ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 2018
Constitutional Amendments, 2018
First Extraordinary Session, 2018
Second and Third Extraordinary Sessions, 2017

Volume I
Chapters 1 - 116
WEST VIRGINIA HOUSE OF DELEGATES
HONORABLE TIM ARMSTEAD
SPEAKER OF THE HOUSE

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CLERK’S OFFICE LEGISLATIVE GROUP

Bo Hoover
Assistant Clerk/Parliamentarian

Robert Altmann        Lynn Lewis
Anne Landgrebe        Lori Skull

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FOREWORD


Second Regular Session, 2018

The Second Regular Session of the 83rd Legislature convened on January 10, 2018. The Constitutional sixty-day limit on the duration of the session was midnight, March 10, 2018. The Legislature adjourned sine die on March 10, 2018.

Bills totaling 1,778 were introduced in the two houses during the session (1,143 House, of which 513 were carryover bills from the 2017 Regular Session, 635 Senate). The Legislature passed 260 bills, 131 House and 129 Senate.

The Governor vetoed 11 bills (Com. Sub. for H. B. 4009, State Settlement and Recovered Funds Accountability Act; Com. Sub. for H. B. 4166, Establishing a special revenue fund to be known as the "Capital Improvements Fund — Department of Agriculture Facilities"; Com. Sub. for H. B. 4199, Permitting a nursing home to use trained individuals to administer medication; Com. Sub. for H. B. 4392, Relating to Medicaid subrogation liens of the Department of Health and Human Resources; Com. Sub. for S. B. 141, Expanding county assessment and collection of head tax on breeding cows; Com. Sub. for S. B. 313, Waiving occupational fees and licensing requirements for certain low-income individuals, military families, and young workers; S. B. 322, Relating to employees of Department of Agriculture; S. B. 343, Limiting expenses in preparing list for notice to redeem; Com. Sub. for S. B. 392, Reconfiguring membership of Emergency Medical Services Advisory Council; Com. Sub. for S. B. 434, Specifying documents not subject to discovery in certain proceedings; and Com. Sub. for S. B. 442, Establishing universal forms and deadlines when submitting prior authorization electronically). Four bills became law without the Governor’s signature (Com. Sub. for H. B. 3004, Relating to filling vacancies in certain offices; Com. Sub. for H. B. 4186, Relating generally to guaranteed asset protection waivers; Com. Sub. for S. B. 415,
Permitting wagering on certain professional or collegiate sports events authorized as WV Lottery sports wagering activities; and Com. Sub. for S. B. 500, Authorizing City of White Sulphur Springs to expend principal and interest from special interest-bearing fund), leaving a net total of 249 bills, 127 House and 122 Senate, which became law.

There were 187 Concurrent Resolutions introduced during the session, 117 House and 70 Senate, of which 32 House and 22 Senate were adopted. Thirty House Joint Resolutions and 12 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, of which 2 were adopted, Com. Sub. for S. J. R. 3, Judicial Budget Oversight Amendment, and Com. Sub. for S. J. R. 12, No Constitutional Right to Abortion Amendment. The House introduced 14 House Resolutions and the Senate introduced 72 Senate Resolutions, of which 8 House and 69 Senate were adopted.

2018 First Extraordinary Session

The Proclamation calling the Legislature into Extraordinary Session on May 20, 2018, contained 9 items for consideration.

The Legislature introduced 17 bills during the Extraordinary Session, 9 House Bills, and 8 Senate Bills. The Legislature passed 8 bills, 4 House and 4 Senate.

The Legislature completed the business of the session and adjourned sine die on May 21, 2018.

2017 Second Extraordinary Session

The Proclamation, as amended, calling the Legislature into Extraordinary Session on October 16, 2017, contained 7 items for consideration.

The Legislature introduced 11 bills during the Extraordinary Session, 5 House Bills and 6 Senate Bills.

One concurrent resolution was adopted, S. C. R. 201, Authorizing adjournments of Senate and House of Delegates. The Senate adopted two Senate Resolutions.
The Legislature passed 6 bills, 3 House and 3 Senate.

The House adjourned *sine die* on October 17, 2017, and the Senate adjourned *sine die*, ending the Second Extraordinary Session, on January 8, 2018.

