any member appointed to the subcommittee who is a
40 written designated representative has the full rights of a member,
41 including the right to vote, serve on subcommittees or perform
42 any other function.

§62-11C-3. Duties of the subcommittee.

1 (a) The subcommittee shall propose for promulgation in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code legislative rules to:

4 (1) Establish standards for approval of community
5 corrections programs submitted by community criminal justice
6 boards or other entities authorized by the provisions of this
7 article to do so;

8 (2) Establish minimum standards for community corrections
9 programs to be funded, including requiring annual program
10 evaluations;

11 (3) Make any necessary adjustments to the fees established
12 in section four of this article;

13 (4) Establish reporting requirements for community
14 corrections programs; and

15 (5) Carry out the purpose and intent of this article.

16 (b) The subcommittee shall:

17 (1) Maintain records of community corrections programs
18 including the corresponding community criminal justice board
19 or other entity contact information and annual program
20 evaluations, when available;

21 (2) Seek funding for approved community corrections
22 programs from sources other than the fees collected pursuant to
23 section four of this article; and

24 (3) Provide funding for approved community corrections
25 programs, as available.

26 (c) The subcommittee shall submit, on or before September
27 30 of each year, to the Governor, the Speaker of the House of
28 Delegates, the President of the Senate and, upon request, to any
29 individual member of the Legislature a report on its activities
30 during the previous year and an accounting of funds paid into
31 and disbursed from the special revenue account established

32 pursuant to section four of this article. The subcommittee may
33 make recommendations to the Governor's Committee on Crime,
34 Delinquency and Correction for legislation related to the
35 subcommittee's duties and responsibilities, or for research or
36 studies by the Division of Justice and Community Services on
37 topics related to the subcommittee's duties and responsibilities.

38 (d) The subcommittee shall review the implementation of
39 evidence-based practices and conduct regular assessments for
40 quality assurance of all community-based criminal justice
41 services, including day report centers, probation, parole and
42 home confinement. In consultation with the affected agencies,
43 the subcommittee shall establish a process for reviewing
44 performance. The process shall include review of agency
45 performance measures and identification of new measures by the
46 subcommittee, if necessary, for measuring the implementation
47 of evidence-based practices or for quality assurance. After
48 providing an opportunity for the affected agencies to comment,
49 the subcommittee shall submit, on or before September 30 of
50 each year, to the Governor, the Speaker of the House of
51 Delegates, the President of the Senate and, upon request, to any
52 individual member of the Legislature a report on its activities
53 and results from assessments of performance during the previous
54 year.

§62-11C-4. Special revenue account.

1 (a) There is hereby created in the State Treasury a special
2 revenue account to be known as the West Virginia Community
3 Corrections Fund. Expenditures from the fund are for the
4 purposes set forth in subsection (e) of this section and are not
5 authorized from collections but are to be made only in
6 accordance with appropriation by the Legislature and in
7 accordance with the provisions of article three, chapter twelve of
8 this code and upon the fulfillment of the provisions set forth in
9 article two, chapter five-a of this code. The West Virginia

10 Community Corrections Fund may receive any gifts, grants,
11 contributions or other money from any source which is
12 specifically designated for deposit in the fund.

13 (b) In addition to the fee required in section nine, article
14 twelve of this chapter, a fee not to exceed \$35 per month, unless
15 modified by legislative rule as provided in section three of this
16 article, is also to be collected from those persons on probation.
17 This fee is to be based upon the person's ability to pay. The
18 magistrate or circuit judge shall conduct a hearing prior to
19 imposition of probation and make a determination on the record
20 that the offender is able to pay the fee without undue hardship.
21 The magistrate clerk, deputy magistrate clerk, magistrate
22 assistant, circuit clerk or deputy circuit clerk shall collect all fees
23 imposed pursuant to this subsection and deposit them in a
24 separate account. Within ten calendar days following the
25 beginning of the calendar month, the magistrate clerk or circuit
26 clerk shall forward the amount deposited to the State Treasurer
27 to be credited to the West Virginia Community Corrections
28 Fund.

29 (c) In addition to the fee required in section five, article
30 eleven-b of this chapter, a fee of \$2.50 per day, unless modified
31 by legislative rule as provided in section three of this article, is
32 to be collected from those persons on home incarceration. The
33 circuit judge, magistrate or municipal court judge shall consider
34 the person's ability to pay in determining the imposition of the
35 fee. The circuit clerk, magistrate clerk, municipal court clerk or
36 his or her designee shall collect all fees imposed pursuant to this
37 subsection and deposit them in a separate account. Within ten
38 calendar days following the beginning of the calendar month, the
39 circuit clerk, magistrate clerk or municipal court clerk shall
40 forward the amount deposited to the State Treasurer to be
41 credited to the West Virginia Community Corrections Fund.

42 (d) In addition to the usual court costs in any criminal case
43 taxed against any defendant convicted in a municipal, magistrate

44 or circuit court, excluding municipal parking ordinances, a \$10
45 fee shall be added, unless the fee is modified by legislative rule
46 as provided in section three of this article. The circuit clerk,
47 magistrate clerk, municipal court clerk or his or her designee
48 shall collect all fees imposed pursuant to this subsection and
49 deposit them in a separate account. Within ten calendar days
50 following the beginning of the calendar month, the circuit clerk,
51 magistrate court clerk and the municipal court clerk shall
52 forward the amount deposited to the State Treasurer to be
53 credited to the West Virginia Community Corrections Fund.

54 (e) The moneys of the West Virginia Community
55 Corrections Fund are to be disbursed by the subcommittee for
56 the funding of community corrections programs and to pay
57 expenses of the subcommittee in administering the provisions of
58 this article, which expenses may not in any fiscal year exceed
59 fifteen percent of the funds deposited to the special revenue
60 account during that fiscal year.

61 (f) Any disbursements from the West Virginia Community
62 Corrections Fund allocated for community corrections programs
63 by the subcommittee may be made contingent upon local
64 appropriations or gifts in money or in kind for the support of the
65 programs. Any county commission of any county or the
66 governing body of a municipality may appropriate and expend
67 money for establishing and maintaining community corrections
68 programs.

§62-11C-6. Community criminal justice boards.

1 (a) Each county or combination of counties or a county or
2 counties and a Class I or II municipality that seek to establish
3 community-based corrections services shall establish a
4 community criminal justice board. Any county which chooses to
5 operate without a community criminal justice board is subject to
6 the regulations and requirements established by the
7 subcommittee.

8 (b) A community criminal justice board shall consist of no
9 more than fifteen voting members.

10 (c) All members of a community criminal justice board shall
11 be residents of the county or counties represented.

12 (d) A community criminal justice board shall consist of the
13 following members:

14 (1) The sheriff or chief of police or, if the board represents
15 more than one county or municipality, at least one sheriff or
16 chief of police from the counties represented;

17 (2) The prosecutor or, if the board represents more than one
18 county, at least one prosecutor from the counties represented;

19 (3) If a public defender corporation exists in the county or
20 counties represented, at least one attorney employed by any
21 public defender corporation existing in the counties represented
22 or, if no public defender office exists, one criminal defense
23 attorney from the counties represented;

24 (4) One member to be appointed by the local board of
25 education or, if the board represents more than one county, at
26 least one member appointed by a board of education of the
27 counties represented;

28 (5) One member with a background in mental health care
29 and services to be appointed by the commission or commissions
30 of the county or counties represented by the board;

31 (6) Two members who can represent organizations or
32 programs advocating for the rights of victims of crimes with
33 preference given to organizations or programs advocating for the
34 rights of victims of the crimes of domestic violence or driving
35 under the influence;

36 (7) One member with a background in substance abuse
37 treatment and services to be appointed by the commission or
38 commissions of the county or counties represented by the board;
39 and

40 (8) Three at-large members to be appointed by the
41 commission or commissions of the county or counties
42 represented by the board.

43 (e) At the discretion of the Supreme Court of Appeals, any
44 or all of the following people may serve on a community
45 criminal justice board as ex officio, nonvoting members:

46 (1) A circuit judge from the county or counties represented;

47 (2) A magistrate from the county or counties represented; or

48 (3) A probation officer from the county or counties
49 represented.

50 (f) Community criminal justice boards may:

51 (1) Provide for the purchase, development and operation of
52 community corrections services;

53 (2) Coordinate with local probation departments in
54 establishing and modifying programs and services for offenders;

55 (3) Evaluate and monitor community corrections programs,
56 services and facilities to determine their impact on offenders;
57 and

58 (4) Develop and apply for approval of community
59 corrections programs by the Governor's Committee on Crime,
60 Delinquency and Correction.

61 (g) If a community criminal justice board represents more
62 than one county, the appointed membership of the board,

63 excluding any ex officio members, shall include an equal
64 number of members from each county, unless the county
65 commission of each county agrees in writing otherwise.

66 (h) If a community criminal justice board represents more
67 than one county, the board shall, in consultation with the county
68 commission of each county represented, designate one county
69 commission as the fiscal agent of the board.

70 (i) Any political subdivision of this state operating a
71 community corrections program shall, regardless of whether or
72 not the program has been approved by the Community
73 Corrections Subcommittee of the Governor's Committee on
74 Crime, Delinquency and Correction, provide to the
75 subcommittee required information regarding the program's
76 operations.

§62-11C-8. Local community criminal justice accounts.

1 (a) The treasurer of the county designated as the fiscal agent
2 for the board pursuant to section six of this article shall establish
3 a separate fund designated the community criminal justice fund.
4 He or she shall deposit all fees remitted by the municipal,
5 magistrate and circuit clerks pursuant to section seven of this
6 article and all funds appropriated by a county commission
7 pursuant to section seven, article eleven-b of this chapter or any
8 other provision of this code and all funds provided by the
9 subcommittee for approved community corrections programs in
10 the community criminal justice fund. Funds in the community
11 criminal justice account are to be expended by order of the
12 designated county's commission upon recommendation of the
13 community criminal justice board in furtherance of the operation
14 of an approved community corrections program.

15 (b) A county commission representing the same county as a
16 community criminal justice board may require the community
17 criminal justice board to render an accounting, at intervals the

18 county commission may designate, of the use of money,
19 property, goods and services made available to the board by the
20 county commission and to make available at quarterly intervals
21 an itemized statement of receipts and disbursements, and its
22 books, records and accounts during the preceding quarter, for
23 audit and examination pursuant to article nine, chapter six of this
24 code.

CHAPTER 82

(S. B. 292 - By Senators Nohe and Gaunch)

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §32A-2-4 and §32A-2-13 of the Code of West Virginia, 1931, as amended, all relating to licenses for business of currency exchange, transportation or transmission; establishing expiration date of December 31 for those licensees; and requiring licensees to provide sixty days' advance notice of any change in control or change in principals.

Be it enacted by the Legislature of West Virginia:

That §32A-2-4 and §32A-2-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-4. License application, issuance and renewal.

- 1 (a) An applicant for a license shall submit an application to
- 2 the commissioner on a form prescribed by the commissioner.

3 The commissioner may direct an applicant to file a license
4 application through the Nationwide Mortgage Licensing System
5 and Registry operated by the State Regulatory Registry, LLC.

6 (b) Each application shall be accompanied by a
7 nonrefundable application fee and a license fee. If the
8 application is approved, the application fee is the license fee for
9 the first year of licensure.

10 (c) The commissioner shall issue a license if the
11 commissioner finds that the applicant meets the requirements of
12 this article and the rules adopted under this article. The
13 commissioner shall approve or deny every application for an
14 original license within one hundred twenty days from the date a
15 complete application is submitted, unless the commissioner
16 extends the period for good cause. All licenses issued under this
17 article expire on December 31 of the year issued, unless sooner
18 suspended or revoked, and are subject to renewal for the
19 following year.

20 (d) The licensee at each office it owns and operates in West
21 Virginia shall prominently display, or maintain available for
22 inspection, a copy of the license authorizing the conduct of a
23 currency exchange business if the location offers and provides
24 such services. Where the currency exchange business is
25 conducted through a licensee's authorized delegates in this state,
26 each authorized delegate location offering such services shall
27 maintain available for inspection proof of their appointment by
28 the licensee to conduct such business.

29 (e) As a condition for renewal of a license, the licensee must
30 submit to the commissioner an application for renewal on a form
31 prescribed by the commissioner and an annual license renewal
32 fee. The commissioner may direct an applicant to file a license
33 renewal application through the Nationwide Mortgage Licensing

34 System and Registry operated by the State Regulatory Registry,
35 LLC.

36 (f) A license issued under this article may not be transferred
37 or assigned.

38 (g) An applicant for a license who is not located in this state
39 shall file an irrevocable consent, duly acknowledged, that suits
40 and actions may be commenced against the applicant in the
41 courts of this state by service of process upon a person located
42 within the state designated to accept service, or by service upon
43 the Secretary of State, as well as by service as set forth in this
44 chapter.

§32A-2-13. Notification requirements.

1 (a) A licensee shall notify the commissioner of any change
2 in its principal place of business, or its headquarters office if
3 different from its principal place of business, within fifteen days
4 after the date of the change.

5 (b) A licensee shall notify the commissioner of any of the
6 following significant developments within fifteen days after
7 gaining actual notice of its occurrence:

8 (1) The filing of bankruptcy or for reorganization under the
9 bankruptcy laws;

10 (2) The institution of any enforcement action including, but
11 not limited to, a license revocation or suspension against the
12 licensee by any other state or federal regulator;

13 (3) A felony indictment related to money transmission,
14 currency exchange, fraud, failure to fulfill a fiduciary duty or
15 other activities of the type regulated under this article of the
16 licensee or its authorized delegates in this state, or of the

17 licensee's or authorized delegate's officers, directors or
18 principals;

19 (4) A felony conviction or plea related to the money
20 transmission, currency exchange, fraud, failure to fulfill a
21 fiduciary duty or other activities of the type regulated under this
22 article of the licensee or its authorized delegates in this state, or
23 of the licensee's or authorized delegate's officers, directors or
24 principals; and

25 (5) Any change in its business activities.

26 (c) A licensee shall notify the commissioner of any merger
27 or acquisition which may result in a change of control or a
28 change in principals of a licensee at least sixty days prior to the
29 announcement or publication of the proposal, or its occurrence,
30 whichever is earlier. Upon notice of these circumstances by a
31 corporate licensee, the commissioner may require all information
32 necessary to determine whether it results in a transfer or
33 assignment of the license and thus if a new application is
34 required in order for the company to continue doing business
35 under this article. A licensee that is an entity other than a
36 corporation shall in these circumstances submit a new
37 application for licensure at the time of notice.

38 (d) The commissioner may direct that the reports required by
39 this section and any other reports, data or information deemed
40 necessary by the commissioner be filed directly with the
41 Division of Financial Institutions on a date to be determined by
42 the commissioner or through the Nationwide Mortgage
43 Licensing System and Registry operated by the State Regulatory
44 Registry, LLC.

CHAPTER 83

**(Com. Sub. for S. B. 261 - By Senators D. Hall,
Miller, Snyder, Beach and Facemire)**

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §22-14-3 of the Code of West Virginia, 1931, as amended, relating to dams; and clarifying definition of “owner” of dam.

Be it enacted by the Legislature of West Virginia:

That §22-14-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. DAM CONTROL ACT.

§22-14-3. Definition of terms used in article.

1 As used in this article, unless used in a context that clearly
2 requires a different meaning, the term:

3 (a) “Alterations” or “repairs” means only those changes in
4 the structure or integrity of a dam that may affect its safety to be
5 determined by the secretary.

6 (b) “Application for a certificate of approval” means the
7 written application provided to the secretary requesting that a
8 person be issued a certificate of approval.

9 (c) “Appurtenant works” means any structure or facility that
10 is an adjunct of, or connected, appended or annexed to, a dam,
11 including, but not limited to, spillways, a reservoir and its rim,

12 low-level outlet works or water conduits such as tunnels,
13 pipelines and penstocks either through the dam or its abutments.

14 (d) “Authority” means the Water Development Authority
15 provided in section four, article one, chapter twenty-two-c of this
16 code.

17 (e) “Certificate of approval” means the written approval
18 issued by the secretary to a person who has applied to the
19 secretary for a certificate of approval that authorizes the person
20 to place, construct, enlarge, alter, repair or remove a dam and
21 specifies the conditions or limitations under which the work is to
22 be performed by that person.

23 (f)(1) “Dam” means an artificial barrier or obstruction,
24 including any works appurtenant to it and any reservoir created
25 by it, which is or will be placed, constructed, enlarged, altered or
26 repaired so that it does or will impound or divert water and:

27 (A) Is or will be twenty-five feet or more in height from the
28 natural bed of the stream or watercourse measured at the
29 downstream toe of the barrier and which does or can impound
30 fifteen acre-feet or more of water; or

31 (B) Is or will be six feet or more in height from the natural
32 bed of the stream or watercourse measured at the downstream
33 toe of the barrier and which does or can impound fifty acre-feet
34 or more of water;

35 (2) “Dam” does not mean:

36 (A) Any dam owned by the federal government;

37 (B) Any dam for which the operation and maintenance of the
38 dam is the responsibility of the federal government;

39 (C) Farm ponds constructed and used primarily for
40 agricultural purposes, including, but not limited to, livestock

41 watering, irrigation, retention of animal wastes and fish culture
42 and that have no potential to cause loss of human life in the
43 event of embankment failure; or

44 (D) Road fill or other transportation structures that do not or
45 will not impound water under normal conditions and that have
46 a designed culvert or similar conveyance or capacity that would
47 be used under a state-designed highway at the same location:
48 *Provided*, That the secretary may apply the provisions of section
49 ten of this article for road fill or other transportation structures
50 that become a hazard to human life or property through the
51 frequent or continuous impoundment of water.

52 (g) “Deficient dam” means a noncoal-related dam that
53 exhibits one or more design, maintenance or operational
54 problems that may adversely affect the performance of the dam
55 over a period of time or during a major storm or other inclement
56 weather that may cause loss of life or property; or a
57 noncoal-related dam that otherwise fails to meet the
58 requirements of this article.

59 (h) “Department” means the Department of Environmental
60 Protection.

61 (i) “Enlargement” means any change in or addition to an
62 existing dam which: (1) Raises the height of the dam; (2) raises
63 or may raise the water storage elevation of the water impounded
64 by the dam; (3) increases or may increase the amount of water
65 impounded by the dam; or (4) increases or may increase the
66 watershed area from which water is impounded by the dam.

67 (j) “Noncompliant dam owner” means an owner who has
68 received two or more orders to repair or remove a deficient dam
69 without completion of the repairs or removal within time frames
70 established by the secretary.

71 (k) “Owner” means any person who:

72 (1) Holds legal possession, ownership or partial ownership
73 of an interest in a dam, its appurtenant works or the real property
74 the dam is situated upon;

75 (2) Has a lease, easement or right-of-way to construct,
76 operate or maintain a dam; or

77 (3) Is a sponsoring organization with existing or prior
78 agreement with the Natural Resources Conservation Service for
79 a dam or its appurtenant works constructed with assistance from
80 Public Law 78-534, Section 13 of the Flood Control Act of 1944;
81 Public Law 83-566, the Watershed Protection and Flood
82 Prevention Act of 1954; the pilot watershed program authorized
83 under the heading "Flood Prevention" of the Department of
84 Agriculture Appropriation Act of 1954, Public Law 156, 67 Stat.
85 214; or Subtitle H of Title XV of the Agriculture and Flood Act
86 of 1981, commonly known as the Resource Conservation and
87 Development Program, 16 U. S. C. §3451: *Provided*, That the
88 owner of the land upon which a dam is owned, maintained or
89 operated by a sponsoring agency, such as a conservation district
90 or other political subdivision of the state, is not responsible for
91 or liable for repairs, maintenance or damage arising from the
92 regular operation, maintenance, deficiencies or ownership of the
93 dam. The owner of the land shall not be cited as a noncompliant
94 dam owner for any deficiencies of the dam, so long as the owner
95 of the land does not intentionally damage or interfere with the
96 regular operation and maintenance of the dam.

97 (1) "Person" means any public or private corporation,
98 institution, association, society, firm, organization or company
99 organized or existing under the laws of this or any other state or
100 country; the State of West Virginia; any state governmental
101 agency; any political subdivision of the state or of its counties or
102 municipalities; a sanitary district; a public service district; a
103 drainage district; a conservation district; a watershed
104 improvement district; a partnership, trust or estate; a person or
105 individual; a group of persons or individuals acting individually

106 or as a group; or any other legal entity. The term “person”, when
107 used in this article, includes and refers to any authorized agent,
108 lessee or trustee of any of the foregoing or receiver or trustee
109 appointed by any court for any of the foregoing.

110 (m) “Reservoir” means any basin which contains or will
111 contain impounded water.

112 (n) “Secretary” means the Secretary of the Department of
113 Environmental Protection.

114 (o) “Natural Resources Conservation Service” means the
115 Natural Resources Conservation Service of the United States
116 Department of Agriculture or any successor or predecessor
117 agency, including the Soil Conservation Service.

118 (p) “Water” means any liquid, including any solids or other
119 matter that may be contained in the liquid, which is or may be
120 impounded by a dam.

121 (q) “Water storage elevation” means the maximum elevation
122 that water can reach behind a dam without encroaching on the
123 freeboard approved for the dam under flood conditions.

CHAPTER 84

(Com. Sub. for H. B. 2053 - By Delegate Shott)

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §38-1-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §40-1-9 of said code, all relating to deeds of trust; permitting the recording of a memorandum of deed of trust in lieu of the deed of trust; setting

requirements for content of memorandum of deed of trust; and requiring recording of original deed of trust prior to commencement of foreclosure action or other execution thereof.

Be it enacted by the Legislature of West Virginia:

That §38-1-2 and §40-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

CHAPTER 38. LIENS.

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-2. Form of deed of trust; memorandum of deed of trust may be recorded.

1 A deed of trust to secure debts or indemnify sureties may be
 2 in the following form or to the same effect: "This deed made the
 3 day of, in the year, between
 4 (the grantor) of the one part, and
 5 (the trustee) of the other part, witnesseth:
 6 That the said (the grantor) doth (or do) grant unto
 7 the said (the trustee) the following property (here
 8 describe it). In trust to secure (here describe the debts to be
 9 secured or the sureties to be indemnified, and insert covenants,
 10 or any other provisions the parties may agree upon). Witness the
 11 following signature."

12 In lieu of the recording of a deed of trust, there may be
 13 recorded with like effect a memorandum of the deed of trust,
 14 executed by all persons who are grantors under the deed of trust
 15 and acknowledged in the manner to entitle a conveyance to be
 16 recorded. A memorandum of deed of trust entitled to be recorded
 17 shall contain at least the following information with respect to
 18 the deed of trust: (1) The name and the address of each grantor,
 19 the name and the address of each trustee and the name and the
 20 address of each beneficiary as set forth in the deed of trust; (2)

21 a reference to the indebtedness secured by the deed of trust
22 including the amount of the indebtedness and the date the
23 indebtedness was incurred or if the indebtedness is evidenced by
24 a note or contract, the date the instrument was executed; (3) the
25 date of execution of the deed of trust if different than the date the
26 evidence of indebtedness was executed; (4) the date of maturity
27 of the indebtedness; (5) the description of the real estate against
28 which a lien is claimed to secure the indebtedness; (6) a title in
29 compliance with subsection (b), section fourteen, article one,
30 chapter thirty-eight of this code if the indebtedness is a line of
31 credit; (7) a statement of whether advances are obligatory if the
32 indebtedness is a line of credit; (8) provisions of the deed of trust
33 regarding substitution of a trustee; (9) a summary of the
34 applicable notice and publication requirements if there is a
35 default; (10) whether the loan was originated or serviced
36 pursuant to a program of the following agencies or
37 organizations, and if so, any form number actually used: (a)
38 Federal Housing Administration; (b) Veterans Administration;
39 (c) Federal National Mortgage Association; (d) Federal Home
40 Loan Administration; (e) United States Department of
41 Agriculture; or (f) West Virginia Housing Development Fund;
42 and (11) the name of the person from whom, upon written
43 request from any interested party, the original deed of trust, or a
44 copy thereof, may be obtained. The memorandum shall
45 constitute notice of only the information contained therein but,
46 as against creditors and purchasers, it is as valid as if the
47 complete deed of trust were recorded on the date the
48 memorandum is admitted to record. Prior to the commencement
49 of any foreclosure or other execution of the deed of trust, the
50 original deed of trust shall be recorded.

**CHAPTER 40. ACTS VOID AS TO
CREDITORS AND PURCHASERS.**

**ARTICLE 1. ACTS GENERALLY VOID AS TO CREDITORS
AND PURCHASERS.**

§40-1-9. Contracts, deeds and mortgages invalid as to creditors and purchasers until recorded.

1 Every such contract, every deed conveying any such estate
2 or term, and every deed of gift, or deed of trust or memorandum
3 of deed of trust pursuant to section two, article one, chapter
4 thirty-eight of this code, or mortgage, conveying real estate shall
5 be void, as to creditors, and subsequent purchasers for valuable
6 consideration without notice, until and except from the time that
7 it is duly admitted to record in the county wherein the property
8 embraced in such contract, deed, deed of trust or memorandum
9 of deed of trust or mortgage may be.

CHAPTER 85

**(Com. Sub. for H. B. 2902 - By Delegate(s) Campbell,
Perry, Reynolds, Pasdon, Rodighiero, Ellington, Rowan,
Rohrbach, Hamrick, E. Nelson and Ashley)**

[Passed March 11, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-48-1, §16-48-2, §16-48-3, §16-48-4, §16-48-5, §16-48-6, §16-48-7 and §16-48-8, all relating to providing for the establishment of a program to allow savings accounts for individuals with a disability and their families to save private funds to support the individual with a disability, to be known as the West Virginia ABLE Act; definitions; implementation and administration of the program by the Treasurer; powers and responsibilities of the Treasurer; use of financial organizations as account depositories and managers; establishing procedures and requirements for establishment of an

ABLE savings account; limitations on deposits; provisions for change of a designated beneficiary; distributions from accounts; limiting liability of the Treasurer and the state; and establishment of the West Virginia ABLE savings program trust fund and the West Virginia ABLE Savings Expense Fund.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-48-1, §16-48-2, §16-48-3, §16-48-4, §16-48-5, §16-48-6, §16-48-7 and §16-48-8, all to read as follows:

ARTICLE 48. WEST VIRGINIA ABLE ACT.

§16-48-1. Short Title.

1 This article shall be known and may be cited as the
2 “Achieving a Better Life Experience in West Virginia Act” or
3 the “West Virginia ABLE Act”.

§16-48-2. Purpose.

1 The purpose of the West Virginia ABLE Act savings
2 program is to authorize the establishment of savings accounts
3 empowering individuals with a disability and their families to
4 save private funds to support the individual with a disability and
5 to provide guidelines for the maintenance of such accounts.

§16-48-3. Definitions.

1 (a) “Account” or “ABLE savings account” means an
2 individual savings account established in accordance with the
3 provisions of this article.

4 (b) “Account owner” means the person who enters into an
5 ABLE savings agreement pursuant to the provisions of this

6 article. The account owner must also be the designated
7 beneficiary. A conservator or guardian may be appointed as an
8 account owner for a designated beneficiary who is a minor or
9 lacks capacity to enter into an agreement.

10 (c) “Conservator” means a person appointed by the court
11 pursuant to article one, chapter forty-four-a of this code.

12 (d) “Designated beneficiary” means a West Virginia resident
13 whose qualified disability expenses may be paid from the
14 account. The designated beneficiary must be an eligible
15 individual at the time the account is established. The account
16 owner may change the designated beneficiary.

17 (e) “Eligible individual” means an individual who is entitled
18 to benefits based on blindness or disability under 42 U.S.C. §401
19 et seq. or 42 U.S.C. § 1381 et seq., as amended, and such
20 blindness or disability occurred before the date on which the
21 individual attained age twenty-six, or an individual who filed a
22 disability certification, to the satisfaction of the secretary, with
23 the secretary for such taxable year.

24 (f) “Financial organization” means an organization autho-
25 rized to do business in the State of West Virginia and is:

26 (1) Licensed or chartered by the Insurance Commissioner;

27 (2) Licensed or chartered by the Commissioner of the
28 Division of Financial Institutions;

29 (3) Chartered by an agency of the federal government; or

30 (4) Subject to the jurisdiction and regulation of the securities
31 and exchange commission of the federal government.

32 (g) “Guardian” means a person appointed by the court
33 pursuant to article one, chapter forty-four-a of this code.

34 (h) “Management contract” means the contract executed by
35 the Treasurer and a financial organization selected to act as a
36 depository and manager of the program.

37 (i) “Member of the family” has the meaning contained in
38 Section 529a of the federal Internal Revenue Code of 1986, as
39 amended.

40 (j) “Nonqualified withdrawal” means a withdrawal from an
41 account which is not:

42 (1) A qualified withdrawal; or

43 (2) A rollover distribution.

44 (k) “Program” means the West Virginia ABLE Act savings
45 program established pursuant to this article.

46 (l) “Program manager” means a financial organization
47 selected by the Treasurer to act as a depository and manager of
48 the program.

49 (m) “Qualified disability expense” means any qualified
50 disability expense included in Section 529a of the federal
51 Internal Revenue Code of 1986, as amended.

52 (n) “Qualified withdrawal” means a withdrawal from an
53 account to pay the qualified disability expenses of the designated
54 beneficiary of the account.

55 (o) “Rollover distribution” means a rollover distribution as
56 defined in Section 529a of the Federal Internal Revenue Code of
57 1986, as amended.

58 (p) “Savings agreement” means an agreement between the
59 program manager or the Treasurer and the account owner.

60 (q) “Secretary” means the secretary of the United States
61 Treasury.

62 (r) “Treasurer” means the State Treasurer.

**§16-48-4. Implementation and administration of program;
Treasurer’s powers and responsibilities.**

1 (a) The Treasurer shall implement and administer the
2 program under the terms and conditions established by this
3 article. In order to implement and administer the program, the
4 Treasurer may:

5 (1) Engage the services of consultants on a contract basis for
6 rendering professional and technical assistance and advice;

7 (2) Seek rulings and other guidance from the secretary and
8 the federal Internal Revenue Service relating to the program;

9 (3) Make changes to the program required for the
10 participants in the program to obtain the federal income tax
11 benefits or treatment provided by Section 529a of the federal
12 Internal Revenue Code of 1986, as amended;

13 (4) Charge, impose and collect administrative fees and
14 service charges in connection with any agreement, contract or
15 transaction relating to the program;

16 (5) Develop marketing plans and promotion material;

17 (6) Establish the methods by which the funds held in
18 accounts shall be dispersed;

19 (7) Establish the method by which funds shall be allocated
20 to pay for administrative costs;

21 (8) Do all things necessary and proper to carry out the
22 purposes of this act;

23 (9) Make an annual evaluation of the ABLE savings program
24 and prepare and submit an annual report of such evaluation to
25 the Governor and Legislature; and

26 (10) Notify the Secretary when an account has been opened
27 for a designated beneficiary and submit other reports concerning
28 the program required by the Secretary.

29 (b) The Treasurer may enter into agreements with other
30 states to either allow West Virginia residents to participate in a
31 plan operated by another state or to allow residents of other
32 states to participate in the West Virginia ABLE program.

33 (c) The Treasurer shall propose rules for legislative approval
34 in accordance with the provisions of article three, chapter
35 twenty-nine-a of this code necessary to implement the provisions
36 of this article.

**§16-48-5. Use of financial organizations as program depositories
and managers.**

1 (a) The Treasurer may implement the program through use
2 of financial organizations as account depositories and managers.
3 The Treasurer may solicit proposals from financial organizations
4 to act as depositories and managers of the program. Financial
5 organizations submitting proposals shall describe the investment
6 instruments which will be held in accounts. The Treasurer may
7 select more than one financial organization and investment
8 instrument for the program. The Treasurer shall select financial
9 organizations to act as program depositories and managers from
10 among the bidding financial organizations that demonstrate the
11 most advantageous combination, both to potential program
12 participants and this state of the following criteria:

13 (1) The financial stability and integrity of the financial
14 organization;

15 (2) The safety of the investment instrument being offered;

16 (3) The ability of the financial organization to satisfy
17 recordkeeping and reporting requirements;

18 (4) The financial organization's plan for promoting the
19 program and the investment the organization is willing to make
20 to promote the program;

21 (5) The fees, if any, proposed to be charged to the account
22 owners;

23 (6) The minimum initial deposit and minimum contributions
24 that the financial organization will require;

25 (7) The ability of the financial organization to accept
26 electronic withdrawals, including payroll deduction plans; and

27 (8) Other benefits to the state or its residents included in the
28 proposal, including fees payable to the state to cover expenses of
29 operation of the program.

30 (b) The Treasurer may enter into any contracts with a
31 financial organization necessary to effectuate the provisions of
32 this article. Any management contract shall include, at a
33 minimum, terms requiring the financial organization to:

34 (1) Take any action required to keep the program in
35 compliance with requirements of this article and any actions not
36 contrary to its contract to manage the program to qualify as a
37 "qualified ABLE program" as defined in Section 529a of the
38 federal Internal Revenue Code of 1986, as amended;

39 (2) Keep adequate records of each account, keep each
40 account segregated from each other account and provide the
41 Treasurer with the information necessary to prepare the
42 statements required by section six of this article, and
43 amendments thereto;

44 (3) Compile and total information contained in statements
45 required to be prepared under section six of this article, and
46 amendments thereto, and provide such compilations to the
47 Treasurer;

48 (4) If there is more than one program manager, provide the
49 Treasurer with such information as is necessary to determine
50 compliance with section six of this article;

51 (5) Provide the Treasurer with access to the books and
52 records of the program manager to the extent needed to
53 determine compliance with the contract, this article and Section
54 529a of the federal Internal Revenue Code of 1986, as amended;

55 (6) Hold all accounts for the benefit of the account owner or
56 owners;

57 (7) Be audited at least annually by a firm of certified public
58 accountants selected by the program manager and provide the
59 results of such audit to the Treasurer;

60 (8) Provide the Treasurer with copies of all regulatory filings
61 and reports made by the financial organization during the term
62 of the management contract or while the financial organization
63 is holding any accounts, other than confidential filings or reports
64 that will not become part of the program. The program manager
65 shall make available for review by the Treasurer the results of
66 any periodic examination of such manager by any state or
67 federal banking, insurance or securities commission, except to
68 the extent that such report or reports may not be disclosed under
69 law; and

70 (9) Ensure that any description of the program, whether in
71 writing or through the use of any media, is consistent with the
72 marketing plan developed pursuant to the provisions of this
73 article.

74 (c) The Treasurer may:

75 (1) Enter into such contracts as it deems necessary and
76 proper for the implementation of the program;

77 (2) Require that an audit be conducted of the operations and
78 financial position of the program depository and manager at any

79 time if the Treasurer has any reason to be concerned about the
80 financial position, the record keeping practices or the status of
81 accounts of such program depository and manager; and

82 (3) Terminate or not renew a management agreement. If the
83 Treasurer terminates or does not renew a management
84 agreement, the Treasurer shall take custody of accounts held by
85 such program manager and shall seek to promptly transfer such
86 accounts to another financial organization that is selected as a
87 program manager or depository and into investment instruments
88 as similar to the original instruments as possible.

89 (d) The Treasurer and the Department of Health and Human
90 Resources are authorized to exchange data regarding eligible
91 individuals to carry out the purposes of this act.

**§16-48-6. Establishment of ABLE savings account by beneficiary,
conservator, or guardian.**

1 (a) Any ABLE savings accounts established pursuant to the
2 provisions of this article shall be opened by a designated
3 beneficiary or a conservator or guardian of a designated
4 beneficiary who lacks capacity to enter into a contract and each
5 beneficiary may have only one account. The Treasurer may
6 establish a nonrefundable application fee. An application for
7 such account shall be in the form prescribed by the Treasurer and
8 contain:

9 (1) The name, address and social security number of the
10 account owner;

11 (2) The name, address and social security number of the
12 designated beneficiary, if the account owner is the beneficiary's
13 trustee conservator or guardian;

14 (3) A certification relating to no excess contributions; and

15 (4) Any additional information as the Treasurer may require.

16 (b) Any person may make contributions to an ABLE savings
17 account after the account is opened, subject to the limitations
18 imposed by Section 529a of the federal Internal Revenue Code
19 of 1986, as amended, or any rules and regulations promulgated
20 by the Secretary pursuant to this article.

21 (c) Contributions to ABLE savings accounts may only be
22 made in cash. The Treasurer or program manager shall reject or
23 promptly withdraw:

24 (1) Contributions in excess of the limits established pursuant
25 to subsection (b); or

26 (2) The total contributions if the:

27 (A) Value of the account is equal to or greater than the
28 account maximum established by the Treasurer. Such account
29 maximum must be equal to the account maximum for
30 postsecondary education savings accounts established pursuant
31 to article thirty, chapter eighteen of this code; or

32 (B) The designated beneficiary is not an eligible individual
33 in the current calendar year.

34 (d) (1) An account owner may:

35 (A) Change the designated beneficiary of an account to an
36 individual who is a member of the family of the prior designated
37 beneficiary in accordance with procedures established by the
38 Treasurer; and

39 (B) Transfer all or a portion of an account to another ABLE
40 savings account, the designated beneficiary of which is a
41 member of the family as defined in Section 529a of the federal
42 Internal Revenue Code of 1986, as amended.

43 (2) No account owner may use an interest in an account as
44 security for a loan. Any pledge of an interest in an account is of
45 no force and effect.

46 (e) (1) Distributions may be made from the account for
47 payment of any qualified disability expense for the designated
48 beneficiary of the account made in accordance with the
49 provisions of this article.

50 (2) Any distribution from an account to any individual or for
51 the benefit of any individual during a calendar year shall be
52 reported to the federal Internal Revenue Service and each
53 account owner, the designated beneficiary or the distributee to
54 the extent required by state or federal law.

55 (3) Statements shall be provided to each account owner at
56 least four times each year within thirty days after the end of the
57 three-month period to which a statement relates. The statement
58 shall identify the contributions made during the preceding
59 three-month period, the total contributions made to the account
60 through the end of the period, the value of the account at the end
61 of such period, distributions made during such period and any
62 other information that the Treasurer requires to be reported to the
63 account owner.

64 (4) Statements and information relating to accounts shall be
65 prepared and filed to the extent required by this article and any
66 other state or federal law.

67 (f) (1) The program shall provide separate accounting for
68 each designated beneficiary. An annual fee may be imposed
69 upon the account owner for the maintenance of an account.

70 (2) Moneys in an ABLE savings account:

71 (A) Are exempt from attachment, execution or garnishment;
72 and

73 (B) May be subject to any claim by the West Virginia
74 Medicaid plan only after the death of the designated beneficiary,
75 subject to limitations imposed by the secretary.

§16-48-7. Limitation on Liability.

1 (a) Nothing in this act creates any obligation of the
2 Treasurer, the state or any agency or instrumentality of the state
3 to guarantee for the benefit of any account owner or designated
4 beneficiary with respect to the:

5 (1) Return of principal;

6 (2) Rate of interest or other return on any account; or

7 (3) Payment of interest or other return on any account.

8 (b) The Treasurer may propose rules for legislative approval
9 in accordance with the provisions of article three, chapter
10 twenty-nine-a of this code to provide that every contract,
11 application or other similar document that may be used in
12 connection with opening an account clearly indicates that the
13 account is not insured by the state and that the principal
14 deposited and the investment return are not guaranteed by the
15 state.

§16-48-8. Establishment of savings program trust fund and savings expense fund in State Treasury.

1 (a) The West Virginia ABLE savings program trust fund is
2 hereby established in the State Treasury. The fund shall be
3 utilized if the Treasurer elects to accept deposits from
4 contributors rather than have deposits sent directly to the
5 program manager. Such fund shall consist of any moneys
6 deposited by contributors in accordance with this article which
7 are not deposited directly with the program manager. All interest
8 derived from the deposit and investment of moneys in such
9 savings trust fund shall be credited to the fund. At the end of any
10 fiscal year, all unexpended and unencumbered moneys in such
11 savings trust fund may not be credited or transferred to the State
12 General Fund or to any other fund.

13 (b) (1) The West Virginia ABLE Savings Expense Fund is
14 hereby established in the State Treasury. The fund shall consist
15 of moneys received from the ABLE savings program manager,
16 or any governmental or private grants and any state general fund
17 appropriations, if any, for the program.

18 (2) All expenses incurred by the Treasurer in developing and
19 administering the ABLE savings program shall be payable from
20 the West Virginia ABLE Savings Expense Fund.

CHAPTER 86

**(Com. Sub. for H. B. 2008 - By Delegates Summers, D. Evans,
Hamrick, Ashley, Ireland, Stansbury, Gearheart, E. Nelson,
Howell, Blair and Kurcaba)**

[Passed February 20, 2015; in effect from passage.]

[Approved by the Governor on February 25, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-6a, relating to an independent audit of the Division of Highways; establishing criteria for selection of the auditor; establishing terms of the audit; and providing for costs associated with the audit.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §17-2A-6a to read as follows:

**ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF
HIGHWAYS.**

**§17-2A-6a. Independent performance audit of the Division of
Highways.**

1 (a) Beginning May 1, 2015, the Division of Highways shall
2 provide access to and make available all of the Division's books,
3 accounts, records and any other information requested by the
4 independent qualified firm that may be selected by the Joint
5 Committee on Government and Finance to conduct a
6 performance audit of the Division of Highways and any one or
7 more of the individual district within the state road system for
8 the preceding three fiscal years, as determined by the Joint
9 Committee on Government and Finance.

10 (b) The independent qualified firm selected to conduct the
11 performance audit shall be selected by the Legislative Auditor
12 under the oversight of the Joint Committee on Government and
13 Finance on a competitive bid based upon price and
14 qualifications. The performance audit shall be conducted in
15 accordance with the generally accepted government auditing
16 standards. The audit may include, but not be limited to
17 examination of areas of inefficiency, best practices, the
18 appropriateness of staffing across functions and locations,
19 vehicles allocated within the agency, compensation levels
20 including overtime and relation to employee turnover,
21 procurement practices, existing or recommended system of
22 performance benchmarks, organizational structure, and internal
23 operating or management policies.

24 (c) The independent qualified firm shall submit the final
25 report of the audit to the Joint Committee on Government and
26 Finance, with a copy to the Governor, on or before December 31,
27 2015. The Joint Committee on Government and Finance may
28 authorize extension of the reporting requirement or expansion of
29 the terms of the audit. The Joint Committee on Government and
30 Finance shall pay the costs associated with the performance audit
31 prescribed by this section.

CHAPTER 87

**(Com. Sub. for H. B. 2234 - By Delegate(s) Ashley,
Shott, Lane, E. Nelson, Upson, Hanshaw,
Mr. Speaker (Mr. Armstead),
McCuskey, Manchin, Campbell and Rowe)**

[Passed February 25, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 3, 2015.]

AN ACT to amend and reenact §48-5-613 of the Code of West Virginia, 1931, as amended, relating to requiring a court to permit a party in a divorce proceeding to resume using the name he or she used prior to the marriage.

Be it enacted by the Legislature of West Virginia:

That §48-5-613 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. DIVORCE.

§48-5-613. Former name of party; restoration.

1 The court, upon ordering a divorce, shall if requested to do
2 so by either party, allow such party to resume the name used
3 prior to his or her marriage without the necessity of filing a
4 separate petition pursuant to section one hundred one, article
5 twenty-five, chapter forty-eight of this code. If a name change
6 is requested, the court shall also issue a certificate of divorce
7 reflecting that change in name. The certificate shall be no longer
8 than one page. For purpose of confidentiality, the certificate shall
9 not be considered an order. The certificate shall include the style
10 of the divorce case, the name on the birth certificate of the party

11 requesting the name change, that party's date of birth, that
12 party's social security number, the date on which the name
13 change is effective, and the new name of that party. In order to
14 be valid, the certificate shall be certified by a clerk of the court.
15 The certified certificate may be used by that person for all lawful
16 purposes, including as a proof of legal name change for driver
17 licensing purposes or state identification card at the Division of
18 Motor Vehicles.

CHAPTER 88

**(Com. Sub. for H. B. 2586 - By Delegate(s) Shott,
Lane, Miller, Frich, Rowan, Fleischauer, Sobonya, Border,
Pasdon, Waxman and Summers)
[By Request of the Supreme Court]**

[Passed March 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §48-27-311 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §56-3-33a, all relating to service of process; actions against nonresident persons by petitioners seeking domestic violence or personal safety relief; and authorizing the Secretary of State to receive process against nonresidents.

Be it enacted by the Legislature of West Virginia:

That §48-27-311 of the Code of West Virginia, 1931, as amended, be amended and reenacted and that said code be amended by adding thereto a new section, designated §56-3-33a, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.**ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.****§48-27-311. Service of process.**

1 A protective order may be served:

2 (1) On the respondent by means of a Class I legal
3 advertisement published notice, with the publication area being
4 the most current known county in which the respondent resides,
5 published in accordance with the provisions of section two,
6 article three, chapter fifty-nine of this code if personal service by
7 law-enforcement has been unsuccessful. Simultaneously with the
8 publication, the respondent shall be served with the protective
9 order and the order of publication by first class mail to the
10 respondent's most current known residential address.

11 (2) Against nonresident persons by the manner prescribed in
12 section thirty-three-a, article three, chapter fifty-six of this code.

13 Any protective order issued by the court of this state which
14 is served in compliance with the provisions of Rule 4(f) of the
15 West Virginia Rules of Civil Procedure served outside the
16 boundaries of this state shall carry the same force and effect as
17 if it had been personally served within this state's boundaries.

CHAPTER 56. PLEADING AND PRACTICE.**ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.****§56-3-33a. Actions against nonresident persons by petitioners seeking domestic violence or personal safety relief; service of process; authorizing Secretary of State to receive process against nonresidents.**

1 (a) Any person who is:

2 (1) Not a resident of this state; or

3 (2) A resident of this state who has left this state; or

4 (3) A person whose residence is unknown shall be
5 considered to have submitted to the jurisdiction of the courts of
6 this state as to any action arising from the conduct specified in
7 subsection (b) of this section, if such conduct was:

8 (A) Committed in this state; or

9 (B) If such conduct was not committed in this state if the
10 conduct was purposely directed at a resident and has an effect
11 within this state.

12 (b) Conduct compelling application of this section consists
13 of:

14 (1) Any act constituting domestic violence or abuse as
15 defined in section two hundred two, article twenty-seven, chapter
16 forty-eight of this code; or

17 (2) Any act constituting a basis for seeking personal safety
18 relief as defined in section four, article eight, chapter fifty-three
19 of this code; or

20 (3) Any act or omission violating the provisions of a duly
21 authorized protective or restraining order, whether issued by this
22 state or another jurisdiction, for the protection of any person
23 within this state.

24 (c) Any person subject to or considered to have submitted to
25 the jurisdiction of the courts of this state who is made a
26 respondent in an action may be served with the petition and
27 order initiating such action either:

28 (1) By law-enforcement officers, wherever the respondent
29 may be found, whether inside or outside the boundaries of this
30 state; or

31 (2) If the respondent is alleged to have committed conduct
32 specified in subsection (b) of this section, this shall be
33 considered equivalent to an appointment by such nonresident of
34 the Secretary of State, or his or her successor in office, to be his
35 or her true and lawful attorney upon whom may be served all
36 lawful process in any action or proceeding against him or her, in
37 any court in this state, for a cause of action arising from or
38 growing out of such conduct, and the engaging in such conduct
39 is a signification of such nonresident's agreement that any such
40 process against him or her, which is served in the manner
41 hereinafter provided, is of the same legal force and validity as
42 though such nonresident were personally served within this state.

43 (A) Such service shall be made by leaving two copies of
44 both the petition and order, with the Secretary of State, or in his
45 or her office, and such service shall be sufficient upon such
46 nonresident: *Provided*, That notice of such service and a copy of
47 the petition and order shall forthwith be sent by registered or
48 certified mail, return receipt requested, by a means which may
49 include electronic issuance and acceptance of electronic return
50 receipts, by the Secretary of State to the respondent at his or her
51 nonresident address and the respondent's return receipt signed
52 by himself or herself or his or her duly authorized agent or the
53 registered or certified mail so sent by the Secretary of State
54 which is refused by the addressee and which registered or
55 certified mail is returned to the Secretary of State, or to his or her
56 office, showing thereon the stamp of the post-office department
57 that delivery has been refused. After receiving verification from
58 the United States Postal Service that acceptance of the notice,
59 petition and order has been signed, the Secretary of State shall
60 notify the clerk's office of the court from which the petition and
61 order were issued by a means which may include electronic
62 notification. If the notice, petition and order were refused or
63 undeliverable by the United States Postal Service, the Secretary
64 of State shall return refused or undeliverable mail to the clerk's

65 office of the court from which the petition and order were issued.
66 If any respondent served with a petition and order fails to appear
67 and defend at the time and place set forth in the order, judgment
68 may be rendered against him or her at any time thereafter. The
69 court may order such continuances as may be reasonable to
70 afford the respondent an opportunity to defend the action or
71 proceeding.

72 (B) As provided in section three hundred eight, article
73 twenty-seven, chapter forty-eight of this code regarding
74 domestic violence proceedings and in section thirteen, article
75 eight, chapter fifty-three of this code regarding personal safety
76 proceedings, no fees may be charged for service of petitions or
77 orders until the matter is brought before the appropriate court for
78 final resolution. Any fees ordinarily remitted to the Secretary of
79 State or to a law-enforcement agency at the time of service shall
80 be deferred and taxed in the costs of the action or proceeding.

81 (C) Data and records regarding service maintained by law-
82 enforcement agencies and by the office of the Secretary of State
83 for purposes of fulfilling the obligations of this section are not
84 public records subject to disclosure under the provisions of
85 article one, chapter twenty-nine-b of this code.

86 (d) The following words and phrases, when used in this
87 section, shall for the purpose of this section and unless a
88 different intent be apparent from the context, have the following
89 meanings:

90 (1) "Duly authorized agent" means and includes among
91 others a person who, at the direction of or with the knowledge or
92 acquiescence of a nonresident, engages in such act or acts and
93 includes among others a member of the family of such
94 nonresident or a person who, at the residence, place of business

95 or post office of such nonresident, usually receives and receipts
96 for mail addressed to such nonresident.

97 (2) “Nonresident” means any person who is not a resident of
98 this state or a resident who has moved from this state subsequent
99 to engaging in such acts or acts covered by this section.

CHAPTER 89

(Com. Sub. for S. B. 430 - By Senator Trump)

[Passed March 13, 2015; in effect from passage.]

[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §48-27-507 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §51-2A-2a, all relating to exempting orders enjoining certain contact between parties to a domestic relations action from the prohibition against mutual protective orders; authorizing family courts of the state to enter standing orders enjoining certain contact between parties to a domestic relations action; providing for certain terms and effective length of such orders; authorizing family courts of the state to enter orders enjoining certain contact between parties to a domestic relations action when there has been a finding of misconduct by a party; authorizing family court to enforce its order through an order of contempt; and expressing intent of the Legislature.

Be it enacted by the Legislature of West Virginia:

That §48-27-507 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §51-2A-2a, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.**ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.****§ 48-27-507. Mutual protective orders prohibited.**

1 Mutual protective orders are prohibited unless both parties
2 have filed a petition under part three of this article and have
3 proven the allegations of domestic violence by a preponderance
4 of the evidence. This shall not prevent other persons, including
5 the respondent, from filing a separate petition. The court may
6 consolidate two or more petitions if he or she determines that
7 consolidation will further the interest of justice and judicial
8 economy. The court shall enter a separate order for each petition
9 filed: *Provided*, That nothing in this section shall preclude the
10 court from entering an order restricting contact pursuant to
11 section two-a, article two-a, chapter fifty-one of this code.

CHAPTER 51. COURTS IN GENERAL.**ARTICLE 2A. FAMILY COURTS.****§51-2A-2a. Family court jurisdiction to restrict contact between parties.**

1 (a) A family court in its discretion may, at any time during
2 the pendency of any action prosecuted under chapter forty-eight
3 of this code, restrict contact between the parties thereto without
4 a finding of domestic violence under article twenty-seven of said
5 chapter. This order shall not be considered a protective order for
6 purposes of section five hundred seven, article twenty-seven,
7 chapter forty-eight of this code. A court may enter a standing
8 order regarding the conduct expected of the parties during the
9 proceeding. Any standing order may restrict the parties from:

10 (1) Entering the home, school, business or place of
11 employment of the other for the purpose of bothering or
12 annoying the other;

13 (2) Contacting the other, in person, in writing, electronically
14 or by telephone, for purposes not clearly necessary for the
15 prosecution of the underlying action or any obligation related
16 thereto or resulting therefrom.

17 (b) Upon a finding of misconduct by a party, the court shall
18 enter an order against the offending party enjoining the conduct
19 which disturbs or interferes with the peace or liberty of the other
20 party so long as such conduct does not rise to the level of or
21 constitute domestic violence as defined in article twenty-seven,
22 chapter forty-eight of this code. The court shall not issue orders
23 under this section in cases where the conduct of either party has
24 previously risen to the level of domestic violence.

25 (c) Nothing in this section shall preclude the court from
26 entering an emergency protective order, or final protective order,
27 as provided in article twenty-seven, chapter forty-eight of this
28 code.

29 (d) Notwithstanding the provisions of section five hundred
30 five, article twenty-seven, chapter forty-eight of this code, an
31 order entered pursuant to the provisions of this section shall
32 remain in effect for a period of time as specified in the order.

33 (e) The court may enforce orders under this section against
34 the offending party through its powers of contempt, pursuant to
35 section nine of this article.

36 (f) It is the express intent of the Legislature that orders
37 issued pursuant to this section are to restrict behavior which is
38 not of sufficient severity to implicate the provisions of article
39 twenty-seven, chapter forty-eight of this code and 18 U. S. C.
40 §922(g)(8).

CHAPTER 90

(H. B. 2608 - By Delegate(s) Sponaugle and Shott)

[Passed March 12, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §48-27-903 of the Code of West Virginia, 1931, as amended, relating to misdemeanor offenses for violation of protective order; and cleaning up redundant language.

Be it enacted by the Legislature of West Virginia:

That §48-27-903 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-903. Misdemeanor offenses for violation of protective order; repeat offenses; penalties.

1 (a) A person is guilty of a misdemeanor if the person
2 knowingly and willfully violates:

3 (1) A provision of an emergency or final protective order
4 entered pursuant to:

5 (A) Subsection (a) or (b) of section five hundred two of this
6 article;

7 (B) If the court has ordered such relief; subsection (2), (7),
8 (9), or (14) of section five hundred three of this article;

9 (C) Subsection (b) or (c) of section five hundred nine, article
10 five of this chapter; or

11 (D) Subsection (b) or (c) of section six hundred eight, article
12 five of this chapter;

13 (2) A condition of bail, probation or parole which has the
14 express intent or effect of protecting the personal safety of a
15 particular person or persons; or

16 (3) A restraining order entered pursuant to section nine-a,
17 article two, chapter sixty-one of this code.

18 Upon conviction thereof the person shall be confined in jail
19 for a period of not less than one day nor more than one year,
20 which jail term shall include actual confinement of not less than
21 twenty-four hours, and shall be fined not less than \$250 nor more
22 than \$2,000.

23 (b) Any person who is convicted of a second offense under
24 subsection (a) of this section is guilty of a misdemeanor and,
25 upon conviction thereof, shall be confined in jail for not less than
26 three months nor more than one year, which jail term shall
27 include actual confinement of not less than thirty days, and fined
28 not less than \$500 nor more than \$3,000.

29 (c) A respondent who is convicted of a third or subsequent
30 offense under subsection (a) of this section when the violation
31 occurs within ten years of a prior conviction of this offense is
32 guilty of a misdemeanor and, upon conviction thereof, shall be
33 confined in jail not less than six months nor more than one year,
34 which jail term shall include actual confinement of not less than
35 six months, and fined not less than \$500 nor more than \$4,000.

CHAPTER 91

**(Com. Sub. for H. B. 2562 - By Mr. Speaker (Mr. Armstead)
and Delegate Miley)
[By Request of the Executive]**

[Passed March 10, 2015; in effect from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-22-7a, relating to sales tax increment financing; authorizing recalculation of the base tax revenue amount, subject to specified limitations; specifying that, upon written request of the county commission, filed not later than April 30, 2015, with the Development Office, base tax revenue amounts greater than \$1 million for a given district may be recalculated; specifying limitations on changes to the base tax revenue amount; specifying that the recalculated base tax revenue amount shall be used to determine the net annual district tax revenue amount for the district beginning on July 1, 2015; specifying that decrease to base tax revenue amount upon recalculation is limited to \$1 million dollars; specifying that no adjustment, refund, payment or repayment of special district excise tax, or consumers sales and service tax and use tax, or net annual district tax revenue amount, or accrual thereof, attributable to periods prior to July 1, 2015, shall change the base tax revenue amount as recalculated; providing for the sharing of certain information respecting the district; defining terms; specifying that, if tax revenues in a sales tax increment financing district are deficient, such that the amount withheld in any month is insufficient to fully recover the base tax revenue amount attributable to that month, that such deficit shall be carried forward to subsequent months until the base tax revenue amount deficit is

paid; and specifying that any unpaid deficit carried forward shall be discharged and set at zero on the first day of each fiscal year.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-22-7a, to read as follows:

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-7a. Base tax revenue amount.

1 (a) *Recalculation of base tax revenue amount.* —

2 (1) If the base tax revenue amount determined under section
3 seven of this article is greater than \$1 million for a given district,
4 then, upon written request of the county commission that has
5 established the economic opportunity development district
6 pursuant to this article, filed with the Executive Director of the
7 Development Office not later than April 30, 2015, the base tax
8 revenue amount for that district shall be recalculated by the Tax
9 Commissioner as the aggregate annual amount of special district
10 excise tax due and owing and remitted to the Tax Commissioner
11 by all business locations located in the district with respect to
12 sales made and services rendered from business locations in the
13 district, for the twelve full calendar months next succeeding the
14 date the special district excise tax was first collected in the
15 district.

16 (2) *Limitation* — If the base tax revenue amount determined
17 under section seven of this article exceeds the amount
18 determined under subdivision (1) of this subsection by more than
19 \$1 million, then the recalculated base tax revenue amount for
20 purposes of this article is the base tax revenue amount previously
21 determined under section seven of this article minus \$1 million.

22 (3) *Effective date.* –

23 (A) The recalculated base tax revenue amount determined
24 under this section shall be the amount used to determine the net
25 annual district tax revenue amount for the district beginning on
26 July 1, 2015. For purposes of this article, “net annual district tax
27 revenue amount” means the gross annual district tax revenue
28 amount minus the base tax revenue amount. For purposes of this
29 article, “gross annual district tax revenue amount” means the
30 amount of special district excise tax, net of refunds and
31 adjustments, collected from the district before subtraction of the
32 base tax revenue amount.

33 (B) The recalculated base tax revenue amount shall only be
34 applicable to determine the net annual district tax revenue
35 amount for periods beginning on and after July 1, 2015. The
36 recalculated base tax revenue amount determined pursuant to
37 this section is prospective in operation, and no adjustment,
38 refund, payment or repayment of special district excise tax, or
39 consumers sales and service tax and use tax, or net annual
40 district tax revenue amount, or accrual thereof, attributable to
41 periods prior to July 1, 2015, shall affect recalculation of the
42 base tax revenue amount.

43 (b) *Base tax revenue amount carry forward, recovery,*
44 *recovery limitation.*

45 (1) Notwithstanding any provision of section twelve of this
46 article to the contrary, and notwithstanding the provisions of
47 section eleven-a, article ten, chapter eleven of this code, if the
48 amount of special district excise tax due and owing and collected
49 in a calendar month is less than one-twelfth of the base tax
50 revenue amount, the State Treasurer shall deposit the full amount
51 of special district excise tax collections for that month into the
52 General Revenue Fund of this state. In order to account for
53 deficient special district excise tax collections in prior months

54 for an economic opportunity development district, the State
55 Treasurer shall deposit the full amount of special district excise
56 tax collections into the General Revenue Fund in subsequent
57 months during the fiscal year in which the deficiencies occurred,
58 in amounts that may exceed one-twelfth of the base tax revenue
59 amount, until past monthly deficiencies for that fiscal year are
60 satisfied in full. Upon payment in full of past monthly
61 deficiencies for such fiscal year, only one-twelfth of the base tax
62 revenue amount shall be transferred to the General Revenue
63 Fund for each month. Any monthly deficiencies shall be carried
64 forward and accounted for in subsequent months only during the
65 fiscal year in which such deficiencies occurred. On the first day
66 of each fiscal year, any monthly deficiencies for an economic
67 opportunity development district remaining from the prior fiscal
68 year shall be discharged and shall not be taken into consideration
69 by the State Treasurer when the monthly deposits are made to
70 the General Revenue Fund pursuant to this section. For purposes
71 of this section, fiscal year refers to the July 1 to June 30 fiscal
72 year for the State of West Virginia.