**2017 Third Extraordinary Session**

The Proclamation, calling the Legislature into Extraordinary Session on December 4, 2017, contained 3 items for consideration.

One concurrent resolution was adopted, **S. C. R. 301**, Providing for issuance of bonds under Roads to Prosperity Amendment of 2017, and the Legislature passed **S. B. 3001**, Authorizing sale of bonds pursuant to Roads to Prosperity Amendment of 2017.

The Legislature completed the business of the session and adjourned *sine die* that same day.

**STEPHEN J. HARRISON**

*Clerk of the House and Keeper of the Rolls.*
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<td>Espinosa, Paul (R)</td>
<td>66th</td>
<td>Charles Town</td>
</tr>
<tr>
<td>Evans, Allen V. (R)</td>
<td>54th</td>
<td>Petersburg</td>
</tr>
<tr>
<td>Evans, Ed (D)</td>
<td>26th</td>
<td>Welch</td>
</tr>
<tr>
<td>Fast, Tom (R)</td>
<td>32nd</td>
<td>Fayetteville</td>
</tr>
<tr>
<td>Ferro, Michael T. (D)</td>
<td>4th</td>
<td>McMechen</td>
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<tr>
<td>Fleischauer, Barbara Evans (D)</td>
<td>51st</td>
<td>Morgantown</td>
</tr>
<tr>
<td>Fluharty, Shawn (D)</td>
<td>3rd</td>
<td>Wheeling</td>
</tr>
<tr>
<td>Folk, Michael (R)</td>
<td>63rd</td>
<td>Martinsburg</td>
</tr>
<tr>
<td>Foster, Geoff (R)</td>
<td>15th</td>
<td>Winfield</td>
</tr>
<tr>
<td>Frich, Cindy (R)</td>
<td>51st</td>
<td>Morgantown</td>
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<tr>
<td>Gearheart, Marty (R)</td>
<td>27th</td>
<td>Bluefield</td>
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<tr>
<td>Graves, Dianna (R)</td>
<td>38th</td>
<td>Cross Lanes</td>
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<tr>
<td>Hamilton, Bill (R)</td>
<td>45th</td>
<td>Buckhannon</td>
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<tr>
<td>Hamrick, Danny (R)</td>
<td>49th</td>
<td>Lost Creek</td>
</tr>
<tr>
<td>Hanshaw, Roger (R)</td>
<td>33rd</td>
<td>Wallback</td>
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<td>Harshbarger, Jason (R)</td>
<td>7th</td>
<td>Pullman</td>
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<tr>
<td>Hartman, William G. (D)</td>
<td>43rd</td>
<td>Elkins</td>
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<td>Hicks, Kenneth P. (D)</td>
<td>19th</td>
<td>Kenova</td>
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<td>Higginbotham, Joshua (R)</td>
<td>13th</td>
<td>Poca</td>
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<tr>
<td>Hill, Jordan C. (R)</td>
<td>41st</td>
<td>Summersville</td>
</tr>
<tr>
<td>Hollen, Ray (R)</td>
<td>9th</td>
<td>Elizabeth</td>
</tr>
<tr>
<td>Hornbuckle, Sean (D)</td>
<td>16th</td>
<td>Huntington</td>
</tr>
</tbody>
</table>
MEMBERS OF THE HOUSE OF DELEGATES - Continued

Householder, Eric L. (R) .................. 64th .......... Martinsburg .............. Small Business Owner/Plumber .............................. 80th - 83rd
Howell, Gary G. (R) ..................... 56th .......... Keyser .................. Small Business Owner/Contractor .................... 80th - 83rd

Iaquinta II, Richard J. (D) ............. 48th .......... Clarksburg .............. Teacher/Coach ........................................... 76th - 81st; 83rd
Isner, Phil (D) ............................. 43rd .......... Elkins .................. Attorney .................................................. 83rd

Jennings, D. “Buck” Rolland (R) .... 53rd .......... Thornton .............. Self-Employed .............................................. 83rd
Kelly, John R. (R) .......................... 10th .......... Parkersburg .............. Retired, Chemical Industry ....................... 75th - 83rd
Kessinger, Kayla (R) .............. 32nd .......... Mount Hope .............. Director of Human Resources ...................... 82nd - 83rd
Lanen, Charlotte R. (R) ................. 35th .......... Charleston .............. Lawyer .................................................. 64th; 67th; 70th; 73rd
Longstreth, Linda (D) .......................... 50th .......... Fairmont .............. Administrator/Teacher .......................... 71st - 83rd
Love, Shirley (D) ..................... 32nd .......... Oak Hill .................. Retired Sheriff ............................................... 83rd