73 (2) Notwithstanding the provisions of subdivisions (2) and
74 (3), subsection (d) section eleven-a, article ten, chapter eleven of
75 this code, the provisions of this subsection apply to, and are
76 limited to, the circumstance where the amount of special district
77 excise tax due and owing and collected in a calendar month is
78 less than one-twelfth of the base tax revenue amount. All other
79 corrections of, or relating to, any erroneous distribution, transfer,
80 allocation, overpayment or underpayment of moneys or any
81 adjustments otherwise necessary with relation to erroneous
82 distributions, transfers, allocations, overpayments or
83 underpayments of moneys, deposits, collections, or payments of
84 special district excise tax shall be made in accordance with the
85 provisions of section twenty-six, article ten, chapter eleven of
86 this code.

87 (c) *Limitation on changes to base tax revenue amount.*

88 Except pursuant to a lawful recalculation of the base tax
89 revenue amount under this section, or a lawful modification of
90 geographical area included in a district under this article, the
91 base tax revenue amount may not be modified, increased or
92 decreased by reason of any change in law or fact relating to the
93 consumers sales and service tax and use tax or to the base tax
94 revenue amount determined under this article. No current,
95 retrospective or prospective tax reporting anomaly, permutation
96 of tax filing configuration, failure of tax payment, failure of tax
97 filing, tax adjustment, claim for a tax refund, issuance of a tax
98 refund, entitlement to a tax refund, claim for a tax credit,
99 issuance of a tax credit, or entitlement to a tax credit, relating to,
100 or affecting, consumers sales and service tax or use tax paid or
101 payable in the district or special district excise tax paid or
102 payable in the district, either prior to the date upon which the
103 base tax revenue amount was determined under this article or
104 subsequent to the date upon which the base tax revenue amount
105 was determined under this article, changes in any way the base
106 tax revenue amount.

107 (d) *Sharing of District Information.*

108 (1) Notwithstanding the provisions of section five-d, article
109 ten, chapter eleven of this code:

110 (A) So long as bonds are outstanding pursuant to this article,
111 the Tax Commissioner shall provide on a monthly basis to the
112 trustee for bonds issued pursuant to this article information on or
113 derived from special district excise tax returns submitted
114 pursuant to this article; and

115 (B) The trustee may share the information so obtained with
116 the county commission that established the economic
117 opportunity development district that issued the bonds pursuant
118 to this article, with financial advisors registered or licensed with
119 the appropriate oversight agency to act in such capacity and with

120 underwriters and placement agents registered or licensed with
121 the appropriate oversight agency to act in such capacity, that
122 have been engaged by the county commission, and with the
123 bondholders and with bond counsel for bonds issued pursuant to
124 this article. The Tax Commissioner and the trustee may enter
125 into a written agreement in order to accomplish exchange of the
126 information.

127 (C) If bonds are not outstanding pursuant to this article, the
128 Tax Commissioner shall provide on a monthly basis to the
129 county commission that has established the economic
130 opportunity development district pursuant to this article,
131 information on or derived from special district excise tax returns
132 submitted pursuant to this article; and

133 (D) The county commission may share the information so
134 obtained with legal counsel for the county commission and with
135 financial advisors registered or licensed with the appropriate
136 oversight agency to act in such capacity and with underwriters
137 and placement agents registered or licensed with the appropriate
138 oversight agency to act in such capacity, that have been engaged
139 by the county commission. The Tax Commissioner and the
140 county commission may enter into a written agreement in order
141 to accomplish exchange of the information.

142 (2) Any confidential information provided pursuant to this
143 subsection shall be used solely for the protection and
144 enforcement of the rights and remedies of the bondholders of
145 bonds issued pursuant to this article, or, if there be none such,
146 then, the district board of the district, or, if there be none such,
147 then, the county commission that established the economic
148 opportunity development district pursuant to this article. Any
149 person or entity that is in possession of information disclosed by
150 the Tax Commissioner, including but not limited to, the trustee
151 and the county commission, and any person or entity that is in
152 possession of information disclosed by or shared by the trustee

153 pursuant to this subdivision, or disclosed by or shared by the
154 county commission pursuant to this subdivision, is subject to the
155 provisions of section five-d, article ten, chapter eleven of this
156 code with relation to further disclosure of such information, as
157 if the person or entity that is in possession of the tax information
158 is an officer, employee, agent or representative of this state or of
159 a local or municipal governmental entity or other governmental
160 subdivision. This section does not prohibit the publication or
161 release of statistics so classified as to prevent the identification
162 of particular returns and the items thereof and the identity of
163 specific taxpayers. For purposes of this article the term
164 “confidential information” means information subject to the
165 confidentiality restrictions of section five-d, article ten, chapter
166 eleven of this code.

CHAPTER 92

**(Com. Sub. for H. B. 2377 - By Delegate(s) Pasdon, Statler,
Duke, Wagner, Romine, Ambler, Espinosa and Campbell)**

[Passed March 12, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §18-2-5 of the Code of West Virginia, 1931, as amended, relating to authorizing State Board of Education to approve certain alternatives with respect to instructional time proposed by a county board or school that meet the spirit and intent of affected statutes and are intended to optimize student learning; removing outdated and conflicting provisions related to school entrance and kindergarten; stating the purpose of subsection and providing context; providing limitations on alternatives; and making findings on learning time for consideration by state board.

Be it enacted by the Legislature of West Virginia:

That §18-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5. Powers and duties generally; specific powers and duties for alternatives that improve student learning.

1 (a) Subject to and in conformity with the Constitution and
2 laws of this state, the State Board of Education shall exercise
3 general supervision of the public schools of the state, and shall
4 promulgate rules in accordance with the provisions of article
5 three-b, chapter twenty-nine-a of this code for carrying into
6 effect the laws and policies of the state relating to education. The
7 rules shall relate to the following:

- 8 (1) Standards for performance and measures of
9 accountability;
- 10 (2) Physical welfare of students;
- 11 (3) Education of all children of school age;
- 12 (4) School attendance;
- 13 (5) Evening and continuation or part-time day schools;
- 14 (6) School extension work;
- 15 (7) Classification of schools;
- 16 (8) Issuing certificates based upon credentials;
- 17 (9) Distribution and care of instructional resources by county
18 boards;

19 (10) General powers and duties of county boards, teachers,
20 principals, supervisors and superintendents; and

21 (11) Such other matters pertaining to the public schools of
22 the state as the state board considers necessary and expedient.

23 (b) The state board, in exercising its constitutional
24 responsibility for the general supervision of public schools, must
25 do so as provided by general law. Included within the general
26 law is the process for improving education which has been
27 recognized by the court as the method chosen by the Legislature
28 to measure whether a thorough and efficient education is being
29 provided. The court further recognized that the resulting student
30 learning is the ultimate measure of a thorough education and that
31 it must be achieved in an efficient manner. To achieve this result,
32 the state board must have reasonable discretion to balance the
33 local autonomy and flexibility needed by schools to deliver a
34 thorough and efficient education with the letter of the laws as
35 enacted for school operations.

36 (c) The purpose of this subsection is to authorize the state
37 board to approve alternatives to the letter of the laws enacted for
38 school operations in the areas enumerated in this subsection. The
39 state board may approve such alternatives as proposed by a
40 county board or school if, in the sole judgment of the state board,
41 the alternatives meet the spirit and intent of the applicable
42 statutes and are intended solely to optimize student learning.

43 (1) The Legislature finds that alternatives are warranted and
44 may be approved by the state board on a case-by-case basis
45 when a county board submits to the state board a comprehensive
46 plan for optimizing student learning that:

47 (A) Achieves the spirit and intent of the laws for an
48 instructional term that provide the instructional time necessary
49 for students to meet or exceed the high quality standards for
50 student performance adopted by the state board;

51 (B) Ensures sufficient time within the instructional term to
52 promote the improvement of instruction and instructional
53 practices;

54 (C) Incorporates a school calendar approved in accordance
55 with the approval process required by section forty-five, article
56 five of this chapter;

57 (D) Allows for school-level determination of alternatives
58 affecting time within the school day that preserve the spirit and
59 intent of providing teachers with: (i) Sufficient planning time to
60 develop engaging, differentiated instruction for all students in all
61 classes, which includes at least forty minutes in length for the
62 elementary level and as required by section fourteen, article four,
63 chapter eighteen-a of this code for the secondary level; and (ii)
64 Collaborative time for teachers to undertake and sustain
65 instructional improvement. This determination may be made
66 only in the form of a school policy that is part of the school's
67 strategic improvement plan and is approved by a vote of the
68 faculty senate; and

69 (E) Has the sole purpose of improving student learning and
70 that improvement is evident within a reasonable period.

71 (2) The Legislature makes the following findings for
72 consideration by the state board with respect to optimizing
73 student learning:

74 (A) Maximizing learning time is a critical factor needed to
75 improve student learning and requires multiple strategies and
76 policies that support great teaching and learning;

77 (B) Learning time is that portion of instructional time in the
78 school day during which a student is paying attention and
79 receiving instruction that is appropriately leveled, and learning
80 is taking place. Learning time must not be assumed to be the
81 time that a student is seated at a desk, but may be achieved

82 through a variety of methods that actively engage students in
83 learning;

84 (C) A student's time engaged in learning is maximized when
85 the student is allowed to progress and acquire competency at a
86 pace which challenges his or her interest and intellect while
87 receiving guidance and assistance when needed. Instructional
88 strategies to help personalize student learning in this manner are
89 frequently assisted by technology;

90 (D) Providing teachers with the resources and support
91 needed to engage students in meaningful, appropriately leveled
92 learning for as much time as is possible during the school day
93 may be as important as facilities, equipment and staff
94 development for maximizing learning time and improving
95 student learning;

96 (E) Successful schools are distinguishable from unsuccessful
97 schools by the frequency and extent to which teachers discuss
98 professional practices, collectively design materials and inform
99 and critique one another;

100 (F) Even successful schools must be self-renewing systems
101 and learning organizations marked by deliberate effort to
102 identify helpful knowledge and spread its use within the
103 organization;

104 (G) Unless teachers are collectively involved in planning and
105 implementing school improvement, it is unlikely to be sustained;
106 and

107 (H) Given sufficient control over their own programs and
108 supportive district leadership and policies, schools themselves
109 may best be suited to determine the variety of methods through
110 which time during the school day is allocated for teachers to plan
111 individually and collectively to maximize learning time.
112 Examples of methods used by successful schools include, but are

113 not limited to, scheduling, using special subject teachers and
114 guest presenters, dedicating time set aside for staff development,
115 implementing alternative staff utilization patterns, providing
116 opportunities for administrators to teach, and utilizing accrued
117 instructional time.

CHAPTER 93

**(H. B. 2370 - By Delegate(s) Pasdon, Duke, Rowan,
Wagner, Upson, Ambler and Espinosa)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §18-2-26 of the Code of West Virginia, 1931, as amended, relating to increasing the powers of regional councils for governance of regional education service agencies; providing for revision of state board rule; requiring selection of executive director from nominations with certain limitations; requiring consultation with councils on development of job description, qualifications and procedures; requiring provisions for annual performance evaluations with portion of rating determined by council; expanding role of council; stating ability of agencies to cooperate, share or combine services with each other; updating references to computer programs and systems and removing outdated provisions; removing prescriptive provisions for computer installation, maintenance and repair; and removing provisions relating to repealed section on professional development.

Be it enacted by the Legislature of West Virginia:

That §18-2-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.**§18-2-26. Establishment of multicounty regional educational service agencies; purpose; authority of state board; governance; annual performance standards.**

1 (a) *Legislative intent.* — The intent of the Legislature in
2 providing for establishment of regional education service
3 agencies, hereinafter referred to in this section as agency or
4 agencies, is to provide for high quality, cost effective education
5 programs and services to students, schools and school systems.

6 Since the first enactment of this section in 1972, the focus of
7 public education has shifted from a reliance on input models to
8 determine if education programs and services are providing to
9 students a thorough and efficient education to a performance
10 based accountability model which relies on the following:

11 (1) Development and implementation of standards which set
12 forth the things that students should know and be able to do as
13 the result of a thorough and efficient education including
14 measurable criteria to evaluate student performance and
15 progress;

16 (2) Development and implementation of assessments to
17 measure student performance and progress toward meeting the
18 standards;

19 (3) Development and implementation of a system for
20 holding schools and school systems accountable for student
21 performance and progress toward obtaining a high quality
22 education which is delivered in an efficient manner; and

23 (4) Development and implementation of a method for
24 building the capacity and improving the efficiency of schools
25 and school systems to improve student performance and
26 progress.

27 (b) *Purpose.* — In establishing the agencies the Legislature
28 envisions certain areas of service in which the agencies can best
29 assist the state board in implementing the standards based
30 accountability model pursuant to subsection (a) of this section
31 and, thereby, in providing high quality education programs.
32 These areas of service include the following:

33 (1) Providing technical assistance to low performing schools
34 and school systems;

35 (2) Providing high quality, targeted staff development
36 designed to enhance the performance and progress of students in
37 state public education;

38 (3) Facilitating coordination and cooperation among the
39 county boards within their respective regions in such areas as
40 cooperative purchasing; sharing of specialized personnel,
41 communications and technology; curriculum development; and
42 operation of specialized programs for exceptional children;

43 (4) Installing, maintaining and/or repairing education related
44 technology equipment and software with special attention to the
45 state level technology learning tools for public schools program;

46 (5) Receiving and administering grants under the provisions
47 of federal and/or state law; and

48 (6) Developing and/or implementing any other programs or
49 services as directed by law, the state board or the regional
50 council.

51 (c) *State board rule.* — The state board shall reexamine the
52 powers and duties of the agencies in light of the changes in state
53 level education policy that have occurred and shall establish
54 multicounty regional education service agencies by rule,
55 promulgated in accordance with the provisions of article three-b,
56 chapter twenty-nine-a of this code.

57 The rule shall contain all information necessary for the
58 effective administration and operation of the agencies. In
59 developing the rule, the state board may not delegate its
60 Constitutional authority for the general supervision of schools to
61 the agencies, however, it may allow the agencies greater latitude
62 in the development and implementation of programs in the
63 service areas outlined in subsection (b) of this section with the
64 exceptions of providing technical assistance to low performing
65 schools and school systems and providing high quality, targeted
66 staff development designed to enhance the performance and
67 progress of students in state public education. These two areas
68 constitute the most important responsibilities for the agencies.

69 The rule establishing the agencies shall be promulgated
70 before November 1, 2015, and shall be consistent with the
71 provisions of this section. It shall include, but is not limited to,
72 the following procedures:

73 (1) Providing for a uniform governance structure for the
74 agencies containing at least these elements:

75 (A) Selection by the state board of an executive director who
76 shall be responsible for the administration of his or her
77 respective agency. The rule shall provide for the state board to
78 select the executive director only upon the nomination of one or
79 more candidates by the regional council of the agency. In case
80 the board refuses to select any of the candidates nominated, the
81 regional council shall nominate others and submit them to the
82 board. All candidates nominated must meet the qualifications for
83 the position established by the state board. Nothing shall prohibit
84 the timely employment of persons to perform necessary duties;

85 (B) Development of a job description and qualifications for
86 the position of executive director, together with procedures for
87 informing the public of position openings, for taking and
88 evaluating applications, for making nominations for these

89 positions, and for annually evaluating the performance of
90 persons employed as executive director. The state board shall
91 consult with the regional councils on the development of the job
92 description, qualifications and procedures;

93 (C) Provisions for the annual performance evaluation of the
94 executive director that provide for one half of the evaluation
95 rating to be determined by the regional council;

96 (D) Provisions for the agencies to employ other staff, as
97 necessary, with the approval of the state board and upon the
98 recommendation of the executive director: *Provided*, That prior
99 to July 1, 2003, no person who is an employee of an agency on
100 the effective date of this section may be terminated or have his
101 or her salary and benefit levels reduced as the sole result of the
102 changes made to this section or by state board rule;

103 (E) Appointment by the county boards of a regional council
104 in each agency area consisting of representatives of county
105 boards and county superintendents from within that area for the
106 purpose of advising, assisting and informing the executive
107 director in carrying out his or her duties to achieve the purposes
108 of this section and provide educational services to the county
109 school systems within the region. The state board may provide
110 for membership on the regional council for representatives from
111 other agencies and institutions who have interest or expertise in
112 the development or implementation of regional education
113 programs; and

114 (F) Selection by the state superintendent of a representative
115 from the state Department of Education to serve on each regional
116 council. These representatives shall meet with their respective
117 regional councils at least quarterly;

118 (2) Establishing statewide standards by the state board for
119 service delivery by the agencies. These standards may be revised

120 annually and shall include, but are not limited to, programs and
121 services to fulfill the purposes set forth in subsection (b) of this
122 section;

123 (3) Establishing procedures for developing and adopting an
124 annual basic operating budget for each agency and for other
125 budgeting and accounting procedures as the state board may
126 require;

127 (4) Establishing procedures clarifying that agencies may
128 acquire and hold real property;

129 (5) Dividing the state into appropriate, contiguous
130 geographical areas and designating an agency to serve each area.
131 The rule shall provide that each of the state's counties is
132 contained within a single service area and that all counties
133 located within the boundaries of each agency, as determined by
134 the state board, shall be members of that agency; and

135 (6) Such other standards or procedures as the state board
136 finds necessary or convenient.

137 (d) *Regional services.* — In furtherance of the purposes
138 provided for in this section, the state board and the regional
139 council of each agency shall continually explore possibilities for
140 the delivery of services on a regional basis which will facilitate
141 equality in the education offerings among counties in its service
142 area, permit the delivery of high quality education programs at
143 a lower per student cost, strengthen the cost effectiveness of
144 education funding resources, reduce administrative and/or
145 operational costs, including the consolidation of administrative,
146 coordinating and other county level functions into region level
147 functions, and promote the efficient administration and operation
148 of the public school systems generally.

149 Technical, operational, programmatic or professional
150 services are among the types of services appropriate for delivery

151 on a regional basis. Nothing in this section prohibits regional
152 education service agencies from cooperating, sharing or
153 combining services or programs with each other, at their
154 discretion, to further the purposes of this section.

155 (e) *Virtual education.* — The state board, in conjunction
156 with the various agencies, shall develop an effective model for
157 the regional delivery of instruction in subjects where there exists
158 low student enrollment or a shortage of certified teachers or
159 where the delivery method substantially improves the quality of
160 an instructional program. The model shall incorporate an
161 interactive electronic classroom approach to instruction. To the
162 extent funds are appropriated or otherwise available, county
163 boards or regional education service agencies may adopt and
164 utilize the model for the delivery of the instruction.

165 (f) *Computer information system.* — Each county board of
166 education shall use the statewide electronic information system
167 established by the state board for data collection and reporting to
168 the state Department of Education.

169 (g) *Reports and evaluations.* — Each agency shall submit to
170 the state superintendent on such date and in such form as
171 specified in the rules adopted by the state board a report and
172 evaluation of the technical assistance and other services provided
173 and utilized by the schools within each respective region and
174 their effectiveness. Additionally, any school may submit an
175 evaluation of the services provided by the agency to the state
176 superintendent at any time. This report shall include an
177 evaluation of the agency program, suggestions on methods to
178 improve utilization and suggestions on the development of new
179 programs and the enhancement of existing programs. The reports
180 and evaluations submitted pursuant to this subsection shall be
181 submitted to the state board and shall be made available upon
182 request to the standing committees on education of the West

183 Virginia Senate and House of Delegates and to the secretary of
184 education and the arts.

185 (h) *Funding sources.* — An agency may receive and disburse
186 funds from the state and federal governments, from member
187 counties, or from gifts and grants.

188 (i) *Employee expenses.* — Notwithstanding any other
189 provision of this code to the contrary, employees of agencies
190 shall be reimbursed for travel, meals and lodging at the same rate
191 as state employees under the travel management office of the
192 Department of Administration.

193 A county board member may not be an employee of an
194 agency.

195 (j) *Meetings and compensation.* —

196 (1) Agencies shall hold at least one half of their regular
197 meetings during hours other than those of a regular school day.
198 The executive director of each agency shall attend at least one
199 meeting of each of the member county boards of education each
200 year to explain the agency's services, garner suggestions for
201 program improvement and provide any other information as may
202 be requested by the county board.

203 (2) Notwithstanding any other provision of this code to the
204 contrary, county board members serving on regional councils
205 may receive compensation at a rate not to exceed \$100 per
206 meeting attended, not to exceed fifteen meetings per year.
207 County board members serving on regional councils may be
208 reimbursed for travel at the same rate as state employees under
209 the rules of the travel management office of the Department of
210 Administration.

CHAPTER 94

**(Com. Sub. for S. B. 287 - By Senators Takubo,
Boley, Carmichael, Gaunch, Stollings, Walters,
Williams, Trump and Blair)**

[Amended and again passed March 18, 2015 as a result of the objections of the Governor;
in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-32, relating to providing for awarding posthumous high school diplomas under certain circumstances; and designating provisions as “Todd’s Law”.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-32, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-32. Posthumous high school diplomas.

- 1 (a) This section shall be known as “Todd’s Law”.
- 2 (b) Notwithstanding any provision of this code to the
- 3 contrary, the state board shall provide for the awarding of a high
- 4 school diploma to a deceased student, at the request of the
- 5 parent, guardian or custodian, if the student:
 - 6 (1) Was enrolled in a public school in this state at the time
 - 7 of death;
 - 8 (2) Was academically eligible, or on track to complete the
 - 9 requirements for graduation at the time of death; and

10 (3) Died after the completion of the eleventh grade school
11 year.

CHAPTER 95

**(H. B. 2140 - By Delegate(s) Perry, Pasdon,
Hamrick, Rowan, Ambler, Cooper, Romine, Moye,
Hartman and Williams)**

[Passed March 13, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 26, 2015.]

AN ACT to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating to building governance and leadership capacity of county board during period of state intervention; providing flexibility on strategic plans; authorizing removal, subject to reemployment, of will and pleasure employees of the county superintendent during intervention in operation of school system; requiring during periods of intervention, county board goals and action plans for improvement and sustained success to end intervention in not more than five years; specifying minimum components of goals and action plans; requiring annual assessment and report of readiness of county to accept return and sustain improvement; requiring public hearing if determination made at fifth annual assessment the county board not ready; continued intervention allowed only after hearing; requiring continued supports as needed for three years following end of intervention; and requiring public hearing for another intervention within this three years.

Be it enacted by the Legislature of West Virginia:

That §18-2E-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.**

1 (a) *Legislative findings, purpose and intent.* — The
2 Legislature makes the following findings with respect to the
3 process for improving education and its purpose and intent in the
4 enactment of this section:

5 (1) The process for improving education includes four
6 primary elements, these being:

7 (A) Standards which set forth the knowledge and skills that
8 students should know and be able to perform as the result of a
9 thorough and efficient education that prepares them for the
10 twenty-first century, including measurable criteria to evaluate
11 student performance and progress;

12 (B) Assessments of student performance and progress
13 toward meeting the standards;

14 (C) A system of accountability for continuous improvement
15 defined by high-quality standards for schools and school systems
16 articulated by a rule promulgated by the state board and outlined
17 in subsection (c) of this section that will build capacity in
18 schools and districts to meet rigorous outcomes that assure
19 student performance and progress toward obtaining the
20 knowledge and skills intrinsic to a high-quality education rather
21 than monitoring for compliance with specific laws and
22 regulations; and

23 (D) A method for building the capacity and improving the
24 efficiency of schools and school systems to improve student
25 performance and progress;

26 (2) As the constitutional body charged with the general
27 supervision of schools as provided by general law, the state
28 board has the authority and the responsibility to establish the
29 standards, assess the performance and progress of students
30 against the standards, hold schools and school systems
31 accountable and assist schools and school systems to build
32 capacity and improve efficiency so that the standards are met,
33 including, when necessary, seeking additional resources in
34 consultation with the Legislature and the Governor;

35 (3) As the constitutional body charged with providing for a
36 thorough and efficient system of schools, the Legislature has the
37 authority and the responsibility to establish and be engaged
38 constructively in the determination of the knowledge and skills
39 that students should know and be able to do as the result of a
40 thorough and efficient education. This determination is made by
41 using the process for improving education to determine when
42 school improvement is needed, by evaluating the results and the
43 efficiency of the system of schools, by ensuring accountability
44 and by providing for the necessary capacity and its efficient use;

45 (4) In consideration of these findings, the purpose of this
46 section is to establish a process for improving education that
47 includes the four primary elements as set forth in subdivision (1)
48 of this subsection to provide assurances that the high-quality
49 standards are, at a minimum, being met and that a thorough and
50 efficient system of schools is being provided for all West
51 Virginia public school students on an equal education
52 opportunity basis; and

53 (5) The intent of the Legislature in enacting this section and
54 section five-c of this article is to establish a process through
55 which the Legislature, the Governor and the state board can
56 work in the spirit of cooperation and collaboration intended in
57 the process for improving education to consult and examine the
58 performance and progress of students, schools and school

59 systems and, when necessary, to consider alternative measures
60 to ensure that all students continue to receive the thorough and
61 efficient education to which they are entitled. However, nothing
62 in this section requires any specific level of funding by the
63 Legislature.

64 (b) *Electronic county and school strategic improvement*
65 *plans.* — The state board shall promulgate a rule consistent with
66 the provisions of this section and in accordance with article
67 three-b, chapter twenty-nine-a of this code establishing an
68 electronic county strategic improvement plan for each county
69 board and an electronic school strategic improvement plan for
70 each public school in this state. Each respective plan shall be for
71 a period of no more than five years and shall include the mission
72 and goals of the school or school system to improve student,
73 school or school system performance and progress, as
74 applicable. The strategic plan shall be revised annually in each
75 area in which the school or system is below the standard on the
76 annual performance measures. The plan shall be revised when
77 required pursuant to this section to include each annual
78 performance measure upon which the school or school system
79 fails to meet the standard for performance and progress, the
80 action to be taken to meet each measure, a separate time line and
81 a date certain for meeting each measure, a cost estimate and,
82 when applicable, the assistance to be provided by the department
83 and other education agencies to improve student, school or
84 school system performance and progress to meet the annual
85 performance measure.

86 The department shall make available to all public schools
87 through its website or the West Virginia Education Information
88 System an electronic school strategic improvement plan
89 boilerplate designed for use by all schools to develop an
90 electronic school strategic improvement plan which incorporates
91 all required aspects and satisfies all improvement plan
92 requirements of the No Child Left Behind Act.

93 (c) *High-quality education standards and efficiency*
94 *standards.* — In accordance with the provisions of article
95 three-b, chapter twenty-nine-a of this code, the state board shall
96 adopt and periodically review and update high-quality education
97 standards for student, school and school system performance and
98 processes in the following areas:

- 99 (1) Curriculum;
- 100 (2) Workplace readiness skills;
- 101 (3) Finance;
- 102 (4) Transportation;
- 103 (5) Special education;
- 104 (6) Facilities;
- 105 (7) Administrative practices;
- 106 (8) Training of county board members and administrators;
- 107 (9) Personnel qualifications;
- 108 (10) Professional development and evaluation;
- 109 (11) Student performance, progress and attendance;
- 110 (12) Professional personnel, including principals and central
111 office administrators, and service personnel attendance;
- 112 (13) School and school system performance and progress;
- 113 (14) A code of conduct for students and employees;
- 114 (15) Indicators of efficiency; and
- 115 (16) Any other areas determined by the state board.

116 (d) *Comprehensive statewide student assessment pro-*
117 *gram.* — The state board shall establish a comprehensive
118 statewide student assessment program to assess student
119 performance and progress in grades three through twelve. The
120 assessment program is subject to the following:

121 (1) The state board shall promulgate a rule in accordance
122 with the provisions of article three-b, chapter twenty-nine-a of
123 this code establishing the comprehensive statewide student
124 assessment program;

125 (2) Prior to the 2014-2015 school year, the state board shall
126 align the comprehensive statewide student assessment for all
127 grade levels in which the test is given with the college-readiness
128 standards adopted pursuant to section thirty-nine, article two of
129 this chapter or develop other aligned tests to be required at each
130 grade level so that progress toward college readiness in
131 English/language arts and math can be measured;

132 (3) The state board may require that student proficiencies be
133 measured through the ACT EXPLORE and the ACT PLAN
134 assessments or other comparable assessments, which are
135 approved by the state board and provided by future vendors;

136 (4) The state board may require that student proficiencies be
137 measured through the West Virginia writing assessment at any
138 grade levels determined by the state board to be appropriate; and

139 (5) The state board may provide through the statewide
140 assessment program other optional testing or assessment
141 instruments applicable to grade levels kindergarten through
142 grade twelve which may be used by each school to promote
143 student achievement. The state board annually shall publish and
144 make available, electronically or otherwise, to school curriculum
145 teams and teacher collaborative processes the optional testing
146 and assessment instruments.

147 (e) *State annual performance measures for school and*
148 *school system accreditation.* —

149 The state board shall promulgate a rule in accordance with
150 the provisions of article three-b, chapter twenty-nine-a of this
151 code that establishes a system to assess and weigh annual
152 performance measures for state accreditation of schools and
153 school systems. The state board also may establish performance
154 incentives for schools and school systems as part of the state
155 accreditation system. On or before December 1, 2013, the state
156 board shall report to the Governor and to the Legislative
157 Oversight Commission on Education Accountability the
158 proposed rule for establishing the measures and incentives of
159 accreditation and the estimated cost therefore, if any. Thereafter,
160 the state board shall provide an annual report to the Governor
161 and to the Legislative Oversight Commission on Education
162 Accountability on the impact and effectiveness of the
163 accreditation system. The rule for school and school system
164 accreditation proposed by the board may include, but is not
165 limited to, the following measures:

166 (1) Student proficiency in English and language arts, math,
167 science and other subjects determined by the board;

168 (2) Graduation and attendance rate;

169 (3) Students taking and passing AP tests;

170 (4) Students completing a career and technical education
171 class;

172 (5) Closing achievement gaps within subgroups of a school's
173 student population; and

174 (6) Students scoring at or above average attainment on SAT
175 or ACT tests.

176 (f) *Indicators of efficiency.* — In accordance with the
177 provisions of article three-b, chapter twenty-nine-a of this code,
178 the state board shall adopt by rule and periodically review and
179 update indicators of efficiency for use by the appropriate
180 divisions within the department to ensure efficient management
181 and use of resources in the public schools in the following areas:

182 (1) Curriculum delivery including, but not limited to, the use
183 of distance learning;

184 (2) Transportation;

185 (3) Facilities;

186 (4) Administrative practices;

187 (5) Personnel;

188 (6) Use of regional educational service agency programs and
189 services, including programs and services that may be
190 established by their assigned regional educational service agency
191 or other regional services that may be initiated between and
192 among participating county boards; and

193 (7) Any other indicators as determined by the state board.

194 (g) *Assessment and accountability of school and school*
195 *system performance and processes.* — In accordance with the
196 provisions of article three-b, chapter twenty-nine-a of this code,
197 the state board shall establish by rule a system of education
198 performance audits which measures the quality of education and
199 the preparation of students based on the annual measures of
200 student, school and school system performance and progress.
201 The system of education performance audits shall provide
202 information to the state board, the Legislature and the Governor,
203 upon which they may determine whether a thorough and
204 efficient system of schools is being provided. The system of
205 education performance audits shall include:

206 (1) The assessment of student, school and school system
207 performance and progress based on the annual measures
208 established pursuant to subsection (e) of this section;

209 (2) The evaluation of records, reports and other information
210 collected by the Office of Education Performance Audits upon
211 which the quality of education and compliance with statutes,
212 policies and standards may be determined;

213 (3) The review of school and school system electronic
214 strategic improvement plans; and

215 (4) The on-site review of the processes in place in schools
216 and school systems to enable school and school system
217 performance and progress and compliance with the standards.

218 (h) *Uses of school and school system assessment*
219 *information.* — The state board shall use information from the
220 system of education performance audits to assist it in ensuring
221 that a thorough and efficient system of schools is being provided
222 and to improve student, school and school system performance
223 and progress. Information from the system of education
224 performance audits further shall be used by the state board for
225 these purposes, including, but not limited to, the following:

226 (1) Determining school accreditation and school system
227 approval status;

228 (2) Holding schools and school systems accountable for the
229 efficient use of existing resources to meet or exceed the
230 standards; and

231 (3) Targeting additional resources when necessary to
232 improve performance and progress.

233 The state board shall make accreditation information
234 available to the Legislature, the Governor, the general public and

235 to any individual who requests the information, subject to the
236 provisions of any act or rule restricting the release of
237 information.

238 (i) *Early detection and intervention programs.* — Based on
239 the assessment of student, school and school system performance
240 and progress, the state board shall establish early detection and
241 intervention programs using the available resources of the
242 Department of Education, the regional educational service
243 agencies, the Center for Professional Development and the
244 Principals Academy, or other resources as appropriate, to assist
245 underachieving schools and school systems to improve
246 performance before conditions become so grave as to warrant
247 more substantive state intervention. Assistance shall include, but
248 is not limited to, providing additional technical assistance and
249 programmatic, professional staff development, providing
250 monetary, staffing and other resources where appropriate.

251 (j) *Office of Education Performance Audits.* —

252 (1) To assist the state board in the operation of a system of
253 education performance audits, the state board shall establish an
254 Office of Education Performance Audits consistent with the
255 provisions of this section. The Office of Education Performance
256 Audits shall be operated under the direction of the state board
257 independently of the functions and supervision of the State
258 Department of Education and state superintendent. The Office of
259 Education Performance Audits shall report directly to and be
260 responsible to the state board in carrying out its duties under the
261 provisions of this section.

262 (2) The office shall be headed by a director who shall be
263 appointed by the state board and who serves at the will and
264 pleasure of the state board. The annual salary of the director
265 shall be set by the state board and may not exceed eighty percent
266 of the salary of the State Superintendent of Schools.

267 (3) The state board shall organize and sufficiently staff the
268 office to fulfill the duties assigned to it by law and by the state
269 board. Employees of the State Department of Education who are
270 transferred to the Office of Education Performance Audits shall
271 retain their benefits and seniority status with the Department of
272 Education.

273 (4) Under the direction of the state board, the Office of
274 Education Performance Audits shall receive from the West
275 Virginia education information system staff research and
276 analysis data on the performance and progress of students,
277 schools and school systems, and shall receive assistance, as
278 determined by the state board, from staff at the State Department
279 of Education, the regional education service agencies, the Center
280 for Professional Development, the Principals Academy and the
281 School Building Authority to carry out the duties assigned to the
282 office.

283 (5) In addition to other duties which may be assigned to it by
284 the state board or by statute, the Office of Education
285 Performance Audits also shall:

286 (A) Assure that all statewide assessments of student
287 performance used as annual performance measures are secure as
288 required in section one-a of this article;

289 (B) Administer all accountability measures as assigned by
290 the state board, including, but not limited to, the following:

291 (i) Processes for the accreditation of schools and the
292 approval of school systems; and

293 (ii) Recommendations to the state board on appropriate
294 action, including, but not limited to, accreditation and approval
295 action;

296 (C) Determine, in conjunction with the assessment and
297 accountability processes, what capacity may be needed by

298 schools and school systems to meet the standards established by
299 the state board and recommend to the state board plans to
300 establish those needed capacities;

301 (D) Determine, in conjunction with the assessment and
302 accountability processes, whether statewide system deficiencies
303 exist in the capacity of schools and school systems to meet the
304 standards established by the state board, including the
305 identification of trends and the need for continuing
306 improvements in education, and report those deficiencies and
307 trends to the state board;

308 (E) Determine, in conjunction with the assessment and
309 accountability processes, staff development needs of schools and
310 school systems to meet the standards established by the state
311 board and make recommendations to the state board, the Center
312 for Professional Development, the regional educational service
313 agencies, the Higher Education Policy Commission and the
314 county boards;

315 (F) Identify, in conjunction with the assessment and
316 accountability processes, school systems and best practices that
317 improve student, school and school system performance and
318 communicate those to the state board for promoting the use of
319 best practices. The state board shall provide information on best
320 practices to county school systems; and

321 (G) Develop reporting formats, such as check lists, which
322 shall be used by the appropriate administrative personnel in
323 schools and school systems to document compliance with
324 applicable laws, policies and process standards as considered
325 appropriate and approved by the state board, which may include,
326 but is not limited to, the following:

327 (i) The use of a policy for the evaluation of all school
328 personnel that meets the requirements of sections twelve and
329 twelve-a, article two, chapter eighteen-a of this code;

330 (ii) The participation of students in appropriate physical
331 assessments as determined by the state board, which assessment
332 may not be used as a part of the assessment and accountability
333 system;

334 (iii) The appropriate licensure of school personnel; and

335 (iv) The appropriate provision of multicultural activities.

336 Information contained in the reporting formats is subject to
337 examination during an on-site review to determine compliance
338 with laws, policies and standards. Intentional and grossly
339 negligent reporting of false information are grounds for
340 dismissal of any employee.

341 (k) *On-site reviews.* —

342 (1) The system of education performance audits shall include
343 on-site reviews of schools and school systems which shall be
344 conducted only at the specific direction of the state board upon
345 its determination that circumstances exist that warrant an on-site
346 review. Any discussion by the state board of schools to be
347 subject to an on-site review or dates for which on-site reviews
348 will be conducted may be held in executive session and is not
349 subject to the provisions of article nine-a, chapter six of this code
350 relating to open governmental proceedings. An on-site review
351 shall be conducted by the Office of Education Performance
352 Audits of a school or school system for the purpose of making
353 recommendations to the school and school system, as
354 appropriate, and to the state board on such measures as it
355 considers necessary. The investigation may include, but is not
356 limited to, the following:

357 (A) Verifying data reported by the school or county board;

358 (B) Examining compliance with the laws and policies
359 affecting student, school and school system performance and
360 progress;

361 (C) Evaluating the effectiveness and implementation status
362 of school and school system electronic strategic improvement
363 plans;

364 (D) Investigating official complaints submitted to the state
365 board that allege serious impairments in the quality of education
366 in schools or school systems;

367 (E) Investigating official complaints submitted to the state
368 board that allege that a school or county board is in violation of
369 policies or laws under which schools and county boards operate;
370 and

371 (F) Determining and reporting whether required reviews and
372 inspections have been conducted by the appropriate agencies,
373 including, but not limited to, the State Fire Marshal, the Health
374 Department, the School Building Authority and the responsible
375 divisions within the Department of Education, and whether noted
376 deficiencies have been or are in the process of being corrected.

377 (2) The Director of the Office of Education Performance
378 Audits shall notify the county superintendent of schools five
379 school days prior to commencing an on-site review of the county
380 school system and shall notify both the county superintendent
381 and the principal five school days before commencing an on-site
382 review of an individual school: *Provided*, That the state board
383 may direct the Office of Education Performance Audits to
384 conduct an unannounced on-site review of a school or school
385 system if the state board believes circumstances warrant an
386 unannounced on-site review.

387 (3) The Office of Education Performance Audits shall
388 conduct on-site reviews which are limited in scope to specific
389 areas in which performance and progress are persistently below
390 standard as determined by the state board unless specifically
391 directed by the state board to conduct a review which covers
392 additional areas.

393 (4) The Office of Education Performance Audits shall
394 reimburse a county board for the costs of substitutes required to
395 replace county board employees who serve on a review team.

396 (5) At the conclusion of an on-site review of a school
397 system, the director and team leaders shall hold an exit
398 conference with the superintendent and shall provide an
399 opportunity for principals to be present for at least the portion of
400 the conference pertaining to their respective schools. In the case
401 of an on-site review of a school, the exit conference shall be held
402 with the principal and curriculum team of the school and the
403 superintendent shall be provided the opportunity to be present.
404 The purpose of the exit conference is to review the initial
405 findings of the on-site review, clarify and correct any
406 inaccuracies and allow the opportunity for dialogue between the
407 reviewers and the school or school system to promote a better
408 understanding of the findings.

409 (6) The Office of Education Performance Audits shall report
410 the findings of an on-site review to the county superintendent
411 and the principals whose schools were reviewed within thirty
412 days following the conclusion of the on-site review. The Office
413 of Education Performance Audits shall report the findings of the
414 on-site review to the state board within forty-five days after the
415 conclusion of the on-site review. A school or county that
416 believes one or more findings of a review are clearly inaccurate,
417 incomplete or misleading, misrepresent or fail to reflect the true
418 quality of education in the school or county or address issues
419 unrelated to the health, safety and welfare of students and the
420 quality of education, may appeal to the state board for removal
421 of the findings. The state board shall establish a process for it to
422 receive, review and act upon the appeals. The state board shall
423 report to the Legislative Oversight Commission on Education
424 Accountability during its July interim meetings, or as soon
425 thereafter as practical, on each appeal during the preceding
426 school year.

427 (7) The Legislature finds that the accountability and
428 oversight of some activities and programmatic areas in the
429 public schools are controlled through other mechanisms and
430 agencies and that additional accountability and oversight may be
431 unnecessary, counterproductive and impair necessary resources
432 for teaching and learning. Therefore, the Office of Education
433 Performance Audits may rely on other agencies and mechanisms
434 in its review of schools and school systems.

435 (1) *School accreditation.* —

436 (1) The state board shall establish levels of accreditation to
437 be assigned to schools. The establishment of levels of
438 accreditation and the levels shall be subject to the following:

439 (A) The levels will be designed to demonstrate school
440 performance in all the areas outlined in this section and also
441 those established by the state board;

442 (B) The state board shall promulgate legislative rules in
443 accordance with the provisions of article three-b, chapter
444 twenty-nine-a of this code to establish the performance and
445 standards required for a school to be assigned a particular level
446 of accreditation; and

447 (C) The state board will establish the levels of accreditation
448 in such a manner as to minimize the number of systems of
449 school recognition, both state and federal, that are employed to
450 recognize and accredit schools.

451 (2) The state board annually shall review the information
452 from the system of education performance audits submitted for
453 each school and shall issue to every school a level of
454 accreditation as designated and determined by the state board.

455 (3) The state board, in its exercise of general supervision of
456 the schools and school systems of West Virginia, may exercise
457 any or all of the following powers and actions:

458 (A) To require a school to revise its electronic strategic plan;

459 (B) To define extraordinary circumstances under which the
460 state board may intervene directly or indirectly in the operation
461 of a school;

462 (C) To appoint monitors to work with the principal and staff
463 of a school where extraordinary circumstances are found to exist,
464 and to appoint monitors to assist the school principal after
465 intervention in the operation of a school is completed;

466 (D) To direct a county board to target resources to assist a
467 school where extraordinary circumstances are found to exist;

468 (E) To intervene directly in the operation of a school and
469 declare the position of principal vacant and assign a principal for
470 the school who will serve at the will and pleasure of the state
471 board. If the principal who was removed elects not to remain an
472 employee of the county board, then the principal assigned by the
473 state board shall be paid by the county board. If the principal
474 who was removed elects to remain an employee of the county
475 board, then the following procedure applies:

476 (i) The principal assigned by the state board shall be paid by
477 the state board until the next school term, at which time the
478 principal assigned by the state board shall be paid by the county
479 board;

480 (ii) The principal who was removed is eligible for all
481 positions in the county, including teaching positions, for which
482 the principal is certified, by either being placed on the transfer
483 list in accordance with section seven, article two, chapter
484 eighteen-a of this code, or by being placed on the preferred recall
485 list in accordance with section seven-a, article four, chapter
486 eighteen-a of this code; and

487 (iii) The principal who was removed shall be paid by the
488 county board and may be assigned to administrative duties,
489 without the county board being required to post that position
490 until the end of the school term; and

491 (F) Other powers and actions the state board determines
492 necessary to fulfill its duties of general supervision of the
493 schools and school systems of West Virginia.

494 (4) The county board may take no action nor refuse any
495 action if the effect would be to impair further the school in
496 which the state board has intervened.

497 (m) *School system approval.* — The state board annually
498 shall review the information submitted for each school system
499 from the system of education performance audits and issue one
500 of the following approval levels to each county board: Full
501 approval, temporary approval, conditional approval or
502 nonapproval.

503 (1) Full approval shall be given to a county board whose
504 schools have all been given full, temporary or conditional
505 accreditation status and which does not have any deficiencies
506 which would endanger student health or safety or other
507 extraordinary circumstances as defined by the state board. A
508 fully approved school system in which other deficiencies are
509 discovered shall remain on full accreditation status for the
510 remainder of the approval period and shall have an opportunity
511 to correct those deficiencies, notwithstanding other provisions of
512 this subsection.

513 (2) Temporary approval shall be given to a county board
514 whose education system is below the level required for full
515 approval. Whenever a county board is given temporary approval
516 status, the county board shall revise its electronic county
517 strategic improvement plan in accordance with subsection (b) of

518 this section to increase the performance and progress of the
519 school system to a full approval status level. The revised plan
520 shall be submitted to the state board for approval.

521 (3) Conditional approval shall be given to a county board
522 whose education system is below the level required for full
523 approval, but whose electronic county strategic improvement
524 plan meets the following criteria:

525 (A) The plan has been revised in accordance with subsection
526 (b) of this section;

527 (B) The plan has been approved by the state board; and

528 (C) The county board is meeting the objectives and time line
529 specified in the revised plan.

530 (4) Nonapproval status shall be given to a county board
531 which fails to submit and gain approval for its electronic county
532 strategic improvement plan or revised electronic county strategic
533 improvement plan within a reasonable time period as defined by
534 the state board or which fails to meet the objectives and time line
535 of its revised electronic county strategic improvement plan or
536 fails to achieve full approval by the date specified in the revised
537 plan.

538 (A) The state board shall establish and adopt additional
539 standards to identify school systems in which the program may
540 be nonapproved and the state board may issue nonapproval
541 status whenever extraordinary circumstances exist as defined by
542 the state board.

543 (B) Whenever a county board has more than a casual deficit,
544 as defined in section one, article one of this chapter, the county
545 board shall submit a plan to the state board specifying the county
546 board's strategy for eliminating the casual deficit. The state
547 board either shall approve or reject the plan. If the plan is

548 rejected, the state board shall communicate to the county board
549 the reason or reasons for the rejection of the plan. The county
550 board may resubmit the plan any number of times. However, any
551 county board that fails to submit a plan and gain approval for the
552 plan from the state board before the end of the fiscal year after
553 a deficit greater than a casual deficit occurred or any county
554 board which, in the opinion of the state board, fails to comply
555 with an approved plan may be designated as having nonapproval
556 status.

557 (C) Whenever nonapproval status is given to a school
558 system, the state board shall declare a state of emergency in the
559 school system and shall appoint a team of improvement
560 consultants to make recommendations within sixty days of
561 appointment for correcting the emergency. When the state board
562 approves the recommendations, they shall be communicated to
563 the county board. If progress in correcting the emergency, as
564 determined by the state board, is not made within six months
565 from the time the county board receives the recommendations,
566 the state board shall intervene in the operation of the school
567 system to cause improvements to be made that will provide
568 assurances that a thorough and efficient system of schools will
569 be provided. This intervention may include, but is not limited to,
570 the following:

571 (i) Limiting the authority of the county superintendent and
572 county board as to the expenditure of funds, the employment and
573 dismissal of personnel, the establishment and operation of the
574 school calendar, the establishment of instructional programs and
575 rules and any other areas designated by the state board by rule,
576 which may include delegating decision-making authority
577 regarding these matters to the state superintendent;

578 (ii) Declaring that the office of the county superintendent is
579 vacant;

580 (iii) Declaring that the positions of personnel who serve at
581 the will and pleasure of the county superintendent as provided in
582 section one, article two, chapter eighteen-a of this code, are
583 vacant, subject to application and reemployment;

584 (iv) Delegating to the state superintendent both the authority
585 to conduct hearings on personnel matters and school closure or
586 consolidation matters and, subsequently, to render the resulting
587 decisions and the authority to appoint a designee for the limited
588 purpose of conducting hearings while reserving to the state
589 superintendent the authority to render the resulting decisions;

590 (v) Functioning in lieu of the county board of education in
591 a transfer, sale, purchase or other transaction regarding real
592 property; and

593 (vi) Taking any direct action necessary to correct the
594 emergency including, but not limited to, the following:

595 (I) Delegating to the state superintendent the authority to
596 replace administrators and principals in low performing schools
597 and to transfer them into alternate professional positions within
598 the county at his or her discretion; and

599 (II) Delegating to the state superintendent the authority to fill
600 positions of administrators and principals with individuals
601 determined by the state superintendent to be the most qualified
602 for the positions. Any authority related to intervention in the
603 operation of a county board granted under this paragraph is not
604 subject to the provisions of article four, chapter eighteen-a of
605 this code.

606 (n) Notwithstanding any other provision of this section, the
607 state board may intervene immediately in the operation of the
608 county school system with all the powers, duties and
609 responsibilities contained in subsection (m) of this section, if the
610 state board finds the following:

611 (1) That the conditions precedent to intervention exist as
612 provided in this section; and that delaying intervention for any
613 period of time would not be in the best interests of the students
614 of the county school system; or

615 (2) That the conditions precedent to intervention exist as
616 provided in this section and that the state board had previously
617 intervened in the operation of the same school system and had
618 concluded that intervention within the preceding five years.

619 (o) *Capacity*. — The process for improving education
620 includes a process for targeting resources strategically to
621 improve the teaching and learning process. Development of
622 electronic school and school system strategic improvement
623 plans, pursuant to subsection (b) of this section, is intended, in
624 part, to provide mechanisms to target resources strategically to
625 the teaching and learning process to improve student, school and
626 school system performance. When deficiencies are detected
627 through the assessment and accountability processes, the
628 revision and approval of school and school system electronic
629 strategic improvement plans shall ensure that schools and school
630 systems are efficiently using existing resources to correct the
631 deficiencies. When the state board determines that schools and
632 school systems do not have the capacity to correct deficiencies,
633 the state board shall take one or more of the following actions:

634 (1) Work with the county board to develop or secure the
635 resources necessary to increase the capacity of schools and
636 school systems to meet the standards and, when necessary, seek
637 additional resources in consultation with the Legislature and the
638 Governor;

639 (2) Recommend to the appropriate body including, but not
640 limited to, the Legislature, county boards, schools and
641 communities methods for targeting resources strategically to
642 eliminate deficiencies identified in the assessment and

643 accountability processes. When making determinations on
644 recommendations, the state board shall include, but is not limited
645 to, the following methods:

646 (A) Examining reports and electronic strategic improvement
647 plans regarding the performance and progress of students,
648 schools and school systems relative to the standards and
649 identifying the areas in which improvement is needed;

650 (B) Determining the areas of weakness and of
651 ineffectiveness that appear to have contributed to the
652 substandard performance and progress of students or the
653 deficiencies of the school or school system and requiring the
654 school or school system to work collaboratively with the West
655 Virginia Department of Education State System of Support to
656 correct the deficiencies;

657 (C) Determining the areas of strength that appear to have
658 contributed to exceptional student, school and school system
659 performance and progress and promoting their emulation
660 throughout the system;

661 (D) Requesting technical assistance from the School
662 Building Authority in assessing or designing comprehensive
663 educational facilities plans;

664 (E) Recommending priority funding from the School
665 Building Authority based on identified needs;

666 (F) Requesting special staff development programs from the
667 Center for Professional Development, the Principals Academy,
668 higher education, regional educational service agencies and
669 county boards based on identified needs;

670 (G) Submitting requests to the Legislature for appropriations
671 to meet the identified needs for improving education;

672 (H) Directing county boards to target their funds
673 strategically toward alleviating deficiencies;

674 (I) Ensuring that the need for facilities in counties with
675 increased enrollment are appropriately reflected and
676 recommended for funding;

677 (J) Ensuring that the appropriate person or entity is held
678 accountable for eliminating deficiencies; and

679 (K) Ensuring that the needed capacity is available from the
680 state and local level to assist the school or school system in
681 achieving the standards and alleviating the deficiencies.

682 (p) *Building leadership capacity* – To help build the
683 governance and leadership capacity of a county board during an
684 intervention in the operation of its school system by the state
685 board, and to help assure sustained success following return of
686 control to the county board, the state board shall require the
687 county board to establish goals and action plans, subject to
688 approval of the state board, to improve performance sufficiently
689 to end the intervention within a period of not more than five
690 years. The state superintendent shall maintain oversight and
691 provide assistance and feedback to the county board on
692 development and implementation of the goals and action plans.
693 At a minimum, the goals and action plans shall include:

694 (A) An analysis of the training and development activities
695 needed by the county board and leadership of the school system
696 and schools for effective governance and school improvement;

697 (B) Support for the training and development activities
698 identified which may include those made available through the
699 state superintendent, regional education service agencies, Center
700 for Professional Development, West Virginia School Board
701 Association, Office of Education Performance Audits, West
702 Virginia Education Information System and other sources

703 identified in the goals and action plans. Attendance at these
704 activities included in the goals and action plans is mandatory as
705 specified in the goals and action plans; and

706 (C) Active involvement by the county board in the
707 improvement process, working in tandem with the county
708 superintendent to gather, analyze and interpret data, write
709 time-specific goals to correct deficiencies, prepare and
710 implement action plans and allocate or request from the state
711 board of education the resources, including board development
712 training and coaching, necessary to achieve approved goals and
713 action plans and sustain system and school improvement.

714 At least once each year during the period of intervention, the
715 Office of Education Performance Audits shall assess the
716 readiness of the county board to accept the return of control of
717 the system or school from the state board and sustain the
718 improvements, and shall make a report and recommendations to
719 the state board supported by documented evidence of the
720 progress made on the goals and action plans. The state board
721 may end the intervention or return any portion of control of the
722 operations of the school system or school that was previously
723 removed at its sole determination. If the state board determines
724 at the fifth annual assessment that the county board is still not
725 ready to accept return of control by the state board and sustain
726 the improvements, the state board shall hold a public hearing in
727 the affected county at which the attendance by all members of
728 the county board is requested so that the reasons for continued
729 intervention and the concerns of the citizens of the county may
730 be heard. The state board may continue the intervention only
731 after it holds the public hearing and may require revision of the
732 goals and action plans.

733 Following the termination of an intervention in the operation
734 of a school system and return of full control by the state board,
735 the support for governance education and development shall

736 continue as needed for up to three years. If at any time within
737 this three years, the state board determines that intervention in
738 the operation of the school system is again necessary, the state
739 board shall again hold a public hearing in the affected county so
740 that the reasons for the intervention and the concerns of the
741 citizens of the county may be heard.

CHAPTER 96

**(Com. Sub. for H. B. 2755 - By Delegate(s) Boggs,
Hanshaw, D. Evans, Perry, Ashley, Pasdon, Pethtel,
Duke and Williams)**

[Passed March 9, 2015; in effect from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §18-5-11a of the Code of West Virginia, 1931, as amended, relating to service and professional employee positions at jointly established schools.

Be it enacted by the Legislature of West Virginia:

That §18-5-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-11a. Joint governing partnership board pilot initiative.

- 1 (a) The Legislature finds that many examples exist across
2 the state of students who reside in one county, but who attend the
3 public schools in an adjoining county.
- 4 (1) These arrangements have been accommodated by the
5 boards of the adjoining counties and applicable statutes to serve

6 best the interests of the students by enabling them to attend a
7 school closer to their homes.

8 (2) Typically, these arrangements have evolved because
9 school closures or construction of new schools in the student's
10 county of residence have made a cross-county transfer to an
11 existing school in an adjoining county a more convenient,
12 practical and educationally sound option.

13 (b) The Legislature further finds that as population changes
14 continue to occur, the boards of adjoining counties may best
15 serve the interests of their students and families by establishing
16 a new school in partnership to be attended by students residing
17 in each of the counties. Particularly in the case of elementary
18 grade level schools established in partnership between adjoining
19 counties, the Legislature finds that each of the county boards, as
20 well as the parents of students from each of the counties
21 attending the school, have an interest in the operation of the
22 school and the preparation of the students for success as they
23 transition to the higher grade levels in the other schools of their
24 respective home counties. Therefore, in the absence of a well
25 defined governance structure that accommodates these interests,
26 the purpose of this section is to provide for a joint governing
27 partnership board pilot initiative.

28 (c) The pilot initiative is limited to the joint establishment by
29 two adjoining counties of a school including elementary grade
30 levels for which a memorandum of understanding on the
31 governance and operation of the school has been signed. The
32 pilot initiative is subject to amendment of the agreement as may
33 be necessary to incorporate at least the following features of a
34 joint governing partnership board:

35 (1) The joint governing partnership board is comprised of the
36 county superintendent of each county, the president of the county
37 board of each county or his or her designee, and a designee of
38 the state superintendent;

39 (2) The board shall elect a chair from among its membership
40 for a two-year term and may meet monthly or at the call of the
41 chair.

42 (A) Meetings of the board are subject to the open
43 governmental proceedings laws applicable to county boards.

44 (B) The boards of the respective counties are responsible for
45 the expenses of its members and shall apportion other
46 operational expenses of the board upon mutual agreement.

47 (C) Once the jointly established school is opened, the
48 meetings of the board shall be held at the school.

49 (3) All provisions of law applicable to the establishment,
50 operation and management of an inter-county school including,
51 but not limited to, section eleven, article five and section
52 fourteen, article nine-a of this chapter and article eight-i, article
53 four, chapter eighteen-a of this code apply, except that the joint
54 governing partnership board may exercise governing authority
55 for operation and management of the school in the following
56 areas:

57 (A) *Personnel.*

58 (1) Notwithstanding any other laws for employment,
59 evaluation, mentoring, professional development, suspension
60 and dismissal of public school employees, the powers and duties
61 of the county superintendent are vested in the joint governing
62 partnership board with respect to the employees employed by the
63 county in which the school is located or assigned to the school
64 from the partner county. Pursuant to the provisions of section
65 eight-i, article four, chapter eighteen-a of this code, employees
66 who are hired by the county board of the receiving county shall
67 accrue seniority in both the sending and receiving counties
68 during the time in which they continue to be employed at the
69 jointly established school. Upon losing a position at the jointly
70 established school due to reduction in force or involuntary

71 transfer, an employee shall displace a less senior employee in the
72 county of employment which immediately preceded employment
73 at the jointly established school. Once an employee from the
74 sending county voluntarily transfers or resigns from a position
75 at the jointly established school and is no longer employed in the
76 receiving county, the employee's seniority and any other
77 statutory rights in the receiving county cease.

78 (2) When initially filling service and professional employee
79 positions at the jointly established school, the counties shall
80 follow the procedures established in section eight-i, article four,
81 chapter eighteen-a of this code. For the initial school year of the
82 jointly established school's opening only, the receiving county
83 may not fill any vacancies created by the retirement or voluntary
84 transfer of employees of the receiving county school from
85 February 1 of the school year immediately preceding the opening
86 of the school until January 1 following the opening of the jointly
87 established school until the receiving county has received the list
88 of employees created pursuant to the provisions of subsection
89 (c), section eight-i, article four, chapter eighteen-a of this code.
90 The receiving county may not fill any of the vacancies
91 referenced in this subsection until the vacancies have been
92 offered to qualified individuals from the certified list.

93 (3) The employees of the jointly established school are the
94 employees of the employing county board and the partnership
95 board may make recommendations concerning these
96 employment matters to the employing board it considers
97 necessary and appropriate.

98 (B) *Curriculum.*

99 (1) The joint governing partnership board is responsible for
100 the formulation and execution of the school's strategic
101 improvement plan and technology plan to meet the goals for
102 student and school performance and progress.

123 (2) In its formulation of these plans, the partnership board
124 shall consider the curriculum and plans of the respective county
125 boards to ensure preparation of the students at the school for
126 their successful transition into the higher grade level schools of
127 the respective counties;

128 (C) *Finances.* The joint governing partnership board shall
129 control and may approve the expenditure of all funds allocated
130 to the school for the school budget from either county and may
131 solicit and receive donations, apply for and receive grants and
132 conduct fund raisers to supplement the budget; and

133 (D) *Facilities.* Consistent with the policies in effect
134 concerning liability insurance coverage, maintenance and
135 appropriate uses of school facilities for the schools of the county
136 in which the school is located, the joint governing partnership
137 board governs the use of the school facility and ensures equitable
138 opportunities for access and use by organizations and groups
139 from both counties.

140 (d) The joint governing partnership board may adopt policies
141 for the school that are separate from the policies of the
142 respective counties and, working in concert with its local school
143 improvement council, may propose alternatives to the operation
144 of the school which require the request of a waiver of policy,
145 interpretation or statute from either or both county boards, the
146 state board or the Legislature as appropriate.