Marcum, Justin (R) ..................... 20th .......... Williamsburg .............. Attorney .................................................. 83rd
Martin, Patrick S. (R) .................... 46th .......... Weston .............. Business Owner ...................................... 83rd
Maynard, Zach (R) ...................... 22nd .......... Harts .................. Self-Employed .............................................. 83rd
McGeachan, Pat (R) ..................... 1st .......... Chester .............. Business Owner ........................................... 79th - 83rd
Miley, Timothy D. (D) .............. 24th .......... Bridgeport .............. Attorney .................................................. 77th - 83rd
Miller, Carol (R) ..................... 16th .......... Huntington .............. Small Business Owner .................................. 82nd - 83rd
Miller, Rodney (D) ...................... 24th .......... Madison .............. Retired Sheriff ................................................. 83rd
Moye, Rick D. (R) ...................... 29th .......... Crab Orchard .............. Business Owner ...................................... 83rd

Nelson, Eric Jr. (R) ..................... 35th .......... Charleston .............. Businessman ............................................. 80th - 83rd

Overington, John (R) .............. 62nd .......... Martinsburg .............. Public Relations/Former Educator ...................... 67th - 83rd

Pack, Jeffrey (R) ............. 28th .......... Cool Ridge .......... Pest Control Technician/Former Educator .............. 83rd
Paynter, Tony (R) .................... 25th .......... Hanover .............. Truck Driver .................................................. 83rd
Pfeifert, Dave (D) ..................... 5th .......... Clarksburg .............. Educator/Attorney ........................................... 83rd
Phillips, Rupert Jr. (R) .......... 24th .......... Lorado .................. Sales Manager/Financial Officer ....................... 80th - 83rd

Pushkin, Mike (D) ..................... 37th .......... Charleston .............. Taxi Driver/Musician/AXI .................................. 82nd - 83rd
Pyles, Rod (R) ............................. 51st .......... Morgantown .............. Retired Sheriff .................................................. 83rd

Queen, Ben (R) ..................... 48th .......... Bridgeport .............. Media Entrepreneur/Photographer ..................... 83rd

Robinson, Andrew (D) .............. 36th .......... Charleston .............. Real Estate Appraiser/Broker/Former Educator .............. 83rd
Rodighiero, Ralph (D) ................. 24th .......... Logan .............. UPS Driver .................................................. 78th - 80th; 82nd - 83rd
Rohrbach, Matthew (R) ................. 17th .......... Huntington .............. Retired Physician ........................................... 82nd - 83rd
Romine, Chuck (R) .................... 16th .......... Huntington .............. Retired Insurance Agent/Former Educator ...................... 59th - 61st; 74th - 83rd
Rowan, Ruth (R) .................. 57th .......... Points .................. Retired Teacher ................................................. 77th - 83rd
Rowe, Larry L. (D) .................. 36th .......... Charleston .............. Attorney .................................................. 73rd - 74th (House)

Shott, John (R) ...................... 27th .......... Bluefield .............. Attorney .................................................. 79th (Resigned and Appointed 81st - 83rd (House)

Sohonya, Kelli (R) ..................... 18th .......... Barboursville .............. Realtor .................................................. 76th - 83rd
Sponaugle, Isaac (D) .................. 55th .......... Franklin .............. Attorney .................................................. 81st - 83rd
Stauffer, Joe (R) ..................... 51st .......... Core .................. Retired Sheriff .................................................. 82nd - 83rd
Storch, Ericka (R) ..................... 3rd .......... Wheeling .............. Financial Officer ............................................... 80th - 83rd
Summers, Amy (R) ................... 49th .......... Flemington .............. Registered Nurse ........................................... 82nd - 83rd
Sypolt, Terri Funk (R) ................. 52nd .......... Kingwood .............. Assessor .................................................. 83rd

Thompson, Robert (D) ............. 65th .......... Charleston .............. Teacher .................................................. 83rd