147 (e) The superintendents and presidents of county boards of
148 adjoining counties that have in effect on the effective date of this
149 section a memorandum of understanding on the governance and
150 operation of a jointly established school shall report to the
151 Legislative Oversight Commission on Education Accountability
152 on or before November 1, 2013, on the status of implementation
153 of this section.

134 (1) Once established, the joint governing partnership board
135 established under this pilot initiative shall remain in effect for
136 five consecutive school years unless authority for the pilot
137 initiative is repealed.

138 (2) The Legislative Oversight Commission on Education
139 Accountability may request the superintendents and the
140 presidents of the county boards to provide periodic updates on
141 this pilot initiative. Also, at the conclusion of the five-year pilot
142 initiative, they shall report their recommendations on the
143 viability of the joint governing partnership board approach and
144 any recommended changes to the Legislative Oversight
145 Commission on Education Accountability.

146 (A) When the five-year period is concluded, by affirmative
147 vote of both boards, the joint governing partnership board shall
148 remain in effect; or

149 (B) The agreement between the boards for the governance
150 and operation of the school shall revert to the terms in effect on
151 the effective date of this section, subject to amendment by
152 agreement of the boards.

CHAPTER 97

(S. B. 238 - By Senators D. Hall, Nohe and Stollings)

[Passed February 25, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 5, 2015.]

AN ACT to amend and reenact §18-5-19 and §18-5-19d of the Code of West Virginia, 1931, as amended, all relating to limiting the liability of county boards of education for loss or injury from the use of school property made available for unorganized recreation.

Be it enacted by the Legislature of West Virginia:

That §18-5-19 and §18-5-19d of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-19. Night schools and other school extension activities; use of school property for public meetings, etc.

1 County boards may establish and maintain evening classes
2 or night schools, continuation or part-time day schools,
3 alternative schools and vocational schools, wherever practicable
4 to do so, and shall admit adult persons and all other persons,
5 including persons of foreign birth. County boards may admit
6 school-age children and youth to these classes or schools under
7 the circumstances prescribed by a State Board of Education
8 policy governing alternative education programs. County boards
9 may use school funds for the financial support of such schools
10 and to use the schoolhouses and their equipment for these
11 purposes. Any such classes of schools shall be conducted in
12 accordance with the rules of the state board.

13 County boards may provide for the free, comfortable and
14 convenient use of any school property to promote and facilitate
15 frequent meetings and associations of the people for discussion,
16 study, recreation and other community activities, and may
17 secure, assemble and house material for use in the study of farm,
18 home and community problems, and may provide facilities for
19 the dissemination of information useful on the farm, in the home
20 or in the community.

21 In addition to the liability protection for organized use
22 outlined in section nineteen-d of this article, county boards are
23 not liable for any loss or injury arising from the use of school
24 property made available for unorganized recreation. County
25 boards are liable for their acts or omissions which constitute

26 gross negligence or willful and wanton conduct which is the
27 proximate cause of injury or property damage.

§18-5-19d. Conditional immunity from liability for community activities; liability insurance; authority of State Board of Risk and Insurance Management.

1 (a)(1) If the requirements of this subsection are met, the
2 board of education is not liable under any theory of vicarious or
3 imputed liability for the acts or omissions of:

4 (A) Any person, organization or association using school
5 property for a community activity described in section nineteen
6 of this article;

7 (B) Any member, employee or agent of such person,
8 organization or association; or

9 (C) Any person attending or participating in the community
10 activity other than an employee of the board while acting within
11 the scope of employment.

12 (2) The limitation of liability extended the board of
13 education pursuant to this subsection does not apply unless:

14 (A) The person, organization or association using school
15 property for a community activity has in effect, at the time of the
16 act or omission described in subdivision (1) of this subsection,
17 a contract of insurance which provides general comprehensive
18 liability coverage of any claim, demand, action, suit or judgment
19 by reason of alleged negligence or other acts resulting in bodily
20 injury or property damage to any person arising out of the use of
21 school property for a community activity described in
22 subdivision (1) of this subsection;

23 (B) The contract of insurance provides for the payment of
24 any attorney fees, court costs and other litigation expenses

25 incurred by the board in connection with any claim, demand,
26 action, suit or judgment arising from such alleged negligence or
27 other act; and

28 (C) The insurance coverage is in the amounts specified in the
29 provisions of section five-a, article twelve, chapter twenty-nine
30 of this code.

31 (3)(A) The insurance described in subdivision (2) of this
32 subsection may be obtained privately or may be obtained
33 pursuant to the provisions of this subdivision. If requested by
34 any person, organization or association seeking such insurance
35 coverage, the State Board of Risk and Insurance Management is
36 authorized to provide such insurance and to enter into any
37 necessary contract of insurance to further the intent of this
38 subdivision.

39 (B) Where provided by the State Board of Risk and
40 Insurance Management, the cost of the insurance, as determined
41 by the such board, shall be paid by the person, organization or
42 association and may include administrative expenses. All funds
43 received by such board shall be deposited with the West Virginia
44 Board of Investments for investment purposes.

45 (C) The State Board of Risk and Insurance Management is
46 hereby authorized and empowered to negotiate and effect
47 settlement of any and all claims covered by the insurance
48 provided by such board pursuant to this subdivision to the extent
49 the board is authorized and empowered to negotiate and effect
50 settlement of claims described in section five, article twelve,
51 chapter twenty-nine of this code.

52 (4) As used in this subsection, "organization" or
53 "association" means a bona fide, not for profit, tax-exempt,
54 benevolent, educational, philanthropic, humane, patriotic, civic,
55 eleemosynary, incorporated or unincorporated association or

56 organization or a rescue unit or other similar volunteer
57 community service organization or association, but does not
58 include any nonprofit association or organization, whether
59 incorporated or not, which is organized primarily for the
60 purposes of influencing legislation or advocating or opposing the
61 nomination, election or defeat of any candidate, or the passage
62 or defeat of any issue, thing or item to be voted upon.

63 (b) In addition to the liability protection for organized use
64 outlined in this section, county boards are not liable for any loss
65 or injury arising from the use of school property made available
66 for unorganized recreation. County boards are liable for their
67 acts or omissions which constitute gross negligence or willful
68 and wanton conduct which is the proximate cause of injury or
69 property damage.

70 (c) Nothing in this section shall affect the rights, duties,
71 defenses, immunities or causes of action under other statutes or
72 the common law of this state which may be applicable to boards
73 of education.

CHAPTER 98

**(Com. Sub. for H. B. 2550 - By Delegate(s) Cowles, Miller,
Householder, Moffatt, McGeehan, Sponaugle, H. White,
Campbell, Skinner, Rowe and Perry)**

[Passed March 12, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating to truancy intervention; defining excused and unexcused absences; providing that notice of a student's three unexcused absences be given to parent, guardian or

custodian; providing that a parent, guardian or custodian have a mandatory conference with the principal or other designated representative of the school when the student has five unexcused absences; and increasing number of unexcused absences by a student before a complaint must be made against the parent, guardian or custodian of the student.

Be it enacted by the Legislature of West Virginia:

That §18-8-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

1 (a) The county attendance director and the assistants shall
2 diligently promote regular school attendance. The director and
3 assistants shall:

4 (1) Ascertain reasons for unexcused absences from school of
5 students of compulsory school age and students who remain
6 enrolled beyond the compulsory school age as defined under
7 section one-a of this article;

8 (2) Take such steps as are, in their discretion, best calculated
9 to encourage the attendance of students and to impart upon the
10 parents and guardians the importance of attendance and the
11 seriousness of failing to do so; and

12 (3) For the purposes of this article, the following definitions
13 shall apply:

14 (A) “Excused absence” shall be defined to include:

15 (i) Personal illness or injury of the student or in the family;

16 (ii) Medical or dental appointment with written excuse from
17 physician or dentist;

18 (iii) Chronic medical condition or disability that impacts
19 attendance;

20 (iv) Participation in home or hospital instruction due to an
21 illness or injury or other extraordinary circumstance that
22 warrants home or hospital confinement;

23 (v) Calamity, such as a fire or flood;

24 (vi) Death in the family;

25 (vii) School-approved or county-approved curricular or
26 extra-curricular activities;

27 (viii) Judicial obligation or court appearance involving the
28 student;

29 (ix) Military requirement for students enlisted or enlisting in
30 the military;

31 (x) Personal or academic circumstances approved by the
32 principal; and

33 (xi) Such other situations as may be further determined by
34 the county board: *Provided*, That absences of students with
35 disabilities shall be in accordance with the Individuals with
36 Disabilities Education Improvement Act of 2004 and the federal
37 and state regulations adopted in compliance therewith.

38 (B) “Unexcused absence” shall be any absence not
39 specifically included in the definition of “excused absence”.

40 (b) In the case of three total unexcused absences of a student
41 during a school year, the attendance director or assistant shall
42 serve written notice to the parent, guardian or custodian of the

43 student that the attendance of the student at school is required
44 and that if the student has five unexcused absences, a conference
45 with the principal or other designated representative will be
46 required.

47 (c) In the case of five total unexcused absences, the
48 attendance director or assistant shall serve written notice to the
49 parent, guardian or custodian of the student that within five days
50 of receipt of the notice the parent, guardian or custodian,
51 accompanied by the student, shall report in person to the school
52 the student attends for a conference with the principal or other
53 designated representative of the school in order to discuss and
54 correct the circumstances causing the unexcused absences of the
55 student, including the adjustment of unexcused absences based
56 upon such meeting.

57 (d) In the case of ten total unexcused absences of a student
58 during a school year, the attendance director or assistant shall
59 make complaint against the parent, guardian or custodian before
60 a magistrate of the county. If it appears from the complaint that
61 there is probable cause to believe that an offense has been
62 committed and that the accused has committed it, a summons or
63 a warrant for the arrest of the accused shall issue to any officer
64 authorized by law to serve the summons or to arrest persons
65 charged with offenses against the state. More than one parent,
66 guardian or custodian may be charged in a complaint. Initial
67 service of a summons or warrant issued pursuant to the
68 provisions of this section shall be attempted within ten calendar
69 days of receipt of the summons or warrant and subsequent
70 attempts at service shall continue until the summons or warrant
71 is executed or until the end of the school term during which the
72 complaint is made, whichever is later.

73 (e) The magistrate court clerk, or the clerk of the circuit
74 court performing the duties of the magistrate court as authorized
75 in section eight, article one, chapter fifty of this code, shall

76 assign the case to a magistrate within ten days of execution of
77 the summons or warrant. The hearing shall be held within twenty
78 days of the assignment to the magistrate, subject to lawful
79 continuance. The magistrate shall provide to the accused at least
80 ten days' advance notice of the date, time and place of the
81 hearing.

82 (f) When any doubt exists as to the age of a student absent
83 from school, the attendance director and assistants have authority
84 to require a properly attested birth certificate or an affidavit from
85 the parent, guardian or custodian of the student, stating age of
86 the student. In the performance of his or her duties, the county
87 attendance director and assistants have authority to take without
88 warrant any student absent from school in violation of the
89 provisions of this article and to place the student in the school in
90 which he or she is or should be enrolled.

91 (g) The county attendance director and assistants shall
92 devote such time as is required by section three of this article to
93 the duties of attendance director in accordance with this section
94 during the instructional term and at such other times as the duties
95 of an attendance director are required. All attendance directors
96 and assistants hired for more than two hundred days may be
97 assigned other duties determined by the superintendent during
98 the period in excess of two hundred days. The county attendance
99 director is responsible under direction of the county
100 superintendent for efficiently administering school attendance in
101 the county.

102 (h) In addition to those duties directly relating to the
103 administration of attendance, the county attendance director and
104 assistant directors also shall perform the following duties:

105 (1) Assist in directing the taking of the school census to see
106 that it is taken at the time and in the manner provided by law;

107 (2) Confer with principals and teachers on the comparison of
108 school census and enrollment for the detection of possible
109 nonenrollees;

110 (3) Cooperate with existing state and federal agencies
111 charged with enforcing child labor laws;

112 (4) Prepare a report for submission by the county
113 superintendent to the State Superintendent of Schools on school
114 attendance, at such times and in such detail as may be required.
115 The state board shall promulgate a legislative rule pursuant to
116 article three-b, chapter twenty-nine-a of this code that sets forth
117 student absences that are excluded for accountability purposes.
118 The absences that are excluded by the rule include, but are not
119 limited to, excused student absences, students not in attendance
120 due to disciplinary measures and absent students for whom the
121 attendance director has pursued judicial remedies to compel
122 attendance to the extent of his or her authority. The attendance
123 director shall file with the county superintendent and county
124 board at the close of each month a report showing activities of
125 the school attendance office and the status of attendance in the
126 county at the time;

127 (5) Promote attendance in the county by compiling data for
128 schools and by furnishing suggestions and recommendations for
129 publication through school bulletins and the press, or in such
130 manner as the county superintendent may direct;

131 (6) Participate in school teachers' conferences with parents
132 and students;

133 (7) Assist in such other ways as the county superintendent
134 may direct for improving school attendance;

135 (8) Make home visits of students who have excessive
136 unexcused absences, as provided above, or if requested by the
137 chief administrator, principal or assistant principal; and

138 (9) Serve as the liaison for homeless children and youth.

CHAPTER 99

**(S. B. 447 - By Senators Karnes, Boley,
Gaunch and Leonhardt)**

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-8-12, relating to allowing administrator of secondary education program at public, private or home school to issue diploma or other appropriate credential; establishing legal sufficiency of diploma or credential; prohibiting discrimination by state agency or institution of higher learning; and reserving to state agency and institution of higher learning authority to inquire about program content for certain purposes.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-8-12, to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-12. Issuance of a diploma or other appropriate credential by public, private or home school administrator.

1 A person who administers a program of secondary education
2 at a public, private or home school that meets the requirements
3 of this chapter may issue a diploma or other appropriate
4 credential to a person who has completed the program of
5 secondary education. Such diploma or credential is legally
6 sufficient to demonstrate that the person meets the definition of
7 having a high school diploma or its equivalent. No state agency
8 or institution of higher learning in this state may reject or

9 otherwise treat a person differently solely on the grounds of the
10 source of such a diploma or credential. Nothing in this section
11 prevents any agency or institution of higher learning from
12 inquiring into the substance or content of the program to assess
13 the content thereof for the purposes of determining whether a
14 person meets other specific requirements.

CHAPTER 100

**(Com. Sub. for H. B. 2478 - By Mr. Speaker, (Mr. Armstead)
and Delegate Miley)**

[By Request of the Executive]

[Passed March 14, 2015; in effect July 1, 2015.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §18-9A-7 of the Code of West Virginia, 1931, as amended, relating to the foundation allowance for public education transportation cost; including propane as an eligible fuel for the ten percent additional percentage allowance for school bus systems using alternative fuels; and fixing the amount to be used for the replacement of buses for the school years beginning July 1, 2015, and July 1, 2016.

Be in enacted by the Legislature of West Virginia:

That §18-9A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-7. Foundation allowance for transportation cost.

- 1 (a) The allowance in the foundation school program for each
- 2 county for transportation shall be the sum of the following
- 3 computations:

4 (1) A percentage of the transportation costs incurred by the
5 county for maintenance, operation and related costs exclusive of
6 all salaries, including the costs incurred for contracted
7 transportation services and public utility transportation, as
8 follows:

9 (A) For each high-density county, eighty-seven and one-half
10 percent;

11 (B) For each medium-density county, ninety percent;

12 (C) For each low-density county, ninety-two and one-half
13 percent;

14 (D) For each sparse-density county, ninety-five percent;

15 (E) For any county for the transportation cost for
16 maintenance, operation and related costs, exclusive of all
17 salaries, for transporting students to and from classes at a
18 multicounty vocational center, the percentage provided in
19 paragraphs (A) through (D) of this subdivision as applicable for
20 the county plus an additional ten percent; and

21 (F) For any county for that portion of its school bus system
22 that uses as an alternative fuel compressed natural gas or
23 propane, the percentage provided in paragraphs (A) through (D)
24 of this subdivision as applicable for the county plus an additional
25 ten percent: *Provided*, That for any county receiving an
26 additional ten percent for that portion of their bus system using
27 bio-diesel as an alternative fuel during the school year 2012-
28 2013, bio-diesel shall continue to qualify as an alternative fuel
29 under this paragraph to the extent that the additional percentage
30 applicable to that portion of the bus system using bio-diesel shall
31 be decreased by two and one-half percent per year for four
32 consecutive school years beginning in school year 2014-2015:
33 *Provided, however*, That any county using an alternative fuel and
34 qualifying for the additional allowance under this subdivision
35 shall submit a plan regarding the intended future use of
36 alternatively fueled school buses;

37 (2) The total cost, within each county, of insurance
38 premiums on buses, buildings and equipment used in
39 transportation;

40 (3) An amount equal to eight and one-third percent of the
41 current replacement value of the bus fleet within each county as
42 determined by the state board: *Provided*, That the amount for the
43 school year beginning July 1, 2015, will be \$15,000,000 and the
44 amount for the school year beginning July 1, 2016, will be
45 \$18,000,000. The amount shall only be used for the replacement
46 of buses. Buses purchased after July 1, 1999 that are driven one
47 hundred eighty thousand miles, regardless of year model, will be
48 subject to the replacement value of eight and one-third percent
49 as determined by the state board. In addition, in any school year
50 in which its net enrollment increases when compared to the net
51 enrollment the year immediately preceding, a school district may
52 apply to the state superintendent for funding for an additional
53 bus or buses. The state superintendent shall make a decision
54 regarding each application based upon an analysis of the
55 individual school district's net enrollment history and
56 transportation needs: *Provided*, That the superintendent shall not
57 consider any application which fails to document that the county
58 has applied for federal funding for additional buses. If the state
59 superintendent finds that a need exists, a request for funding
60 shall be included in the budget request submitted by the state
61 board for the upcoming fiscal year; and

62 (4) Aid in lieu of transportation equal to the state average
63 amount per pupil for each pupil receiving the aid within each
64 county.

65 (b) The total state share for this purpose is the sum of the
66 county shares: *Provided*, That no county shall receive an
67 allowance which is greater than one-third above the computed
68 state average allowance per transportation mile multiplied by the

69 total transportation mileage in the county exclusive of the
70 allowance for the purchase of additional buses.

71 (c) One half of one percent of the transportation allowance
72 distributed to each county shall be for the purpose of trips related
73 to academic classroom curriculum and not related to any
74 extracurricular activity. Any remaining funds credited to a
75 county for the purpose of trips related to academic classroom
76 curriculum during the fiscal year shall be carried over for use in
77 the same manner the next fiscal year and shall be separate and
78 apart from, and in addition to, the appropriation for the next
79 fiscal year. The state board may request a county to document
80 the use of funds for trips related to academic classroom
81 curriculum if the board determines that it is necessary.

CHAPTER 101

**(H. B. 2598 - By Delegate(s) Campbell, Perry,
Cowles, Ambler, Cooper, Reynolds, Rowan,
Moye, Pasdon and Marcum)**

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §18-20-2 of the Code of West Virginia, 1931, as amended, relating to school accommodations for exceptional children; and requiring that teachers receive instruction relating to the school's plan of accommodations for students with disabilities.

Be it enacted by the Legislature of West Virginia:

That §18-20-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**§18-20-2. Providing suitable educational facilities, equipment and services.**

1 (a) Each county board shall provide suitable educational
2 facilities, special equipment and special services that are
3 necessary. Special services include provisions and procedures
4 for finding and enumerating exceptional children of each type,
5 diagnosis by appropriate specialists who will certify the child's
6 need and eligibility for special education and make
7 recommendations for treatment and prosthesis as may alleviate
8 the disability, special teaching by qualified and specially trained
9 teachers, transportation, lunches and remedial therapeutic
10 services. Qualifications of teachers and therapists shall be in
11 accordance with standards prescribed or approved by the state
12 board.

13 (b) A county board may provide for educating resident
14 exceptional children by contracting with other counties or other
15 educational agencies which maintain special education facilities.
16 Fiscal matters shall follow policies approved by the state board.

17 (c) The county board shall provide a four-clock-hour
18 program of training for any teacher aide employed to assist
19 teachers in providing services to exceptional children under this
20 article prior to the assignment. The program shall consist of
21 training in areas specifically related to the education of
22 exceptional children, pursuant to rules of the state board. The
23 training shall occur during normal working hours and an
24 opportunity to be trained shall be provided to a service person
25 prior to filling a vacancy in accordance with the provisions of
26 section eight-b, article four, chapter eighteen-a of this code.

27 (d) The county board annually shall make available during
28 normal working hours to all regularly employed teachers' aides

29 twelve hours of training that satisfies the continuing education
30 requirements for the aides regarding:

31 (1) Providing services to children who have displayed
32 violent behavior or have demonstrated the potential for violent
33 behavior; and

34 (2) Providing services to children diagnosed as autistic or
35 with autism spectrum disorder. This training shall be structured
36 to permit the employee to qualify as an autism mentor after a
37 minimum of four years of training. The county board shall:

38 (A) Notify in writing all teachers' aides of the location, date
39 and time when training will be offered for qualification as an
40 autism mentor; and

41 (B) Reimburse any regularly employed or substitute
42 teacher's aide who elects to attend this training for one half of
43 the cost of the tuition.

44 (e) For any student whose individualized education plan
45 (IEP) or education plan established pursuant to Section 504 of
46 the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794,
47 requires the services of a sign support specialist or an
48 educational sign language interpreter I or II:

49 (1) Any educational sign language interpreter I or II assigned
50 to assist that student is a related service provider member of the
51 education team who participates in IEP meetings and works with
52 the team to implement the IEP;

53 (2) A sign support specialist may be assigned to a student
54 with an exceptionality other than deaf or hard of hearing if it is
55 determined that the student needs signs to support his or her
56 expressive communication; and

57 (3) A sign support specialist may be assigned to a student
58 who is deaf or hard of hearing in lieu of an interpreter only if an

59 educational sign language interpreter I or II is unavailable, and
60 the sign support specialist is executing a professional
61 development plan while actively seeking certification as an
62 educational sign language interpreter I or II. After two years the
63 sign support specialist may remain in the assignment only if an
64 educational sign language interpreter I or II remains unavailable,
65 and with an approved waiver by the West Virginia Department
66 of Education. An employee in this situation is entitled to full
67 payment of the costs of certification acquisition or renewal
68 pursuant to the certification renewal provisions of section four,
69 article two, chapter eighteen-a of this code.

70 (f) Every teacher of a student for whom a school or county
71 board of education prepares a plan of accommodation pursuant
72 to Section 504 of the Rehabilitation Act of 1973, as amended, 29
73 U.S.C. §794, shall receive specific instruction from the school
74 regarding the contents and requirements of the plan and, if the
75 plan is prepared in writing, the teacher shall receive a copy of the
76 written plan and every update thereto and the teacher shall sign
77 an acknowledgment of receipt of each plan and update.

CHAPTER 102

**(Com. Sub. for H. B. 2381 - By Delegate(s) Ambler,
Cooper, D. Evans, Perry, Duke, Rohrbach, Espinosa,
Upson, Rowan and Romine)**

[Passed March 11, 2015; in effect July 1, 2015.]

[Approved by the Governor on March 26, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-4-2c, relating to providing a teacher mentoring increment for classroom teachers

with national board certification who teach and mentor at persistently low performing schools; defining persistently low performing schools; defining mentoring; specifying method of payment; and specifying eligibility.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18A-4-2c, read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2c. Teacher mentoring increment for classroom teachers with national board certification who teach and mentor at persistently low performing schools.

1 (a) An additional \$2,000 shall be paid annually to each
2 classroom teacher who:

3 (1) Holds a valid certificate issued by the National Board for
4 Professional Teaching Standards;

5 (2) Is employed to teach at a school designated as a
6 persistently low performing school by the West Virginia
7 Department of Education; and

8 (3) Is also assigned as part of their regular employment, to
9 serve in a mentoring capacity for other teachers at the school.

10 (b) The additional payment:

11 (1) Shall be in addition to any amounts prescribed in the
12 applicable state minimum salary schedule;

13 (2) Shall be paid in equal monthly installments; and

14 (3) Shall be considered a part of the state minimum salaries
15 for teachers.

16 (c) For the purposes of this section:

17 (1) “Persistently low performing school” means a school
18 identified by the department as being among the lowest twenty
19 percent of schools in the state in three-year aggregate
20 mathematics and reading/language arts scores on the statewide
21 summative assessment; and

22 (2) “Mentoring” means working under the direction of the
23 principal to improve the professional practice knowledge and
24 skills of other teachers employed at the school through on-site
25 embedded professional development and other appropriate
26 school building level approaches. Mentoring includes, but is not
27 limited to, an assigned role in the comprehensive system for
28 teacher induction and professional growth pursuant to section
29 three, article three-c of this chapter, and may include working
30 with other teachers to improve instruction at the school.

31 (d) A national board certified teacher who becomes eligible
32 for an additional payment under this section remains eligible for
33 five consecutive years of employment at the same school in the
34 same assignment regardless of a subsequent change in the
35 designation of the school as a persistently low performing
36 school. The teacher may become eligible again at the same
37 school if it continues to be persistently low performing or at a
38 different persistently low performing school, but not sooner than
39 five years from the beginning of a previous eligibility.

40 (e) Nothing in this section permits continued eligibility if the
41 certificate issued by the National Board for Professional
42 Teaching Standards is no longer valid.

43 (f) Notwithstanding any other provision of this chapter to the
44 contrary, a county may use other funds, including federal and
45 local funds, available to them to increase or provide other
46 incentives for highly qualified teachers to teach at persistently
47 low performing schools.

CHAPTER 103

**(Com. Sub. for H. B. 2010 - By Delegate(s) Kessinger,
McCuskey, Border, Shott, Rowan, Frich, Westfall, Lane,
Anderson, Sobonya and Faircloth)**

[Amended and again passed March 10, 2015; as a result of the objections of the Governor;
in effect ninety days from passage]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §3-1-16 and §3-1-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4A-11a of said code; to amend and reenact §3-5-4 of said code; to amend said code by adding thereto four new sections, designated §3-5-6a, §3-5-6b, §3-5-6c and §3-5-6d; to amend and reenact §3-5-7, §3-5-13 and §3-5-13a of said code; to amend and reenact §3-10-3 of said code; to amend and reenact §3-12-3, §3-12-6, §3-12-10, §3-12-11, §3-12-12 and §3-12-14 of said code; to amend and reenact §6-5-1 of said code; to amend and reenact §50-1-1 and §50-1-6 of said code; to amend and reenact §51-1-1 of said code; and to amend and reenact §51-2A-5 of said code, all relating to electoral reforms of the West Virginia judiciary generally; requiring the election of justices of the Supreme Court of Appeals, circuit court judges, family court judges and magistrates be on a nonpartisan basis; requiring that elections to certain offices be on a division basis when more than one justice of the Supreme Court of Appeals, circuit judge, family court judge or magistrate is to be elected; providing for the timing and frequency of election; providing for the commencement of terms of office; establishing ballot design and printing; providing that elections for justice of the Supreme Court of Appeals, circuit judge, family court judge or magistrate are to be held on the same date as the primary election; requiring nonpartisan ballots be used; establishing filing announcement of candidacies, including the timing, location and information

necessary thereto; providing for the order of appearance of offices on the ballot; establishing ballot content; providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate; providing occasions for special elections to be held to fill vacancies; providing that unsuccessful nonpartisan candidates can be selected to fill ballot vacancies in a general election; providing for the continuing applicability of the West Virginia Supreme Court of Appeals Public Campaign Financing Program; modifying the amount of public campaign financing available to qualifying candidates in a contested election; and removing public campaign financing from qualifying candidates in an uncontested election.

Be it enacted by the Legislature of West Virginia:

That §3-1-16 and §3-1-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4A-11a of said code be amended and reenacted; that §3-5-4 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §3-5-6a, §3-5-6b, §3-5-6c and §3-5-6d; that §3-5-7, §3-5-13 and §3-5-13a of said code be amended and reenacted; that §3-10-3 of said code be amended and reenacted; that §3-12-3, §3-12-6, §3-12-10, §3-12-11, §3-12-12 and §3-12-14 of said code be amended and reenacted; that §6-5-1 of said code be amended and reenacted; that §50-1-1 and §50-1-6 of said code be amended and reenacted; that §51-1-1 of said code be amended and reenacted; and that §51-2A-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-16. Election of state officers.

- 1 (a) At the general election to be held in 1968, and every
- 2 fourth year thereafter, there shall be elected a Governor,
- 3 Secretary of State, Treasurer, Auditor, Attorney General and

4 Commissioner of Agriculture. At the general election in 1968,
5 and every second year thereafter, there shall be elected a member
6 of the State Senate for each senatorial district, and a member or
7 members of the House of Delegates of the state from each
8 county or each delegate district.

9 (b) At the time of the primary election to be held in the year
10 2016, and every twelfth year thereafter, there shall be elected
11 one justice of the Supreme Court of Appeals, and at the time of
12 the primary election to be held in 2020, and every twelfth year
13 thereafter, two justices of the Supreme Court of Appeals and at
14 the time of the primary election to be held in 2024, and every
15 twelfth year thereafter, two justices of the Supreme Court of
16 Appeals. Effective with the primary election held in the year
17 2016, the election of justices of the Supreme Court of Appeals
18 shall be on a nonpartisan basis and by division as set forth more
19 fully in article five of this chapter.

**§3-1-17. Election of circuit judges; county and district officers;
magistrates.**

1 (a) There shall be elected, at the time of the primary election
2 to be held in 2016, and every eighth year thereafter, one judge of
3 the circuit court of every judicial circuit entitled to one judge,
4 and one judge for each numbered division of the judicial circuit
5 in those judicial circuits entitled to two or more circuit judges;
6 and at the time of the primary election to be held in 2016, and in
7 every fourth year thereafter, the number of magistrates
8 prescribed by law for the county. Beginning with the election
9 held in the year 2016, an election for the purpose of electing
10 judges of the circuit court, or an election for the purpose of
11 electing magistrates, shall be upon a nonpartisan ballot printed
12 for the purpose.

13 (b) There shall be elected, at the general election to be held
14 in 1992, and every fourth year thereafter, a sheriff, prosecuting
15 attorney, surveyor of lands, and the number of assessors

16 prescribed by law for the county; and at the general election to
17 be held in 1990, and every second year thereafter, a
18 commissioner of the county commission for each county; and at
19 the general election to be held in 1992, and every sixth year
20 thereafter, a clerk of the county commission and a clerk of the
21 circuit court for each county.

22 (c) Effective with the primary election of 2016, all elections
23 for judge of the circuit courts in the respective circuits and
24 magistrates in each county will be elected on a nonpartisan basis
25 and by division as set forth more fully in article five of this
26 chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

***§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.**

1 (a) The board of ballot commissioners in counties using
2 ballots upon which votes may be recorded by means of marking
3 with electronically sensible ink or pencil and which marks are
4 tabulated electronically shall cause the ballots to be printed or
5 displayed upon the screens of the electronic voting system for
6 use in elections.

7 (b) (1) For the primary election, the heading of the ballot, the
8 type faces, the names and arrangement of offices and the printing
9 of names and arrangement of candidates within each office are
10 to conform as nearly as possible to sections thirteen and thirteen-
11 a, article five of this chapter.

12 (2) For the general election, the heading of the ballot, the
13 straight ticket positions, the instructions to straight ticket voters,
14 the type faces, the names and arrangement of offices and the

* **NOTE:** This section was also amended by S. B. 249 (Chapter 104), which passed subsequent to this act.

15 printing of names and the arrangement of candidates within each
16 office are to conform as nearly as possible to section two, article
17 six of this chapter, except as otherwise provided in this article.

18 (3) Effective with the primary election held in 2016, and
19 thereafter, the following nonpartisan elections are to be separated
20 from the partisan ballot and separately headed in display type
21 with a title clearly identifying the purpose of the election and
22 constituting a separate ballot wherever a separate ballot is
23 required under this chapter:

24 (A) Nonpartisan elections for judicial offices, by division,
25 of:

26 (i) Justice of the Supreme Court of Appeals;

27 (ii) Judge of the circuit court;

28 (iii) Family court judge; and

29 (iv) Magistrate;

30 (B) Nonpartisan elections for Board of Education; and

31 (C) Any question to be voted upon;

32 (4) Both the face and the reverse side of the ballot may
33 contain the names of candidates only if means to ensure the
34 secrecy of the ballot are provided and lines for the signatures of
35 the poll clerks on the ballot are printed on a portion of the ballot
36 which is deposited in the ballot box and upon which marks do
37 not interfere with the proper tabulation of the votes.

38 (5) The arrangement of candidates within each office is to be
39 determined in the same manner as for other electronic voting
40 systems, as prescribed in this chapter. On the general election
41 ballot for all offices, and on the primary election ballot only for
42 those offices to be filled by election, except delegate to national
43 convention, lines for entering write-in votes are to be provided

44 below the names of candidates for each office, and the number
45 of lines provided for any office shall equal the number of
46 persons to be elected, or three, whichever is fewer. The words
47 “WRITE-IN, IF ANY” are to be printed, where applicable,
48 directly under each line for write-ins. The lines are to be
49 opposite a position to mark the vote.

50 (c) Except for electronic voting systems that utilize screens
51 upon which votes may be recorded by means of a stylus or by
52 means of touch, the primary election ballots are to be printed in
53 the color of ink specified by the Secretary of State for the
54 various political parties, and the general election ballot is to be
55 printed in black ink. For electronic voting systems that utilize
56 screens upon which votes may be recorded by means of a stylus
57 or by means of touch, the primary ballots and the general
58 election ballot are to be printed in black ink. All ballots are to be
59 printed, where applicable, on white paper suitable for automatic
60 tabulation and are to contain a perforated stub at the top or
61 bottom of the ballot, which is to be numbered sequentially in the
62 same manner as provided in section thirteen, article five of this
63 chapter, or are to be displayed on the screens of the electronic
64 voting system upon which votes are recorded by means of a
65 stylus or touch. The number of ballots printed and the packaging
66 of ballots for the precincts are to conform to the requirements for
67 paper ballots provided in this chapter.

68 (d) In addition to the official ballots, the ballot
69 commissioners shall provide all other materials and equipment
70 necessary to the proper conduct of the election.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-4. Nomination of candidates in primary elections.

1 (a) At each primary election, the candidate or candidates of
2 each political party for all offices to be filled at the ensuing

3 general election by the voters of the entire state, of each
4 congressional district, of each state senatorial district, of each
5 delegate district, and of each county in the state shall be
6 nominated by the voters of the different political parties, except
7 that no presidential elector shall be nominated at a primary
8 election.

9 (b) In primary elections a plurality of the votes cast shall be
10 sufficient for the nomination of candidates for office. Where
11 only one candidate of a political party for any office in a political
12 division, including party committeemen and delegates to
13 national conventions, is to be chosen the candidate receiving the
14 highest number of votes therefor in the primary election shall be
15 declared the party nominee for such office. Where two or more
16 such candidates are to be chosen in the primary election, the
17 candidates constituting the proper number to be so chosen who
18 shall receive the highest number of votes cast in the political
19 division in which they are candidates shall be declared the party
20 nominees and choices for such offices, except that:

21 (1) Candidates for the office of commissioner of the county
22 commission shall be nominated and elected in accordance with
23 the provisions of section ten, article nine of the Constitution of
24 the State of West Virginia and the requirements of section one-b,
25 article one, chapter seven of this code;

26 (2) Members of county boards of education shall be elected
27 at primary elections in accordance with the provisions of
28 sections five and six of this article;

29 (3) Candidates for the House of Delegates shall be
30 nominated and elected in accordance with the residence
31 restrictions provided in section two, article two, chapter one of
32 this code.

33 (c) In case of tie votes between candidates for party
34 nominations or elections in primary elections, the choice of the

35 political party shall be determined by the executive committee
36 of the party for the political division in which such persons are
37 candidates.

§3-5-6a. Election of justices of the Supreme Court of Appeals.

1 (a) An election for the purpose of electing a justice or
2 justices of the Supreme Court of Appeals shall be held on the
3 same date as the primary election, as provided by law, upon a
4 nonpartisan ballot by division printed for this purpose. For
5 election purposes, in each election at which shall be elected more
6 than one justice of the Supreme Court of Appeals, the election
7 shall be by numbered division corresponding to the number of
8 justices being elected. Each justice shall be elected at large from
9 the entire state.

10 (b) In each nonpartisan election by division for a justice of
11 the Supreme Court of Appeals, the candidates for election in
12 each numbered division shall be tallied separately, and the board
13 of canvassers shall declare and certify the election of the eligible
14 candidate receiving the highest numbers of votes cast within a
15 numbered division to fill any full terms.

16 (c) In case of a tie vote under this section, section twelve,
17 article six of this chapter controls in breaking the tie vote.

§3-5-6b. Election of circuit judges.

1 (a) An election for the purpose of electing a circuit court
2 judge or judges shall be held on the same date as the primary
3 election in their respective circuits, as provided by law, upon a
4 nonpartisan ballot by division printed for this purpose.

5 (b) In each nonpartisan election by division for a circuit
6 court judge, the candidates for election in each numbered
7 division shall be tallied separately, and the board of canvassers
8 shall declare and certify the election of the eligible candidate

9 receiving the highest numbers of votes cast within a numbered
10 division to fill any full terms.

11 (c) In case of a tie vote under this section, section twelve,
12 article six of this chapter controls in breaking the tie vote.

§3-5-6c. Election of family court judges.

1 (a) An election for the purpose of electing a family court
2 judge or judges shall be held on the same date as the primary
3 election in their respective circuits, as provided by law, upon a
4 nonpartisan ballot by division printed for this purpose.

5 (b) In each nonpartisan election by division for a family
6 court judge, the candidates for election in each numbered
7 division shall be tallied separately, and the board of canvassers
8 shall declare and certify the election of the eligible candidate
9 receiving the highest numbers of votes cast within a numbered
10 division to fill any full terms.

11 (c) In case of a tie vote under this section, section twelve,
12 article six of this chapter controls in breaking the tie vote.

§3-5-6d. Election of magistrates.

1 (a) An election for the purpose of electing a magistrate or
2 magistrates by division shall be held on the same date as the
3 primary election in their respective circuits, as provided by law,
4 upon a nonpartisan ballot by division printed for this purpose.

5 (b) In each nonpartisan election by division for a magistrate,
6 the candidates for election in each numbered division shall be
7 tallied separately, and the board of canvassers shall declare and
8 certify the election of the eligible candidate receiving the highest
9 numbers of votes cast within a numbered division to fill any full
10 terms.

11 (c) In case of a tie vote under this section, section twelve,
12 article six of this chapter controls in breaking the tie vote.

**§3-5-7. Filing announcements of candidacies; requirements;
withdrawal of candidates when section applicable.**

1 (a) Any person who is eligible and seeks to hold an office or
2 political party position to be filled by election in any primary or
3 general election held under the provisions of this chapter shall
4 file a certificate of announcement declaring his or her candidacy
5 for the nomination or election to the office.

6 (b) The certificate of announcement shall be filed as follows:

7 (1) Candidates for the House of Delegates, the State Senate,
8 circuit judge, family court judge, and any other office or political
9 position to be filled by the voters of more than one county shall
10 file a certificate of announcement with the Secretary of State.

11 (2) Candidates for an office or political position to be filled
12 by the voters of a single county or a subdivision of a county,
13 except for candidates for the House of Delegates, State Senate,
14 circuit judge or family court judge, shall file a certificate of
15 announcement with the clerk of the county commission.

16 (3) Candidates for an office to be filled by the voters of a
17 municipality shall file a certificate of announcement with the
18 recorder or city clerk.

19 (c) The certificate of announcement shall be filed with the
20 proper officer not earlier than the second Monday in January
21 before the primary election day and not later than the last
22 Saturday in January before the primary election day and must be
23 received before midnight, eastern standard time, of that day or,
24 if mailed, shall be postmarked by the United States Postal
25 Service before that hour. This includes the offices of justice of
26 the Supreme Court of Appeals, circuit court judge, family court

27 judge and magistrate, which are to be filled on a nonpartisan and
28 division basis at the primary election.

29 (d) The certificate of announcement shall be on a form
30 prescribed by the Secretary of State on which the candidate shall
31 make a sworn statement before a notary public or other officer
32 authorized to administer oaths, containing the following
33 information:

34 (1) The date of the election in which the candidate seeks to
35 appear on the ballot;

36 (2) The name of the office sought; the district, if any; and the
37 division, if any;

38 (3) The legal name of the candidate and the exact name the
39 candidate desires to appear on the ballot, subject to limitations
40 prescribed in section thirteen, article five of this chapter;

41 (4) The county of residence and a statement that the
42 candidate is a legally qualified voter of that county; and the
43 magisterial district of residence for candidates elected from
44 magisterial districts or under magisterial district limitations;

45 (5) The specific address designating the location at which the
46 candidate resides at the time of filing, including number and
47 street or rural route and box number and city, state and zip code;

48 (6) For partisan elections, the name of the candidate's
49 political party and a statement that the candidate: (A) Is a
50 member of and affiliated with that political party as evidenced
51 by the candidate's current registration as a voter affiliated with
52 that party; and (B) has not been registered as a voter affiliated
53 with any other political party for a period of sixty days before
54 the date of filing the announcement;

55 (7) For candidates for delegate to national convention, the
56 name of the presidential candidate to be listed on the ballot as

57 the preference of the candidate on the first convention ballot; or
58 a statement that the candidate prefers to remain “uncommitted”;

59 (8) A statement that the person filing the certificate of
60 announcement is a candidate for the office in good faith;

61 (9) The words “subscribed and sworn to before me this
62 _____ day of _____, 20____” and a space for the
63 signature of the officer giving the oath.

64 (e) The Secretary of State or the board of ballot
65 commissioners, as the case may be, may refuse to certify the
66 candidacy or may remove the certification of the candidacy upon
67 receipt of a certified copy of the voter’s registration record of the
68 candidate showing that the candidate was registered as a voter in
69 a party other than the one named in the certificate of
70 announcement during the sixty days immediately preceding the
71 filing of the certificate: *Provided*, That unless a signed formal
72 complaint of violation of this section and the certified copy of
73 the voter’s registration record of the candidate are filed with the
74 officer receiving that candidate’s certificate of announcement no
75 later than ten days following the close of the filing period, the
76 candidate may not be refused certification for this reason.

77 (f) The certificate of announcement shall be subscribed and
78 sworn to by the candidate before some officer qualified to
79 administer oaths, who shall certify the same. Any person who
80 knowingly provides false information on the certificate is guilty
81 of false swearing and shall be punished in accordance with
82 section three, article nine of this chapter.

83 (g) Any candidate for delegate to a national convention may
84 change his or her statement of presidential preference by
85 notifying the Secretary of State by letter received by the
86 Secretary of State no later than the third Tuesday following the
87 close of candidate filing. When the rules of the political party

88 allow each presidential candidate to approve or reject candidates
89 for delegate to convention who may appear on the ballot as
90 committed to that presidential candidate, the presidential
91 candidate or the candidate's committee on his or her behalf may
92 file a list of approved or rejected candidates for delegate and the
93 Secretary of State shall list as "uncommitted" any candidate for
94 delegate who is disapproved by the presidential candidate.

95 (h) A person may not be a candidate for more than one office
96 or office division at any election: *Provided*, That a candidate for
97 an office may also be a candidate for President of the United
98 States, for membership on political party executive committees
99 or for delegate to a political party national convention: *Provided*,
100 *however*, That an unsuccessful candidate for a nonpartisan office
101 in an election held concurrently with the primary election may
102 be appointed under the provisions of section nineteen of this
103 article to fill a vacancy on the general ballot.

104 (i) A candidate who files a certificate of announcement for
105 more than one office or division and does not withdraw, as
106 provided by section eleven, article five of this chapter, from all
107 but one office prior to the close of the filing period may not be
108 certified by the Secretary of State or placed on the ballot for any
109 office by the board of ballot commissioners.

§3-5-13. Form and contents of ballots.

1 The following provisions apply to the form and contents of
2 election ballots:

3 (1) The face of every primary election ballot shall conform
4 as nearly as practicable to that used at the general election.

5 (2) The heading of every ballot is to be printed in display
6 type. The heading is to contain a ballot title, the name of the
7 county, the state, the words "Primary Election" and the month,
8 day and year of the election. The ballot title of the political party

9 ballots is to contain the words “Official Ballot of the (Name)
10 Party” and the official symbol of the political party may be
11 included in the heading.

12 (A) The ballot title of any separate paper ballot or portion of
13 any electronic or voting machine ballot for all judicial officer
14 shall commence with the words “Nonpartisan Ballot of Election
15 of Judicial Officers” and each such office shall be listed in the
16 following order:

17 (i) The ballot title of any separate paper ballot or portion of
18 any electronic or voting machine ballot for all justices of the
19 Supreme Court of Appeals shall contain the words “Nonpartisan
20 Ballot of Election of Justice(s) of the Supreme Court of Appeals
21 of West Virginia”. The names of the candidates for the Supreme
22 Court of Appeals shall be printed by division without references
23 to political party affiliation or registration.

24 (ii) The ballot title of any separate paper ballot or portion of
25 any electronic or voting machine ballot for all circuit court
26 judges in the respective circuits shall contain the words
27 “Nonpartisan Ballot of Election of Circuit Court Judge(s)”. The
28 names of the candidates for the respective circuit court judge
29 office shall be printed by division without references to political
30 party affiliation or registration.

31 (iii) The ballot title of any separate paper ballot or portion of
32 any electronic or voting machine ballot for all family court
33 judges in the respective circuits shall contain the words
34 “Nonpartisan Ballot of Election of Family Court Judge(s)”. The
35 names of the candidates for the respective family court judge
36 office shall be printed by division without references to political
37 party affiliation or registration.

38 (iv) The ballot title of any separate paper ballot or portion of
39 any electronic or voting machine ballot for all magistrates in the

40 respective circuits shall contain the words “Nonpartisan Ballot
41 of Election of Magistrate(s)”. The names of the candidates for
42 the respective magistrate office shall be printed by division
43 without references to political party affiliation or registration.

44 (B) The ballot title of any separate paper ballot or portion of
45 any electronic or voting machine ballot for the Board of
46 Education is to contain the words “Nonpartisan Ballot of
47 Election of Members of the _____ County Board of
48 Education”. The districts for which less than two candidates may
49 be elected and the number of available seats are to be specified
50 and the names of the candidates are to be printed without
51 reference to political party affiliation and without designation as
52 to a particular term of office.

53 (C) Any other ballot or portion of a ballot on a question is to
54 have a heading which clearly states the purpose of the election
55 according to the statutory requirements for that question.

56 (3) (A) For paper ballots, the heading of the ballot is to be
57 separated from the rest of the ballot by heavy lines and the
58 offices shall be arranged in columns with the following
59 headings, from left to right across the ballot: “National Ticket”,
60 “State Ticket”, “County Ticket” and, in a presidential election
61 year, “National Convention” or, in a nonpresidential election
62 year, “District Ticket”. The columns are to be separated by
63 heavy lines. Within the columns, the offices are to be arranged
64 in the order prescribed in section thirteen-a of this article.

65 (B) For voting machines, electronic voting devices and any
66 ballot tabulated by electronic means, the offices are to appear in
67 the same sequence as prescribed in section thirteen-a of this
68 article and under the same headings as prescribed in paragraph
69 (A) of this subdivision. The number of pages, columns or rows,
70 where applicable, may be modified to meet the limitations of
71 ballot size and composition requirements subject to approval by
72 the Secretary of State.

73 (C) The title of each office is to be separated from preceding
74 offices or candidates by a line and is to be printed in bold type
75 no smaller than eight point. Below the office is to be printed the
76 number of the district, if any, the number of the division, if any,
77 and the words "Vote for _____" with the number to be
78 nominated or elected or "Vote For Not More Than _____" in
79 multicandidate elections. For offices in which there are
80 limitations relating to the number of candidates which may be
81 nominated, elected or appointed to or hold office at one time
82 from a political subdivision within the district or county in which
83 they are elected, there is to be a clear explanation of the
84 limitation, as prescribed by the Secretary of State, printed in bold
85 type immediately preceding the names of the candidates for
86 those offices on the ballot in every voting system. For counties
87 in which the number of county commissioners exceeds three and
88 the total number of members of the county commission is equal
89 to the number of magisterial districts within the county, the
90 office of county commission is to be listed separately for each
91 district to be filled with the name of the magisterial district and
92 the words "Vote for One" printed below the name of the office:
93 *Provided*, That the office title and applicable instructions may
94 span the width of the ballot so as it is centered among the
95 respective columns.

96 (D) The location for indicating the voter's choices on the
97 ballot is to be clearly shown. For paper ballots, other than those
98 tabulated electronically, the official primary ballot is to contain
99 a square formed in dark lines at the left of each name on the
100 ballot, arranged in a perpendicular column of squares before
101 each column of names.

102 (4) (A) The name of every candidate certified by the
103 Secretary of State or the board of ballot commissioners is to be
104 printed in capital letters in no smaller than eight point type on
105 the ballot for the appropriate precincts. Subject to the rules
106 promulgated by the Secretary of State, the name of each

107 candidate is to appear in the form set out by the candidate on the
108 certificate of announcement, but in no case may the name
109 misrepresent the identity of the candidate nor may the name
110 include any title, position, rank, degree or nickname implying or
111 inferring any status as a member of a class or group or affiliation
112 with any system of belief.

113 (B) The city of residence of every candidate, the state of
114 residence of every candidate residing outside the state, the
115 county of residence of every candidate for an office on the ballot
116 in more than one county and the magisterial district of residence
117 of every candidate for an office subject to magisterial district
118 limitations are to be printed in lower case letters beneath the
119 names of the candidates.

120 (C) The arrangement of names within each office must be
121 determined as prescribed in section thirteen-a of this article.

122 (D) If the number of candidates for an office exceeds the
123 space available on a column or ballot page and requires that
124 candidates for a single office be separated, to the extent possible,
125 the number of candidates for the office on separate columns or
126 pages are to be nearly equal and clear instructions given the
127 voter that the candidates for the office are continued on the
128 following column or page.

129 (5) When an insufficient number of candidates has filed for
130 a party to make the number of nominations allowed for the office
131 or for the voters to elect sufficient members to the Board of
132 Education or to executive committees, the vacant positions on
133 the ballot shall be filled with the words "No Candidate Filed":
134 *Provided*, That in paper ballot systems which allow for write-ins
135 to be made directly on the ballot, a blank line shall be placed in
136 any vacant position in the office of Board of Education or for
137 election to any party executive committee. A line shall separate
138 each candidate from every other candidate for the same office.

139 Notwithstanding any other provision of this code, if there are
140 multiple vacant positions on a ballot for one office, the multiple
141 vacant positions which would otherwise be filled with the words
142 “No Candidate Filed” may be replaced with a brief detailed
143 description, approved by the Secretary of State, indicating that
144 there are no candidates listed for the vacant positions.

145 (6) In presidential election years, the words “For election in
146 accordance with the plan adopted by the party and filed with the
147 Secretary of State” is to be printed following the names of all
148 candidates for delegate to national convention.

149 (7) All paper ballots are to be printed in black ink on paper
150 sufficiently thick so that the printing or marking cannot be
151 discernible from the back: *Provided*, That no paper ballot voted
152 pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the
153 Uniformed and Overseas Citizens Absentee Voting Act of 1986,
154 or federal write-in absentee ballot may be rejected due to paper
155 type, envelope type, or notarization requirement. Ballot cards
156 and paper for printing ballots using electronically sensible ink
157 are to meet minimum requirements of the tabulating systems and
158 are to conform in size and weight to ensure ease in tabulation.

159 (8) Ballots are to contain perforated tabs at the top of the
160 ballots and are to be printed with unique sequential numbers
161 from one to the highest number representing the total number of
162 ballots printed. On paper ballots, the ballot is to be bordered by
163 a solid line at least one sixteenth of an inch wide and the ballot
164 is to be trimmed to within one-half inch of that border.

165 (9) On the back of every official ballot or ballot card the
166 words “Official Ballot” with the name of the county and the date
167 of the election are to be printed. Beneath the date of the election
168 there are to be two blank lines followed by the words “Poll
169 Clerks”.

170 (10) The face of sample paper ballots and sample ballot
171 labels are to be like other official ballots or ballot labels except
172 that the word “sample” is to be prominently printed across the
173 front of the ballot in a manner that ensures the names of
174 candidates are not obscured and the word “sample” may be
175 printed in red ink. No printing may be placed on the back of the
176 sample.

§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

1 (a) The order of offices for state and county elections on all
2 ballots within the state shall be as prescribed herein. When the
3 office does not appear on the ballot in an election, then it shall be
4 omitted from the sequence. When an unexpired term for an
5 office appears on the ballot along with a full term, the unexpired
6 term shall appear immediately below the full term.

7 NATIONAL TICKET: President (and Vice President in the
8 general election), United States Senator, member of the United
9 States House of Representatives.

10 STATE TICKET: Governor, Secretary of State, Auditor,
11 Treasurer, Commissioner of Agriculture, Attorney General, State
12 Senator, member of the House of Delegates, any other
13 multicounty office, state executive committee.

14 COUNTY TICKET: Clerk of the circuit court, county
15 commissioner, clerk of the county commission, prosecuting
16 attorney, sheriff, assessor, surveyor, congressional district
17 executive committee, senatorial district executive committee in
18 multicounty districts, delegate district executive committee in
19 multicounty districts.

20 NATIONAL CONVENTION: Delegate to the national
21 convention — at-large, delegate to the national convention —
22 congressional district.

23 DISTRICT TICKET: County executive committee.

24 (b) Except for office divisions in which no more than one
25 person has filed a certificate of announcement, the arrangement
26 of names for all offices shall be determined by lot according to
27 the following provisions:

28 (1) On the fourth Tuesday following the close of the
29 candidate filing, beginning at nine o'clock a. m., a drawing by
30 lot shall be conducted in the office of the clerk of the county
31 commission in each county. Notice of the drawing shall be given
32 on the form for the certificate of announcement and no further
33 notice shall be required. The clerk of the county commission
34 shall superintend and conduct the drawing and the method of
35 conducting the drawing shall be prescribed by the Secretary of
36 State.

37 (2) Except as provided herein, the position of each candidate
38 within each office division shall be determined by the position
39 drawn for that candidate individually: *Provided*, That if fewer
40 candidates file for an office division than the total number to be
41 nominated or elected, the vacant positions shall appear following
42 the names of all candidates for the office.

43 (3) Candidates for delegate to national convention who have
44 filed a commitment to a candidate for president shall be listed
45 alphabetically within the group of candidates committed to the
46 same candidate for president and uncommitted candidates shall
47 be listed alphabetically in an uncommitted category. The
48 position of each group of committed candidates and
49 uncommitted candidates shall be determined by lot by drawing
50 the names of the presidential candidates and for an uncommitted
51 category.

52 (4) A candidate or the candidate's representative may attend
53 the drawings.

ARTICLE 10. FILLING VACANCIES.**§3-10-3. Vacancies in offices of state officials, United States Senators and judges.**

1 (a) Any vacancy occurring in the offices of Secretary of
2 State, Auditor, Treasurer, Attorney General, Commissioner of
3 Agriculture, or in any office created or made elective to be filled
4 by the voters of the entire state, is filled by the Governor of the
5 state by appointment and subsequent election to fill the
6 remainder of the term, if required by section one of this article.

7 (b) Any vacancy occurring in the offices of Justice of the
8 Supreme Court of Appeals, judge of a circuit court or judge of a
9 family court is filled by the Governor of the state by appointment
10 and subsequent election to fill the remainder of the term, as
11 required by subsection (d) of this section. If an election is
12 required under subsection (d) of this section, the Governor,
13 circuit court or the chief judge thereof in vacation, is responsible
14 for the proper proclamation by order and notice required by
15 section one of this article.

16 (c) Any vacancy in the office of magistrate is appointed
17 according to the provisions of section six, article one, chapter
18 fifty of this code, and subsequent election to fill the remainder
19 of the term, as required by subsection (d) of this section.

20 (d) (1) When the vacancy in Justice of the Supreme Court of
21 Appeals, judge of the circuit court, judge of a family court or
22 magistrate occurs after the eighty-fourth day before a general
23 election, and the affected term of office ends on the thirty-first
24 day of December following the next election, the person
25 appointed to fill the vacancy shall continue in office until the
26 completion of the term.

27 (2) When the vacancy occurs before the close of the
28 candidate filing period for the primary election, the vacancy

29 shall be filled by election in the nonpartisan judicial election
30 held concurrently with the primary election, and the appointment
31 shall continue until a successor is elected and certified.

32 (3) When the vacancy occurs after the close of candidate
33 filing for the primary election and not later than eighty-four days
34 before the general election, the vacancy shall be filled by
35 election in a nonpartisan judicial election held concurrently with
36 the general election, and the appointment shall continue until a
37 successor is elected and certified.

38 (e) When an election to fill a vacancy is required to be held
39 at the general election according to the provisions of subsection
40 (d) of this section, a special candidate filing period shall be
41 established. Candidates seeking election to any unexpired term
42 for Justice of the Supreme Court of Appeals, judge of a circuit
43 court, judge of the family court or magistrate shall file a
44 certificate of announcement and pay the filing fee no earlier than
45 the first Monday in August and no later than seventy-seven days
46 before the general election.

ARTICLE 12. WEST VIRGINIA SUPREME COURT OF APPEALS PUBLIC CAMPAIGN FINANCING PILOT PROGRAM.

§3-12-3. Definitions.

1 As used in this article, the following terms and phrases have
2 the following meanings:

3 (1) "Candidate's committee" means a political committee
4 established with the approval of or in cooperation with a
5 candidate or a prospective candidate to explore the possibilities
6 of seeking a particular office or to support or aid his or her
7 nomination or election to an office in an election cycle. If a
8 candidate directs or influences the activities of more than one
9 active committee in a current campaign, those committees shall

10 be considered one committee for the purpose of contribution
11 limits.

12 (2) “Certified candidate” means an individual seeking
13 election to the West Virginia Supreme Court of Appeals who has
14 been certified in accordance with section ten of this article as
15 having met all of the requirements for receiving public campaign
16 financing from the fund.

17 (3) “Contribution” means a gift subscription, assessment,
18 payment for services, dues, advance, donation, pledge, contract,
19 agreement, forbearance or promise of money or other tangible
20 thing of value, whether conditional or legally enforceable, or a
21 transfer of money or other tangible thing of value to a person,
22 made for the purpose of influencing the nomination, election or
23 defeat of a candidate. An offer or tender of a contribution is not
24 a contribution if expressly and unconditionally rejected or
25 returned. A contribution does not include volunteer personal
26 services provided without compensation: *Provided*, That a
27 nonmonetary contribution is to be considered at fair market
28 value for reporting requirements and contribution limitations.

29 (4) “Exploratory contribution” means a contribution of no
30 more than \$1,000 made by an individual adult, including a
31 participating candidate and members of his or her immediate
32 family, during the exploratory period but prior to filing the
33 declaration of intent. Exploratory contributions may not exceed
34 \$20,000 in the aggregate.

35 (5) “Exploratory period” means the period during which a
36 participating candidate may raise and spend exploratory
37 contributions to examine his or her chances of election and to
38 qualify for public campaign financing under this article. The
39 exploratory period begins on January 1 the year before the
40 election in which the candidate may run for Justice of the
41 Supreme Court of Appeals and ends on the last Saturday in
42 January of the election year.

43 (6) “Financial agent” means any individual acting for and by
44 himself or herself, or any two or more individuals acting together
45 or cooperating in a financial way to aid or take part in the
46 nomination or election of any candidate for public office, or to
47 aid or promote the success or defeat of any political party at any
48 election.

49 (7) “Fund” means the Supreme Court of Appeals Public
50 Campaign Financing Fund created by section five of this article.

51 (8) “Immediate family” or “immediate family members”
52 means the spouse, parents, step-parents, siblings and children of
53 the participating candidate.

54 (9) “Nonparticipating candidate” means a candidate who is:

55 (A) Seeking election to the Supreme Court of Appeals;

56 (B) Is neither certified nor attempting to be certified to
57 receive public campaign financing from the fund; and

58 (C) Has an opponent who is a participating or certified
59 candidate.

60 (10) “Nonpartisan judicial election campaign period” means
61 the period beginning on the first day of the primary election
62 filing period, as determined under section seven, article five of
63 this chapter, and ending on the day of the nonpartisan judicial
64 election.

65 (11) “Participating candidate” means a candidate who is
66 seeking election to the Supreme Court of Appeals and is
67 attempting to be certified in accordance with section ten of this
68 article to receive public campaign financing from the fund.

69 (12) “Person” means an individual, partnership, committee,
70 association and any other organization or group of individuals.

71 (13) “Qualifying contribution” means a contribution
72 received from a West Virginia registered voter of not less than
73 \$1 nor more than \$100 in the form of cash, check or money
74 order, made payable to a participating candidate or the
75 candidate’s committee, or in the form of an electronic payment
76 or debit or credit card payment, received during the qualifying
77 period.

78 (14) “Qualifying period” means the period during which
79 participating candidates may raise and spend qualifying
80 contributions in order to qualify to receive public campaign
81 financing.

82 For candidates seeking to be placed on the nonpartisan
83 judicial election ballot, the qualifying period begins on
84 September 1 preceding the election year and ends on the last
85 Saturday in January of the election year.

§3-12-6. Sources of revenue for the fund.

1 Revenue from the following sources shall be deposited in the
2 fund:

3 (1) All exploratory and qualifying contributions in excess of
4 the established maximums;

5 (2) Money returned by participating or certified candidates
6 who fail to comply with this article;

7 (3) Unspent or unobligated moneys allotted to certified
8 candidates and remaining unspent or unobligated on the date of
9 the nonpartisan judicial election for which the money was
10 distributed;

11 (4) If a certified candidate loses, all remaining unspent or
12 unobligated moneys;

13 (5) Civil penalties levied by the State Election Commission
14 against candidates for violations of this article;

15 (6) Civil penalties levied by the Secretary of State pursuant
16 to section seven, article eight of this chapter;

17 (7) Voluntary donations made directly to the fund;

18 (8) Any interest income or other return earned on the
19 money's investment;

20 (9) On or before July 1, 2010, and for two successive years
21 thereafter, the State Auditor shall authorize the transfer of the
22 amount of \$1 million from the Purchasing Card Administration
23 Fund established in section ten-d, article three, chapter twelve of
24 this code to the fund created by this article;

25 (10) On or before July 1, 2015, the state Auditor shall
26 authorize the transfer of the amount of \$400,000 from the
27 Purchasing Card Administration Fund established in section ten-
28 d, article three, chapter twelve of this code to the fund created by
29 this article; and

30 (11) Money appropriated to the fund.

§3-12-10. Certification of candidates.

1 (a) To be certified, a participating candidate shall apply to
2 the State Election Commission for public campaign financing
3 from the fund and file a sworn statement that he or she has
4 complied and will comply with all requirements of this article
5 throughout the applicable campaign.

6 (b) Upon receipt of a notice from the Secretary of State that
7 a participating candidate has received the required number and
8 amount of qualifying contributions, the State Election
9 Commission shall determine whether the candidate or
10 candidate's committee:

11 (1) Has signed and filed a declaration of intent as required by
12 section seven of this article;

13 (2) Has obtained the required number and amount of
14 qualifying contributions as required by section nine of this
15 article;

16 (3) Has complied with the contribution restrictions of this
17 article;

18 (4) Is eligible, as provided in section nine, article five of this
19 chapter, to appear on the nonpartisan judicial election ballot; and

20 (5) Has met all other requirements of this article.

21 (c) The State Election Commission shall process
22 applications in the order they are received and shall verify a
23 participating candidate's compliance with the requirements of
24 subsection (b) of this section by using the verification and
25 sampling techniques approved by the State Election
26 Commission.

27 (d) The State Election Commission shall determine whether
28 to certify a participating candidate as eligible to receive public
29 campaign financing no later than three business days after the
30 candidate or the candidate's committee makes his or her final
31 report of qualifying contributions or, if a challenge is filed under
32 subsection (g) of this section, no later than six business days
33 after the candidate or the candidate's committee makes his or her
34 final report of qualifying contributions. A certified candidate
35 shall comply with this article through the nonpartisan judicial
36 election campaign period.

37 (e) No later than two business days after the State Election
38 Commission certifies that a participating candidate is eligible to
39 receive public campaign financing under this section, the State
40 Election Commission, acting in concert with the State Auditor's

41 office and the State Treasurer's office, shall cause a check to be
42 issued to the candidate's campaign depository account an
43 amount equal to the public campaign financing benefit for which
44 the candidate qualifies under section eleven of this article, minus
45 the candidate's qualifying contributions, and shall notify all
46 other candidates for the same office of its determination.

47 (f) If the candidate desires to receive public financing
48 benefits by electronic transfer, the candidate shall include in his
49 or her application sufficient information and authorization for
50 the State Treasurer to transfer payments to his or her campaign
51 depository account.

52 (g) Any person may challenge the validity of any
53 contribution listed by a participating candidate by filing a written
54 challenge with the State Election Commission setting forth any
55 reason why the contribution should not be accepted as a
56 qualifying contribution. If a contribution is challenged under this
57 subsection, the State Election Commission shall decide the
58 validity of the challenge no later than the end of the next
59 business day after the day that the challenge is filed, unless the
60 State Election Commission determines that the candidate whose
61 contribution is challenged has both a sufficient qualifying
62 number and amount of qualifying contributions to be certified as
63 a candidate under this section without considering the challenge.
64 Within five business days of a challenge, the candidate or
65 candidate's committee who listed any contribution that is the
66 subject of a challenge may file a report with the State Election
67 Commission of an additional contribution collected pursuant to
68 section nine of this article for consideration as a qualifying
69 contribution.

70 (h) A candidate's certification and receipt of public
71 campaign financing may be revoked by the State Election
72 Commission, if the candidate violates this article. A certified
73 candidate who violates this article shall repay all moneys
74 received from the fund to the State Election Commission.

75 (i) The determination of any issue before the State Election
76 Commission is the final administrative determination. Any
77 meetings conducted by the State Elections Commission to certify
78 a candidate's eligibility to receive funds under this article shall
79 not be subject the public notice and open meeting requirements
80 of article nine-a, chapter six of this code, but the commission
81 shall concurrently provide public notice of any decision and
82 determination it makes which impacts the candidate's eligibility
83 to receive funds pursuant to this article. Any person adversely
84 affected by a decision of the State Election Commission under
85 this article may appeal that decision to the circuit court of
86 Kanawha County.

87 (j) A candidate may withdraw from being a certified
88 candidate and become a nonparticipating candidate at any time
89 with the approval of the State Election Commission. Any
90 candidate seeking to withdraw shall file a written request with
91 the State Election Commission, which shall consider requests on
92 a case-by-case basis. No certified candidate may withdraw until
93 he or she has repaid all moneys received from the fund:
94 *Provided*, That the State Election Commission may, in
95 exceptional circumstances, waive the repayment requirement.
96 The State Election Commission may assess a penalty not to
97 exceed \$10,000 against any candidate who withdraws without
98 approval.

**§3-12-11. Schedule and amount of Supreme Court of Appeals
Public Campaign Financing Fund payments.**

1 (a) The State Election Commission, acting in concert with
2 the State Auditor's office and the State Treasurer's office, shall
3 have a check issued within two business days after the date on
4 which the candidate is certified, to make payments from the fund
5 for the nonpartisan judicial election campaign period available
6 to a certified candidate.

7 In a contested nonpartisan judicial election, a certified
8 candidate shall receive \$525,000 in campaign financing from the
9 fund, minus the certified candidate's qualifying contributions.

10 (b) The State Election Commission shall authorize the
11 distribution of campaign financing moneys to certified
12 candidates in equal amounts. The commission shall propose a
13 legislative rule on distribution of funds.

14 (c) The State Election Commission may not authorize or
15 direct the distribution of moneys to certified candidates in excess
16 of the total amount of money deposited in the fund pursuant to
17 section six of this article. If the commission determines that the
18 money in the fund is insufficient to totally fund all certified
19 candidates, the commission shall authorize the distribution of the
20 remaining money proportionally, according to each candidate's
21 eligibility for funding. Each candidate may raise additional
22 money in the same manner as a nonparticipating candidate for
23 the same office up to the unfunded amount of the candidate's
24 eligible funding.

§3-12-12. Restrictions on contributions and expenditures.

1 (a) A certified candidate or his or her committee may not
2 accept loans or contributions from any private source, including
3 the personal funds of the candidate and the candidate's
4 immediate family, during the nonpartisan judicial election
5 campaign period except as permitted by this article.

6 (b) After filing the declaration of intent and during the
7 qualifying period, a participating candidate may not spend or
8 obligate more than he or she has collected in exploratory and
9 qualifying contributions. After the qualifying period and through
10 the nonpartisan judicial election campaign period, a certified
11 candidate may spend or obligate any unspent exploratory or
12 qualifying contributions and the moneys he or she receives from
13 the fund under the provisions of section eleven of this article.

14 (c) A participating or certified candidate may expend
15 exploratory and qualifying contributions and funds received
16 from the fund only for lawful election expenses as provided in
17 section nine, article eight of this chapter. Moneys distributed to
18 a certified candidate from the fund may be expended only during
19 the nonpartisan judicial election campaign period for which
20 funds were dispersed. Money from the fund may not be used:

21 (1) In violation of the law;

22 (2) To repay any personal, family or business loans,
23 expenditures or debts; or

24 (3) To help any other candidate.

25 (d) A certified candidate or his or her committee shall return
26 to the fund any unspent and unobligated exploratory
27 contributions, qualifying contributions or moneys received from
28 the fund within forty-eight hours after the date on which the
29 candidate ceases to be certified.

30 (e) A certified candidate or his or her committee shall return
31 to the fund any unspent or unobligated public campaign
32 financing funds no later than five business days after the
33 nonpartisan judicial election.

34 (f) A contribution from one person may not be made in the
35 name of another person.

36 (g) A participating or certified candidate or his or her
37 committee receiving qualifying contributions or exploratory
38 contributions from a person not listed on the receipt required by
39 sections eight and nine of this article is liable to the State
40 Election Commission for the entire amount of that contribution
41 and any applicable penalties.

42 (h) A certified candidate accepting any benefits under the
43 provisions of this article shall continue to comply with all of its

44 provisions throughout the nonpartisan judicial election campaign
45 period.

46 (i) A participating or certified candidate or his or her
47 financial agent shall provide the Secretary of State with all
48 requested campaign records, including all records of exploratory
49 and qualifying contributions received and campaign
50 expenditures and obligations, and shall fully cooperate with any
51 audit of campaign finances requested or authorized by the State
52 Election Commission.

§3-12-14. Duties of the State Election Commission; Secretary of State.

1 (a) In addition to its other duties, the State Election
2 Commission shall carry out the duties of this article and
3 complete the following as applicable:

4 (1) Prescribe forms for reports, statements, notices and other
5 documents required by this article;

6 (2) Make an annual report to the Legislature accounting for
7 moneys in the fund, describing the State Election Commission's
8 activities and listing any recommendations for changes of law,
9 administration or funding amounts;

10 (3) Propose emergency and legislative rules for legislative
11 approval, in accordance with article three, chapter twenty-nine-a
12 of this code, as may be necessary for the proper administration
13 of this article;

14 (4) Enforce this article to ensure that moneys from the fund
15 are placed in candidate campaign accounts and spent as specified
16 in this article;

17 (5) Monitor reports filed pursuant to this article and the
18 financial records of candidates to ensure that qualified

19 candidates receive funds promptly and to ensure that moneys
20 required by this article to be paid to the fund are deposited in the
21 fund;

22 (6) Cause an audit of the fund to be conducted by
23 independent certified public accountants ninety days after a
24 nonpartisan judicial election. The State Election Commission
25 shall cooperate with the audit, provide all necessary
26 documentation and financial records to those persons conducting
27 the audit and shall maintain a record of all information supplied
28 by the audit;

29 (7) In consultation with the State Treasurer and the State
30 Auditor, develop a rapid, reliable method of conveying funds to
31 certified candidates. In all cases, the commission shall distribute
32 funds to certified candidates in a manner that is expeditious,
33 ensures accountability and safeguards the integrity of the fund;

34 (8) Regularly monitor the receipts, disbursements,
35 obligations and balance in the fund to determine whether the
36 fund will have sufficient moneys to meet its obligations and
37 sufficient moneys available for disbursement during the
38 nonpartisan judicial election campaign period; and

39 (9) Transfer a portion of moneys maintained in the fund to
40 the West Virginia Investment Management Board for their
41 supervised investment, after consultation with the State
42 Treasurer, the State Auditor and the West Virginia Investment
43 Management Board.

44 (b) In addition to his or her other duties, the Secretary of
45 State shall carry out the duties of this article and complete the
46 following as applicable:

47 (1) Prescribe forms for reports, statements, notices and other
48 documents required by this article;

49 (2) Prepare and publish information about this article and
50 provide it to potential candidates and citizens of this state;

51 (3) Prepare and publish instructions setting forth methods of
52 bookkeeping and preservation of records to facilitate compliance
53 with this article and to explain the duties of candidates and
54 others participating in elections under this article;

55 (4) Propose emergency and legislative rules for legislative
56 approval in accordance with article three, chapter twenty-nine-a
57 of this code as may be necessary for the proper administration of
58 this article;

59 (5) Enforce this article to ensure that moneys from the fund
60 are placed in candidate campaign accounts and spent as specified
61 in this article;

62 (6) Monitor reports filed pursuant to this article and the
63 financial records of candidates to ensure that qualified
64 candidates receive funds promptly and to ensure that moneys
65 required by this article to be paid to the fund are deposited in the
66 fund;

67 (7) Ensure public access to the campaign finance reports
68 required pursuant to this article, and whenever possible, use
69 electronic means for the reporting, storing and display of the
70 information; and

71 (8) Prepare a voters' guide for the general public listing the
72 names of each candidate seeking election to the Supreme Court
73 of Appeals. Both certified and nonparticipating candidates shall
74 be invited by the State Election Commission to submit a
75 statement, not to exceed five hundred words in length, for
76 inclusion in the guide. The guide shall identify the candidates
77 that are certified candidates and the candidates that are
78 nonparticipating candidates. Copies of the guide shall be posted

79 on the website of the Secretary of State, as soon as may be
80 practical.

81 (c) To fulfill their responsibilities under this article, the State
82 Election Commission and the Secretary of State may subpoena
83 witnesses, compel their attendance and testimony, administer
84 oaths and affirmations, take evidence and require, by subpoena,
85 the production of any books, papers, records or other items
86 material to the performance of their duties or the exercise of
87 their powers.

88 (d) The State Election Commission may also propose and
89 adopt procedural rules to carry out the purposes and provisions
90 of this article and to govern procedures of the State Election
91 Commission as it relates to the requirements of this article.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT TO HOLD OFFICE.

§6-5-1. When terms of office to begin.

1 The terms of officers, except when elected or appointed to
2 fill vacancies, shall begin respectively as follows: That of
3 Governor, Secretary of State, State Superintendent of Free
4 Schools, Treasurer, Auditor, Attorney General and
5 Commissioner of Agriculture, on the first Monday after the
6 second Wednesday of January next after their election; that of a
7 member of the Legislature, on December 1, next after his or her
8 election; and that of the justices of the Supreme Court of
9 Appeals, the judges of the several circuit courts, the judges of the
10 family and other inferior courts, the county commissioners,
11 prosecuting attorneys, surveyors of land, assessors, sheriffs,
12 clerks of the circuit, or other inferior courts, clerks of the county
13 commissions, magistrates, on January 1, next after their election.

14 Whenever a person is elected or appointed to fill a vacancy,
15 his or her term shall be as prescribed by chapter three of this
16 code.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-1. Magistrate court created.

1 There is hereby created in each county of this state a
2 magistrate court with such numbers of magistrates for each court
3 as are hereafter provided. There shall be elected by the voters of
4 each county, at the general election to be held in 1976, and in
5 every fourth year thereafter, such number of magistrates as is
6 provided in section two of this article. The filing fee for the
7 office of magistrate shall be one percent of the annual salary.
8 The term of magistrates shall be for four years and shall begin on
9 January 1, of the year following the year of election.

10 Effective with the primary election of 2016, all elections for
11 magistrates will be on a nonpartisan basis by division. Beginning
12 in 2016, there will no longer be primary elections held for
13 magistrates and all elections for magistrates are to be held in the
14 nonpartisan judicial election as set forth in article five, chapter
15 three of this code. All indications of party identification on
16 election ballots for magistrate shall be omitted.

§50-1-6. Vacancy in office of magistrate.

1 Subject to the provisions of section one, article ten, chapter
2 three of this code, when a vacancy occurs in the office of
3 magistrate, the judge of the circuit court, or the chief judge
4 thereof if there is more than one judge of the circuit court, shall
5 fill the same by appointment.

6 At a nonpartisan judicial election in which a magistrate is
7 elected for an unexpired term, the circuit judge, or the chief

8 judge thereof if there is more than one judge of the circuit court,
9 shall cause a notice of such election to be published prior to such
10 election as a Class II-0 legal advertisement in compliance with
11 the provisions of article three, chapter fifty-nine of this code, and
12 the publication area for such publication shall be the county
13 involved.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-1. Justices.

1 The Supreme Court of Appeals shall consist of five justices,
2 elected and qualified according to the Constitution and the laws
3 of this state, any three of whom shall constitute a quorum.
4 Effective with the primary election of 2016, all elections for
5 justices will be on a nonpartisan basis by division. Beginning in
6 2016, there will no longer be primary elections held for the
7 office of justice and all elections for justice are to be held in the
8 nonpartisan judicial election as set forth in article five, chapter
9 three of this code. All indications of party identification on
10 election ballots for that office shall be omitted.

ARTICLE 2A. FAMILY COURTS.

§51-2A-5. Term of office of family court judge; initial appointment; elections.

1 (a) Beginning with the election to be conducted in the year
2 2016, family court judges shall be elected. In family court
3 circuits having two or more family court judges there shall be,
4 for election purposes, numbered divisions corresponding to the
5 number of family court judges in each area. Each family court
6 judge shall be elected at large by the entire family court circuit.
7 In each numbered division of a family court circuit, the

8 candidates for nomination or election shall be voted upon and
9 the votes cast for the candidates in each division shall be tallied
10 separately from the votes cast for candidates in other numbered
11 divisions within the family court circuit. The candidate or
12 candidates receiving the highest number of the votes cast within
13 a numbered division shall be nominated or elected, as the case
14 may be. Effective with the primary election of 2016, all elections
15 for family court judges in the respective circuits will be on a
16 nonpartisan basis by division. Beginning in 2016, there will no
17 longer be primary elections held for family court judges and all
18 elections for family court judges are to be held in the nonpartisan
19 judicial election as set forth in article five, chapter three of this
20 code. All indications of party identification on election ballots
21 for family court judge shall be omitted.

22 (b) The term of office for all family court judges elected in
23 2002 shall be for six years, commencing on January 1, 2003, and
24 ending on December 31, 2008. Subsequent terms of office for
25 family court judges elected thereafter shall be for eight years.

CHAPTER 104

**(Com. Sub. for S. B. 249 - By Senators Trump, Blair,
Ferns, M. Hall and Walters)**

[Passed March 11, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §3-4A-9, §3-4A-11a and §3-4A-27 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-6-2, §3-6-3, §3-6-5 and §3-6-6 of said code, all relating to disallowing voting a straight party ticket by one mark or punch in a general election.

Be it enacted by the Legislature of West Virginia:

That §3-4A-9, §3-4A-11a and §3-4A-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-6-2, §3-6-3, §3-6-5 and §3-6-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and design
2 may not be approved by the State Election Commission or be
3 purchased, leased or used by any county commission unless it
4 meets the following requirements:

5 (1) It secures or ensures the voter absolute secrecy in the act
6 of voting or, at the voter's election, provides for open voting;

7 (2) It is constructed to ensure that, except in instances of
8 open voting as provided in this section, the contents of a marked
9 ballot may not be seen or known by anyone other than the voter
10 who has voted or is voting;

11 (3) It permits each voter to vote at any election for all
12 persons and offices for whom and which he or she is lawfully
13 entitled to vote, whether or not the name of any person appears
14 on a ballot as a candidate; and it permits each voter to vote for as
15 many persons for an office as he or she is lawfully entitled to
16 vote for; and to vote for or against any question upon which he
17 or she is lawfully entitled to vote. The automatic tabulating
18 equipment used in electronic voting systems is to reject choices
19 recorded on any ballot if the number of choices exceeds the
20 number to which a voter is entitled;

21 (4) It permits each voter to write in the names of persons for
22 whom he or she desires to vote whose names do not appear upon
23 the ballots;

24 (5) It permits each voter to change his or her vote for any
25 candidate and upon any question appearing upon the ballots or
26 ballot labels up to the time when his or her ballot is deposited in
27 the ballot box or his or her ballot is cast by electronic means;

28 (6) It contains programming media containing sequentially
29 numbered program instructions and coded or otherwise protected
30 from tampering or substitution of the media or program
31 instructions by unauthorized persons and capable of tabulating
32 all votes cast in each election;

33 (7) It contains two standard validation test decks approved
34 as to form and testing capabilities by the State Election
35 Commission;

36 (8) It correctly records and counts accurately all votes cast
37 for each candidate and for and against each question appearing
38 upon the ballots;

39 (9) It permits a voter in a primary election to: (A) Vote only
40 for the candidates of the party for which the voter is legally
41 permitted to vote; (B) vote for the candidates, if any, for
42 nonpartisan nominations or election; and (C) vote on public
43 questions; and precludes the voter from voting for any candidate
44 seeking nomination by any other political party unless that
45 political party has determined that the voter may participate in
46 its primary election;

47 (10) It, where applicable, is provided with means for sealing
48 or electronically securing the vote-recording device to prevent its
49 use and to prevent tampering with the device, both before the
50 polls are open or before the operation of the vote-recording
51 device for an election is begun and immediately after the polls
52 are closed or after the operation of the vote-recording device for
53 an election is completed;

54 (11) It has the capacity to contain the names of candidates
55 constituting the tickets of at least nine political parties and
56 accommodates the wording of at least fifteen questions;

57 (12) (A) Direct-recording electronic voting machines must
58 generate a paper copy of each voter's vote that will be
59 automatically kept within a storage container that is locked,
60 closely attached to the direct-recording electronic voting
61 machine and inaccessible to all but authorized voting officials,
62 who will handle such storage containers and such paper copies
63 contained therein in accordance with section nineteen of this
64 article;

65 (B) The paper copy of the voter's vote shall be generated at
66 the time the voter is at the voting station using the direct-
67 recording electronic voting machine;

68 (C) The voter may examine the paper copy visually or
69 through headphone readout, and may accept or reject the printed
70 copy;

71 (D) The voter may not touch, handle or manipulate the
72 printed copy manually in any way;

73 (E) Once the printed copy of the voter's votes is accepted by
74 the voter as correctly reflecting the voter's intent, but not before,
75 it will automatically be stored for recounts or random checks and
76 the electronic vote will be cast within the computer mechanism
77 of the direct-recording electronic voting machine;

78 (F) Direct-recording electronic voting machines with a
79 mandatory paper copy shall be approved by the Secretary of
80 State. The Secretary of State may promulgate rules and
81 emergency rules to implement or enforce this subsection
82 pursuant to the provisions of section five, article three, chapter
83 twenty-nine-a of this code;

84 (13) Where vote-recording devices are used, they shall:

85 (A) Be durably constructed of material of good quality and
86 in a workmanlike manner and in a form which makes it safely
87 transportable;

88 (B) Bear a number that will identify it or distinguish it from
89 any other machine;

90 (C) Be constructed to ensure that a voter may easily learn the
91 method of operating it and may expeditiously cast his or her vote
92 for all candidates of his or her choice and upon any public
93 question; and

94 (D) Be accompanied by a mechanically or electronically
95 operated instruction model which shows the arrangement of the
96 ballot, party columns or rows and questions;

97 (14) For electronic voting systems that utilize a screen upon
98 which votes may be recorded by means of a stylus or by means
99 of touch, they shall:

100 (A) Be constructed to provide for the direct electronic
101 recording and tabulating of votes cast in a system specifically
102 designed and engineered for the election application;

103 (B) Be constructed to prevent any voter from voting for
104 more than the allowable number of candidates for any office, to
105 include an audible or visual signal, or both, warning any voter
106 who attempts to vote for more than the allowable number of
107 candidates for any office or who attempts to cast his or her ballot
108 prior to its completion and are constructed to include a visual or
109 audible confirmation, or both, to the voter upon completion and
110 casting of the ballot;

111 (C) Be constructed to present the entire ballot to the voter,
112 in a series of sequential pages, and to ensure that the voter sees

113 all of the ballot options on all pages before completing his or her
114 vote and to allow the voter to review and change all ballot
115 choices prior to completing and casting his or her ballot;

116 (D) Be constructed to allow election commissioners to spoil
117 a ballot where a voter fails to properly cast his or her ballot, has
118 departed the polling place and cannot be recalled by a poll clerk
119 to complete his or her ballot;

120 (E) Be constructed to allow election commissioners, poll
121 clerks or both to designate, mark or otherwise record provisional
122 ballots;

123 (F) Consist of devices which are independent, nonnetworked
124 voting systems in which each vote is recorded and retained
125 within each device's internal nonvolatile electronic memory and
126 contain an internal security, the absence of which prevents
127 substitution of any other device;

128 (G) Store each vote in no fewer than three separate,
129 independent, nonvolatile electronic memory components and
130 that each device contains comprehensive diagnostics to ensure
131 that failures do not go undetected;

132 (H) Contain a unique, embedded internal serial number for
133 auditing purposes for each device used to activate, retain and
134 record votes;

135 (I) Be constructed to record all preelection, election and
136 post-election activities, including all ballot images and system
137 anomalies, in each device's internal electronic memory and are
138 to be accessible in electronic or printed form;

139 (J) Be constructed with a battery backup system in each
140 device to, at a minimum, prevent the loss of any votes, as well as
141 all preelection, election and post-election activities, including all
142 ballot images and system anomalies, stored in the device's

143 internal electronic memory and to allow voting to continue for
144 two hours of uninterrupted operation in case of an electrical
145 power failure; and

146 (K) Be constructed to prevent the loss of any votes, as well
147 as all preelection, election and post-election activities, including
148 all ballot images and system anomalies, stored in each device's
149 internal electronic memory even in case of an electrical and
150 battery power failure.

***§3-4A-11a. Ballots tabulated electronically; arrangement,
quantity to be printed, ballot stub numbers.**

1 (a) The board of ballot commissioners in counties using
2 ballots upon which votes may be recorded by means of marking
3 with electronically sensible ink or pencil and which marks are
4 tabulated electronically shall cause the ballots to be printed or
5 displayed upon the screens of the electronic voting system for
6 use in elections.

7 (b) (1) For the primary election, the heading of the ballot, the
8 type faces, the names and arrangement of offices and the printing
9 of names and arrangement of candidates within each office are
10 to conform as nearly as possible to sections thirteen and thirteen-
11 a, article five of this chapter.

12 (2) For the general election, the heading of the ballot, the
13 type faces, the names and arrangement of offices and the printing
14 of names and the arrangement of candidates within each office
15 are to conform as nearly as possible to section two, article six of
16 this chapter, except as otherwise provided in this article.

17 (3) Effective with the primary election held in 2016 and
18 thereafter, the following nonpartisan elections are to be separated

* **NOTE:** This section was also amended by H. B. 2010 (Chapter 103),
which passed prior to this act.

19 from the partisan ballot and separately headed in display type
20 with a title clearly identifying the purpose of the election and
21 constituting a separate ballot wherever a separate ballot is
22 required under this chapter:

23 (A) Nonpartisan elections for judicial offices, by division,
24 of:

25 (i) Justice of the Supreme Court of Appeals;

26 (ii) Judge of the circuit court;

27 (iii) Family court judge; and

28 (iv) Magistrate;

29 (B) Nonpartisan elections for board of education; and

30 (C) Any question to be voted upon.

31 (4) Both the face and the reverse side of the ballot may
32 contain the names of candidates only if means to ensure the
33 secrecy of the ballot are provided and lines for the signatures of
34 the poll clerks on the ballot are printed on a portion of the ballot
35 which is deposited in the ballot box and upon which marks do
36 not interfere with the proper tabulation of the votes.

37 (5) The arrangement of candidates within each office is to be
38 determined in the same manner as for other electronic voting
39 systems, as prescribed in this chapter. On the general election
40 ballot for all offices, and on the primary election ballot only for
41 those offices to be filled by election, except delegate to national
42 convention, lines for entering write-in votes are to be provided
43 below the names of candidates for each office, and the number
44 of lines provided for any office shall equal the number of
45 persons to be elected, or three, whichever is fewer. The words
46 "WRITE-IN, IF ANY" are to be printed, where applicable,

47 directly under each line for write-ins. The lines are to be
48 opposite a position to mark the vote.

49 (c) Except for electronic voting systems that utilize screens
50 upon which votes may be recorded by means of a stylus or by
51 means of touch, the primary election ballots are to be printed in
52 the color of ink specified by the Secretary of State for the
53 various political parties, and the general election ballot is to be
54 printed in black ink. For electronic voting systems that utilize
55 screens upon which votes may be recorded by means of a stylus
56 or by means of touch, the primary ballots and the general
57 election ballot are to be printed in black ink. All ballots are to be
58 printed, where applicable, on white paper suitable for automatic
59 tabulation and are to contain a perforated stub at the top or
60 bottom of the ballot, which is to be numbered sequentially in the
61 same manner as provided in section thirteen, article five of this
62 chapter, or are to be displayed on the screens of the electronic
63 voting system upon which votes are recorded by means of a
64 stylus or touch. The number of ballots printed and the packaging
65 of ballots for the precincts are to conform to the requirements for
66 paper ballots provided in this chapter.

67 (d) In addition to the official ballots, the ballot
68 commissioners shall provide all other materials and equipment
69 necessary to the proper conduct of the election.

§3-4A-27. Proceedings at the central counting center.

1 (a) All proceedings at the central counting center are to be
2 under the supervision of the clerk of the county commission and
3 are to be conducted under circumstances which allow
4 observation from a designated area by all persons entitled to be
5 present. The proceedings shall take place in a room of sufficient
6 size and satisfactory arrangement to permit observation. Those
7 persons entitled to be present include all candidates whose
8 names appear on the ballots being counted or, if a candidate is

9 absent, a representative of the candidate who presents a written
10 authorization signed by the candidate for the purpose and two
11 representatives of each political party on the ballot who are
12 chosen by the county executive committee chairperson. A
13 reasonable number of the general public is also freely admitted
14 to the room. In the event all members of the general public
15 desiring admission to the room cannot be admitted at one time,
16 the county commission shall provide for a periodic and
17 convenient rotation of admission to the room for observation, to
18 the end that each member of the general public desiring
19 admission, during the proceedings at the central counting center,
20 is to be granted admission for reasonable periods of time for
21 observation: *Provided*, That no person except those authorized
22 for the purpose may touch any ballot or other official records and
23 papers utilized in the election during observation.

24 (b) All persons who are engaged in processing and counting
25 the ballots are to work in teams consisting of two persons of
26 opposite political parties, and are to be deputized in writing and
27 take an oath that they will faithfully perform their assigned
28 duties. These deputies are to be issued an official badge or
29 identification card which is assigned an identity control number
30 and the deputies are to prominently wear on his or her outer
31 garments the issued badge or identification card. Upon
32 completion of the deputies' duties, the badges or identification
33 cards are to be returned to the county clerk.

34 (c) Ballots are to be handled and tabulated and the write-in
35 votes tallied according to procedures established by the
36 Secretary of State, subject to the following requirements:

37 (1) In systems using ballots marked with electronically
38 sensible ink, ballots are to be removed from the ballot boxes and
39 stacked for the tabulator which separates ballots containing
40 marks for a write-in position. Immediately after tabulation, the
41 valid write-in votes are to be tallied. No write-in vote may be

42 counted for an office unless the voter has entered the name of an
43 official write-in candidate for that office on the line provided,
44 either by writing, affixing a sticker or placing an ink-stamped
45 impression thereon;

46 (2) In systems using ballots in which votes are recorded
47 upon screens with a stylus or by means of touch, the ballots are
48 to be tabulated according to the processes of the system. Systems
49 using ballots in which votes are recorded upon screens with a
50 stylus or by means of touch are to tally write-in ballots
51 simultaneously with the other ballots;

52 (3) When more than one person is to be elected to an office
53 and the voter desires to cast write-in votes for more than one
54 official write-in candidate for that office, the voter shall mark the
55 location appropriate for the voting system in the write-in
56 location for that office. When there are multiple write-in votes
57 for the same office and the combination of choices for
58 candidates on the ballot and write-in choices for the same office
59 exceed the number of candidates to be elected, the ballot is to be
60 duplicated or hand counted, with all votes for that office
61 rejected;

62 (4) Write-in votes for nomination for any office and write-in
63 votes for any person other than an official write-in candidate are
64 to be disregarded; and

65 (5) Official write-in candidates are those who have filed a
66 write-in candidate's certificate of announcement and have been
67 certified according to the provisions of section four-a, article six
68 of this chapter.

69 (d) If any ballot is damaged or defective so that it cannot
70 properly be counted by the automatic tabulating equipment, a
71 true duplicate copy is to be made of the damaged ballot in the
72 presence of representatives of each political party on the ballot

73 and substituted for the damaged ballot. All duplicate ballots are
74 to be clearly labeled “duplicate” and are to bear a serial number
75 which is recorded on the damaged or defective ballot and on the
76 replacement ballot.

77 (e) The returns printed by the automatic tabulating
78 equipment at the central counting center, to which have been
79 added write-in and other valid votes, are, when certified by the
80 clerk of the county commission, to constitute the unofficial
81 preliminary returns of the county. Upon completion of the count,
82 the returns are to be open to the public by posting a summary of
83 the returns as have been tabulated at the central counting center.
84 Upon completion of the canvass, the returns are to be posted as
85 tabulated precinct by precinct.

86 (f) If for any reason it becomes impracticable to count all or
87 a part of the ballots with tabulating equipment, the county
88 commission may direct that they be counted manually, following
89 as far as practicable the provisions governing the counting of
90 paper ballots.

91 (g) As soon as possible after the completion of the count, the
92 clerk of the county commission shall have the vote-recording
93 devices properly boxed or securely covered and removed to a
94 proper and secure place of storage.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

1 (a) All ballots prepared under the provisions of this section
2 are to contain:

3 (1) The name and ticket of each party which is a political
4 party under the provisions of section eight, article one of this
5 chapter;

6 (2) The name chosen as the party name by each group of
7 citizens which has secured nomination for two or more
8 candidates by petition under the provisions of section
9 twenty-three, article five of this chapter; and

10 (3) The names of every candidate for any office to be voted
11 for at the election whose nomination in the primary election,
12 nomination by petition or nomination by appointment to fill a
13 vacancy on the ballot has been certified and filed according to
14 law and no others.

15 (b) The provisions of paragraphs (C) and (D), subdivision
16 (2), section thirteen, article five of this chapter; subdivision (3)
17 of said section; paragraphs (A) and (B), subdivision (4) of said
18 section; and subdivisions (6), (7), (8) and (9) of said section
19 pertaining to the preparation and form of primary election ballots
20 shall likewise apply to general election ballots.

21 (c) (1) For all ballot systems, the ballot heading is to be in
22 display type and contain the words "Official Ballot, General
23 Election" and the name of the county and the month, day and
24 year of the election.

25 (2) After the heading, each ballot is to contain, laid out in
26 parallel columns, rows or pages as required by the particular
27 voting system, the party emblem and the name of each party as
28 prescribed in subsection (a) of this section.

29 (3) The party whose candidate for president received the
30 highest number of votes at the last preceding presidential
31 election is to be placed in the left, or first column, row or page,
32 as is appropriate to the voting system. The party which received
33 the second highest vote is to be next and so on. Any groups or
34 third parties which did not have a candidate for president on the
35 ballot in the previous presidential election are to be placed in the
36 sequence in which the final certificates of nomination by petition
37 were filed.

38 (4) For all ballots, any columns, rows or sections in which
39 the ticket of one party appears are to be clearly separated from
40 the other columns, rows or sections by a heavy line or other clear
41 division. For each party, the offices are to be arranged in the
42 order prescribed in section thirteen-a, article five of this chapter
43 under the appropriate tickets, which are to be headed “National
44 Ticket”, “State Ticket” and “County Ticket”. The number of
45 pages, columns or rows, where applicable, may be modified to
46 meet the limitations of ballot size and composition requirements,
47 subject to approval by the Secretary of State.

48 (d) The arrangement of names within each office for all
49 ballot systems is to be as follows:

50 (1) In elections for presidential electors, the names of the
51 candidates for president and vice president of each party are to
52 be placed beside a brace with a single voting position, so that a
53 vote for any presidential candidate is a vote for the electors of
54 the party for which the candidates were named.

55 (2) The order of names of candidates for any office or
56 division for which more than one is to be elected is determined
57 as prescribed in section thirteen-a, article five of this chapter:
58 *Provided*, That the drawing by lot is to be conducted on the
59 seventieth day next preceding the date of the general election,
60 beginning at 9:00 a.m.

61 (3) In any office where more than one person is to be
62 elected, the names of the candidates for the office are to be
63 staggered so that no two candidates for that office appear
64 directly opposite any other candidate, as shown in the example
65 below: *Provided*, That if the voting system cannot accurately
66 tabulate any ballot due to this requirement, the ballot may be
67 adjusted so that it is accurately tabulated. However, each
68 candidate shall be separated by a thin line to distinguish between
69 each candidate.

70

71	For House of Delegates	For House of Delegates
72	First Delegate District	First Delegate District
73	(Vote For Not More Than Two)	(Vote For Not More Than Two)
74	SUSAN B. ANTHONY	
75	City (County)	
76		JOHN ADAMS
77		City (County)
78	ABRAHAM LINCOLN	
79	City (County)	
80		JAMES MONROE
81		City (County)
82		

83 (4) Each voting system is to provide a means for voters to
 84 vote for any person whose name does not appear on the ticket by
 85 writing it with pen or pencil or by using stamps, stickers, tapes,
 86 labels or other means of writing in the name of a candidate
 87 which does not interfere with the tabulation of the ballot.

88 (A) In paper ballot systems which allow for write-ins to be
 89 made directly on the ballot, a blank square and a blank line equal
 90 to the space which would be occupied by the name of the
 91 candidate is to be placed under the proper office for each
 92 vacancy in nomination and for an office for which more than one
 93 is to be elected, any vacancy is to appear after any other
 94 candidates for the office. If no write-in lines are included on the
 95 ballot, specific instructions are to be added to the top of the
 96 ballot notifying the voter that a write-in vote may be cast by
 97 writing the name and office on any location on the front of the
 98 ballot.

99 (B) In machine and electronically tabulated ballot systems
 100 in which write-in votes must be made in a place other than on the
 101 ballot, if there is a vacancy in nomination leaving fewer
 102 candidates in any party than can be elected to that office, the

103 words “No Candidate Nominated” are to be printed in the space
104 that would be occupied by the name of the candidate and for an
105 office for which more than one is to be elected, any vacancy is
106 to appear after any other candidates for the office.
107 Notwithstanding any other provision of this code, if there are
108 multiple vacant positions on a ballot for one office, the multiple
109 vacant positions which would otherwise be filled with the words
110 “No Candidate Filed” may be replaced with a brief detailed
111 description, approved by the Secretary of State, indicating that
112 there are no candidates listed for the vacant positions.

113 (5) In a general election in any county in which unexpired
114 terms of the board of education are to be filled by election, a
115 separate section or page of the ballot is to be set off by means
116 clearly separating the nonpartisan ballot from the ballot for the
117 political party candidates and is to be headed “Nonpartisan
118 Board of Education”.

119 (e) Any constitutional amendment is to be placed following
120 all offices, followed by any other issue upon which the voters are
121 to cast a vote. The heading for each amendment or issue is to be
122 printed in large, bold type according to the requirements of the
123 resolution authorizing the election.

124 (f) The board of ballot commissioners may not place any
125 issue on the ballot for election which is not specifically
126 authorized under the West Virginia Constitution or statutes or
127 which has not been properly ordered by the appropriate
128 governmental body charged with calling the election.

129 (g) A ballot may not offer a voter the option of voting a
130 straight party ticket by one mark or punch.

§3-6-3. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall prepare a
2 sample official general election ballot for all political party or

3 nominees with no party affiliation unless those persons have
4 actually been nominated by an independent party, nonpartisan
5 candidates for election, if any, and all ballot issues to be voted
6 for at the general election, according to the provisions of article
7 four-a of this chapter, and for any ballot issue, according to the
8 provisions of law authorizing the election.

9 (b) The facsimile sample general election ballot shall be
10 published as follows:

11 (1) For counties in which two or more qualified newspapers
12 publish a daily newspaper, not more than twenty-six nor less
13 than twenty days preceding the general election, the ballot
14 commissioners shall publish the sample official general election
15 ballot as a Class I-0 legal advertisement in the two qualified
16 daily newspapers of different political parties within the county
17 having the largest circulation in compliance with the provisions
18 of article three, chapter fifty-nine of this code;

19 (2) For counties having no more than one daily newspaper,
20 or having only one or more qualified newspapers which publish
21 weekly, not more than twenty-six nor less than twenty days
22 preceding the primary election, the ballot commissioners shall
23 publish the sample official general election ballot as a Class I
24 legal advertisement in the qualified newspaper within the county
25 having the largest circulation in compliance with the provisions
26 of article three, chapter fifty-nine of this code; and

27 (3) Each facsimile sample ballot shall be a photographic
28 reproduction of the official sample ballot or ballot pages and
29 shall be printed in a size no less than sixty-five percent of the
30 actual size of the ballot, at the discretion of the ballot
31 commissioners: *Provided*, That when the ballots for the precincts
32 within the county contain different senatorial, delegate,
33 magisterial or executive committee districts or when the ballots
34 for precincts within a city contain different municipal wards, the

35 facsimile shall be altered to include each of the various districts
36 in the appropriate order. If, in order to accommodate the size of
37 each ballot, the ballot or ballot pages must be divided onto more
38 than one page, the arrangement and order shall be made to
39 conform as nearly as possible to the arrangement of the ballot.
40 The publisher of the newspaper shall submit a proof of the ballot
41 and the arrangement to the ballot commissioners for approval
42 prior to publication.

43 (c) The ballot commissioners of each county shall prepare,
44 in the form and manner prescribed by the Secretary of State, an
45 official list of offices and nominees for each office which will
46 appear on the general election ballot for each political party or
47 as nominees with no party affiliation unless those persons have
48 actually been nominated by an independent party and, as the case
49 may be, for the nonpartisan candidates to be voted for at the
50 general election:

51 (1) All information which appears on the ballot, including
52 instructions as to the number of candidates for whom votes may
53 be cast for the office, any additional language which will appear
54 on the ballot below the name of the office, any identifying
55 information relating to the candidates, such as his or her
56 residence and magisterial district or presidential preference.
57 Following the names of all candidates, the list shall include the
58 full title, text and voting positions of any issue to appear on the
59 ballot.

60 (2) The order of the offices and candidates for each office
61 and the manner of designating the parties shall be as follows:

62 (A) The offices shall be listed in the same order in which
63 they appear on the ballot;

64 (B) The candidates within each office for which one is to be
65 elected shall be listed in the order they appear on the ballot, from

66 left to right or from top to bottom, as the case may be, and the
67 candidate's political party affiliation or independent status shall
68 be indicated by the one- or two-letter initial specifying the
69 affiliation, placed in parenthesis to the right of the candidate's
70 name; and

71 (C) The candidates within each office for which more than
72 one is to be elected shall be arranged by political party groups in
73 the order they appear on the ballot and the candidate's affiliation
74 shall be indicated as provided in paragraph (B) of this
75 subdivision.

76 (d) The official list of candidates and issues as provided in
77 subsection (c) of this section shall be published as follows:

78 (1) For counties in which two or more qualified newspapers
79 publish a daily newspaper, on the last day on which a newspaper
80 is published immediately preceding the general election, the
81 ballot commissioners shall publish the official list of nominees
82 and issues as a Class I-0 legal advertisement in the two qualified
83 daily newspapers of different political parties within the county
84 having the largest circulation in compliance with the provisions
85 of article three, chapter fifty-nine of this code;

86 (2) For counties having no more than one daily paper, or
87 having only one or more qualified newspapers which publish
88 weekly, on the last day on which a newspaper is published
89 immediately preceding the general election, the ballot
90 commissioners shall publish the sample official list of nominees
91 and issues as a Class I legal advertisement in the qualified
92 newspaper within the county having the largest circulation in
93 compliance with the provisions of article three, chapter fifty-nine
94 of this code;

95 (3) The publication of the official list of nominees for each
96 party and for nonpartisan candidates shall be in single or double

97 columns, as required to accommodate the type size requirements
98 as follows:

99 (A) The words “official list of nominees and issues”, the
100 name of the county, the words “General Election” and the date
101 of the election shall be printed in all capital letters and in bold
102 type no smaller than fourteen point; and

103 (B) The names of the candidates and the initial within
104 parenthesis designating the candidate’s affiliation shall be
105 printed in all capital letters in bold type no smaller than ten point
106 and the residence information shall be printed in type no smaller
107 than ten point; and

108 (4) When any ballot issue is to appear on the ballot, the title
109 of that ballot shall be printed in all capital letters in bold type no
110 smaller than twelve point. The text of the ballot issue shall
111 appear in no smaller than eight point type. The ballot
112 commissioners may require the publication of the ballot issue
113 under this subsection in the facsimile sample ballot format in
114 lieu of the alternate format.

115 (e) Notwithstanding the provisions of subsections (c) and (d)
116 of this section, the ballot commissioners of any county may
117 choose to publish a facsimile sample general election ballot,
118 instead of the official list of candidates and issues, for purposes
119 of the last publication required before any general election.

§3-6-5. Rules and procedures in election other than primaries.

1 The provisions of article one of this chapter relating to
2 elections generally shall govern and control arrangements and
3 election officials for the conduct of elections under this article.
4 The following rules and procedures shall govern the voting for
5 candidates in general and special elections:

6 (a) If the voter desires to vote for an official write-in
7 candidate, the voter shall: write with ink or other means or affix

8 a sticker or label or place an ink-stamped impression of the name
9 of an official write-in candidate for an office for whom he or she
10 desires to vote in the space designated for write-in votes for the
11 particular voting system or for paper ballot systems, write or
12 place the name and office designation in any position on the face
13 of the ballot which makes the intention of the voter clear as to
14 both the office and the candidate chosen.

15 The Secretary of State may proscribe devices for casting
16 write-in votes which would cause mechanical difficulty with
17 voting machines or electronic devices or which would obliterate
18 or deface a paper ballot or any portion thereof, but the Secretary
19 of State shall preserve the right to vote by a write-in vote for
20 those candidates who have filed and have been certified as
21 official write-in candidates under the provisions of section four-a
22 of this article.

23 (b) If the voter marks more names than there are persons to
24 be elected to an office or if, for any reason, it is impossible to
25 determine the voter's choice for an office to be filled, the ballot
26 shall not be counted for the office. The intention of the voter
27 shall be deemed to be clear if the write-in vote cast for an office
28 contains both the first and last name of an official write-in
29 candidate for that office; and if no two official write-in
30 candidates for that office share a first or last name, either the
31 first name or last name alone shall be deemed to express the
32 clear intention of the voter.

33 (c) Except as otherwise specifically provided in this chapter,
34 no ballot shall be rejected for any technical error which does not
35 make it impossible to determine the voter's choice.

§3-6-6. Ballot counting procedures in paper ballot systems.

1 When the polls are closed in an election precinct where only
2 a single election board has served, the receiving board shall

3 perform all of the duties prescribed in this section. When the
4 polls are closed in an election precinct where two election boards
5 have served, both the receiving and counting boards shall
6 together conclude the counting of the votes cast, the tabulating
7 and summarizing of the number of the votes cast, unite in
8 certifying and attesting to the returns of the election and join in
9 making out the certificates of the result of the election provided
10 for in this article. They may not adjourn until the work is
11 completed.

12 In all election precincts, as soon as the polls are closed and
13 the last voter has voted, the receiving board shall proceed to
14 ascertain the result of the election in the following manner:

15 (a) In counties in which the clerk of the county commission
16 has determined that the absentee ballots should be counted at the
17 precincts in which the absent voters are registered, the receiving
18 board must first process the absentee ballots and deposit the
19 ballots to be counted in the ballot box. The receiving board shall
20 then proceed as provided in subsections (b) and (c) of this
21 section. In counties in which the absentee ballots are counted at
22 the central counting center, the receiving board shall proceed as
23 provided in subsections (b) and (c) of this section.

24 (b) The receiving board shall ascertain from the pollbooks
25 and record on the proper form the total number of voters who
26 have voted. The number of ballots challenged shall be counted
27 and subtracted from the total and the result should equal the
28 number of ballots deposited in the ballot box. The
29 commissioners and clerks shall also report, over their signatures,
30 the number of ballots spoiled and the number of ballots not
31 voted.

32 (c) The procedure for counting ballots, whether performed
33 throughout the day by the counting board as provided in section
34 thirty-three, article one of this chapter or after the close of the

35 polls by the receiving board or by the two boards together, shall
36 be as follows:

37 (1) The ballot box shall be opened and all votes shall be
38 tallied in the presence of the entire election board;

39 (2) One of the commissioners shall take one ballot from the
40 box at a time and shall determine if the ballot is properly signed
41 by the two poll clerks of the receiving board. If not properly
42 signed, the ballot shall be placed in an envelope for the purpose,
43 without unfolding it. Any ballot which does not contain the
44 proper signatures shall be challenged. If an accurate accounting
45 is made for all ballots in the precinct in which the ballot was
46 voted and no other challenge exists against the voter, the ballot
47 shall be counted at the canvas. If properly signed, the
48 commissioner shall hand the ballot to a team of commissioners
49 of opposite politics, who shall together read the votes marked on
50 the ballot for each office. Write-in votes for election for any
51 person other than an official write-in candidate shall be
52 disregarded;

53 (3) The commissioner responsible for removing the ballots
54 from the box shall keep a tally of the number of ballots as they
55 are removed and whenever the number shall equal the number of
56 voters entered on the pollbook minus the number of provisional
57 ballots, as determined according to subsection (a) of this section,
58 any other ballot found in the ballot box shall be placed in the
59 same envelope with unsigned ballots not counted, without
60 unfolding the same or allowing anyone to examine or know the
61 contents thereof, and the number of excess ballots shall be
62 recorded on the envelope;

63 (4) Each poll clerk shall keep an accurate tally of the votes
64 cast by marking in ink on tally sheets, which shall be provided
65 for the purpose, so as to show the number of votes received by
66 each candidate for each office and for and against each issue on
67 the ballot; and

68 (5) When the reading of the votes is completed, the ballot
69 shall be immediately strung on a thread.

CHAPTER 105

**(S. B. 322 - By Senators Nohe, Boley, Palumbo,
Leonhardt and Trump)**

[Passed March 10, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §3-4A-28 of the Code of West Virginia, 1931, as amended, relating to removing unnecessary requirement of mandatory electronic recount of ballots in recounts.

Be it enacted by the Legislature of West Virginia:

That §3-4A-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-28. Post-election custody and inspection of vote-recording devices and electronic poll books; canvass and recounts.

1 (a) The vote-recording devices, electronic poll books,
2 tabulating programs and standard validation test ballots are to
3 remain sealed during the canvass of the returns of the election,
4 except that the equipment may be opened for the canvass and
5 must be resealed immediately thereafter. During the seven-day
6 period after the completion of the canvass, any candidate or the
7 local chair of a political party may be permitted to examine any
8 of the sealed materials: *Provided*, That a notice of the time and

9 place of the examination shall be posted at the central counting
10 center before and on the hour of nine o'clock in the morning on
11 the day the examination is to occur and all persons entitled to be
12 present at the central counting center may, at their option, be
13 present. Upon completion of the canvass and after the seven-day
14 period has expired, the vote-recording devices, test results and
15 standard validation test ballots are to be sealed for one year:
16 *Provided, however,* That the vote-recording devices, electronic
17 poll books and all tabulating equipment may be released for use
18 in any other lawful election to be held more than ten days after
19 the canvass is completed and any of the electronic voting
20 equipment or electronic poll books discussed in this section may
21 be released for inspection or review by a request of a circuit
22 court or the Supreme Court of Appeals.

23 (b) In canvassing the returns of the election, the board of
24 canvassers shall examine, as required by subsection (d) of this
25 section, all of the vote-recording devices, electronic poll books,
26 the automatic tabulating equipment used in the election and
27 those voter-verified paper ballots generated by direct recording
28 electronic vote machines, shall determine the number of votes
29 cast for each candidate and for and against each question and, by
30 this examination, shall procure the correct returns and ascertain
31 the true results of the election. Any candidate or his or her party
32 representative may be present at the examination.

33 (c) If any qualified individual demands a recount of the votes
34 cast at an election, the voter-verified paper ballot shall be used
35 according to the same rules that are used in the original vote
36 count pursuant to section twenty-seven of this article. For
37 purposes of this subsection, "qualified individual" means a
38 person who is a candidate for office on the ballot or a voter
39 affected by an issue, other than an individual's candidacy, on the
40 ballot.

41 (d) During the canvass, at least three percent of the precincts
42 are to be chosen at random and the voter-verified paper ballots
43 are to be counted manually. Whenever the vote total obtained
44 from the manual count of the voter-verified paper ballots for all
45 votes cast in a randomly selected precinct:

46 (1) Differs by more than one percent from the automated
47 vote tabulation equipment; or

48 (2) Results in a different prevailing candidate or outcome,
49 either passage or defeat, of one or more ballot issues in the
50 randomly selected precincts for any contest or ballot issue, then
51 the discrepancies shall immediately be disclosed to the public
52 and all of the voter-verified paper ballots shall be manually
53 counted. In every case where there is a difference between the
54 vote totals obtained from the automated vote tabulation
55 equipment and the corresponding vote totals obtained from the
56 manual count of the voter-verified paper ballots, the manual
57 count of the voter-verified paper ballots is the vote of record.

CHAPTER 106

(Com. Sub. for S. B. 312 - By Senator Mullins)

[Passed March 14, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §3-8-7 of the Code of West Virginia, 1931, as amended, relating generally to disqualification of nominees for general election due to failure to file campaign finance statements; providing that candidates who fail to file campaign finance statements by the eighty-fourth day before the general election are disqualified; clarifying that a disqualification under this section would create a ballot vacancy and permit the

replacement of a candidate on the ballot; permitting the replacement of a candidate on the ballot; defining terms; and authorizing the Secretary of State to promulgate legislative rules concerning providing written notice to a candidate prior to his or her disqualification.

Be it enacted by the Legislature of West Virginia:

That §3-8-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

1 (a) Any person, candidate, financial agent or treasurer of a
2 political party committee who fails to file a sworn, itemized
3 statement required by this article within the time limitations
4 specified in this article or who willfully files a grossly
5 incomplete or grossly inaccurate statement is guilty of a
6 misdemeanor and, upon conviction thereof, shall be fined not
7 less than \$500 or confined in jail for not more than one year, or
8 both fined and confined. Sixty days after any primary or other
9 election, the Secretary of State, county clerk or municipal
10 recorder, as the case may be, shall give notice of any failure to
11 file a sworn statement or the filing of any grossly incomplete or
12 grossly inaccurate statement by any person, candidate, financial
13 agent or treasurer of a political party committee and forward
14 copies of any grossly incomplete or grossly inaccurate statement
15 to the prosecuting attorney of the county where the person,
16 candidate, financial agent or treasurer resides, is located or has
17 its principal place of business.

18 (b) (1) Any person, candidate, financial agent or treasurer of
19 a political party committee who fails to file a sworn, itemized
20 statement as required in this article or who files a grossly
21 incomplete or grossly inaccurate statement may be assessed a

22 civil penalty by the Secretary of State of \$25 a day for each day
23 after the due date the statement is delinquent, grossly incomplete
24 or grossly inaccurate. Sixty days after any primary or other
25 election, the county clerk shall give notice to the Secretary of
26 State of any failure to file a sworn statement or the filing of any
27 grossly incomplete or grossly inaccurate statement by any
28 person, candidate, financial agent or treasurer of a political party
29 committee and forward copies of such delinquent, incomplete or
30 inaccurate statements to the Secretary of State.

31 (2) A civil penalty assessed pursuant to this section shall be
32 payable to the state of West Virginia and is collectable as
33 authorized by law for the collection of debts.

34 (3) The Secretary of State may negotiate and enter into
35 settlement agreements for the payment of civil penalties assessed
36 as a result of the filing of a delinquent, grossly incomplete or
37 inaccurate statement.

38 (4) The Secretary of State and county clerk may review and
39 audit any sworn statement required to be filed pursuant to this
40 article. The State Election Commission shall propose legislative
41 rules for promulgation, in accordance with chapter twenty-nine-a
42 of this code, to establish procedures for the assessment of civil
43 penalties as provided in this section.

44 (c) (1) Any candidate, whether nominated by primary
45 election or appointed by executive committee or executive
46 committee chair, who has failed to file any sworn statement as
47 required by this article, relating to the immediately preceding
48 primary election for any office by the eighty-fourth day before
49 the general election, is disqualified and may not have his or her
50 name appear on the general election ballot. The provisions of
51 subsection (d), section five-b of this article notwithstanding, any
52 sworn statement filed after the deadline required by section five
53 of this article must be received in the office indicated by
54 subsection (a), section five-b of this article by the close of
55 business on the eighty-fourth day before the general election.

56 (2) It is unlawful to issue a commission or certificate of
57 election, or to administer the oath of office, to any person elected
58 to any public office who has failed to file any sworn statement
59 required by this article and no person may enter upon the duties
60 of his or her office until he or she has filed such statement, nor
61 may he or she receive any salary or emolument for any period
62 prior to the filing of the statement.

63 (3) The vacancy on the ballot created by the disqualification
64 in this subsection is subject to section nineteen, article five,
65 chapter three of this code.

66 (d) As used in this section, “grossly” means substantive and
67 material, and specifically includes false or misleading
68 representations and acts of omissions.

69 (e) The Secretary of State shall provide by rule protocols for
70 written notice via certified mail, return receipt requested, to the
71 person, candidate, financial agent or treasurer of a political party
72 committee that is not in compliance with the requirements of this
73 section. With respect to a violation of subsection (c) of this
74 section, the notice shall be provided sixty days after any primary
75 or other election.

CHAPTER 107

(Com. Sub. for H. B. 2157 - By Delegate Lane)

[Passed March 3, 2015; in effect ninety days from passage.]

[Approved by the Governor on March 11, 2015.]

AN ACT to amend and reenact §3-9-19 of the Code of West Virginia, 1931, as amended, relating to establishing that fraud associated with absent voters' ballots is a felony; and establishing the penalties for fraud associated with absent voters' ballots.

Be it enacted by the Legislature of West Virginia:

That §3-9-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-19. Violations concerning absent voters' ballots; penalties.

1 (a) Any person who, with the intent to commit fraud,
2 obtains, removes, or disseminates an absent voters' ballot,
3 intimidates an absent voter, or completes or alters an absent
4 voters' ballot, is guilty of a felony and, upon conviction thereof,
5 shall be fined not less than \$10,000 nor more than \$20,000,
6 imprisoned in a state correctional facility for not less than one
7 nor more than five years, or both fined and imprisoned.

8 (b) Notwithstanding subsection (a) of this section, any
9 person who, having procured an absent voter's official ballot or
10 ballots, shall wilfully neglect or refuse to return the same as
11 provided in article three of this chapter, or who shall otherwise
12 wilfully violate any of the provisions of said article three of this
13 chapter, shall be guilty of a misdemeanor, and, on conviction
14 thereof, shall be fined not more than two hundred and fifty
15 dollars, or confined in the county jail for not more than three
16 months. If the clerk of the circuit court of any county, or any
17 member of the board of ballot commissioners, or any member of
18 the board of canvassers shall refuse or neglect to perform any of
19 the duties required of him by any of the provisions of articles
20 three, five and six of this chapter relating to voting by absentees
21 or shall disclose to any other person or persons how any absent
22 voter voted, he shall, in each instance, be guilty of a
23 misdemeanor, and, upon conviction thereof, shall be fined not
24 more than five hundred dollars, or confined in the county jail for
25 not more than six months.

CHAPTER 108

**(Com. Sub. for S. B. 378 - By Senators Snyder,
Blair, Miller, Kessler, Kirkendoll and Gaunch)**

[Passed February 20, 2015; in effect from passage.]

[Approved by the Governor on March 3, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-3B-6, relating to permitting licensing of any electrician who did not renew his or her electrician's license issued earlier by State Fire Marshal; and renewing license without retesting if earlier license was not revoked and renewal fee is paid for each year lapsed.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §29-3B-6, to read as follows:

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-6. Relicensing without retesting after nonrenewal under certain circumstances.

1 An electrician previously licensed by the State Fire Marshal
2 who did not renew his or her electrician's license may renew the
3 license without retesting within three years of the date of the last
4 renewal: *Provided*, That the electrician's license had not been
5 revoked and that the applicant pays double the current fee if his
6 or her license has been lapsed for two renewal periods, or triple
7 the current fee if his or her license has been lapsed for three
8 renewal periods.