Upson, J.R. (R) ...................... 65th .......... Charles Town .............. Former Retail Manager/Attorney .......................... 82nd - 83rd
Wagner, Danny (R) .................... 47th .......... Philippi .............. Retired Educator/Coach ........................................... 82nd - 83rd

Walters, Ron (R) ..................... 39th .......... Charleston .............. Insurance Executive/President ...................... 71st - 73rd; 75th - 83rd

White, Brad (R) ..................... 36th .......... Charleston .............. Insurance Agent ...................................... 82nd - 83rd
Williams, John (D) .................. 51st .......... Morgantown .............. Insurance Agent ...................................... 83rd
Wilson, S. Marshall (R) ........... 60th .......... Gerrardstown .............. Author/Army Official ........................................... 83rd

Zatezalo, Mark (R) .................... 1st .......... Weirton .............. Hydrogeologist ............................................. 82nd - 83rd

[XXXVI]
MEMBERS OF THE HOUSE OF DELEGATES - Continued

1 Sergeant-at-Arms Marshall Clay resigned April 1, 2018, and Anne Lieberman was elected on May 21, 2018.

2 Appointed February 12, 2018, to fill the unexpired term of Karen “Lynne” Arvon, who was appointed to the Senate January 23, 2018.


4 Appointed October 10, 2017, to fill the unexpired term of Tony Lewis, who died September 24, 2017.

5 Appointed January 10, 2018, to fill the unexpired term of John O’Neal, who resigned December 22, 2017.

6 Ron Walters resigned March 9, 2018.

### ROSTER ADDENDUM

(Other Delegates who served during part of period covered by this publication)

<table>
<thead>
<tr>
<th>Name</th>
<th>District</th>
<th>City</th>
<th>Occupation</th>
<th>Sessions Served</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baldwin, Stephen Jr. (D)</td>
<td>42nd</td>
<td>Ronceverte</td>
<td>Minister</td>
<td>83rd, resigned October 16, 2017 due to appointment to the Senate. Served in the House during the 2nd Extraordinary Session, 2017.</td>
</tr>
</tbody>
</table>
MEMBERS OF THE SENATE

REGULAR SESSION, 2018

OFFICERS

President: Mitch Carmichael – Ripley
Clerk: Lee Cassiss1 – Charleston
Sergeant-at-Arms: Andrew Palmer – Charleston
Doorkeeper: Jeffrey Branham – Cross Lanes

<table>
<thead>
<tr>
<th>Name</th>
<th>District</th>
<th>City</th>
<th>Occupation</th>
<th>Legislative Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arvon, Karen “Lynne” (R)</td>
<td>9th</td>
<td>Beckley</td>
<td>Medical Sales/Social Services</td>
<td>81st – 83rd (House); Appt. to Senate 1/23, 2018</td>
</tr>
<tr>
<td>Azinger, Mike (R)</td>
<td>3rd</td>
<td>Vienna</td>
<td>Manager, Contractor Group</td>
<td>82nd (House); 83rd</td>
</tr>
<tr>
<td>Baldwin, Jr, Stephen (D)</td>
<td>10th</td>
<td>Ronnevert</td>
<td>Minister</td>
<td>83rd (House); Appt. to Senate 10/16/2017, 83rd</td>
</tr>
<tr>
<td>Beach, Bob (D)</td>
<td>13th</td>
<td>Morgantown</td>
<td>Appt. 5/1998, 73rd; 75th – 79th (House); 80th – 83rd</td>
<td></td>
</tr>
<tr>
<td>Blair, Craig (R)</td>
<td>15th</td>
<td>Martinsburg</td>
<td>Businessman</td>
<td>76th – 79th (House); 79th – 83rd</td>
</tr>
<tr>
<td>Boley, Donna (R)</td>
<td>3rd</td>
<td>St. Marys</td>
<td>Retired</td>
<td>Appt. 5/14/1985 67th; 68th – 83rd</td>
</tr>
<tr>
<td>Boso, Greg (R)</td>
<td>11th</td>
<td>Summersville</td>
<td>Civil Engineer</td>
<td>82nd – 83rd</td>
</tr>
<tr>
<td>Carmichael, Mitch (R)</td>
<td>4th</td>
<td>Ripley</td>
<td>Director of Commercial Sales</td>
<td>75th – 80th (House); 81st – 83rd</td>
</tr>
<tr>
<td>Clements, Charles H. (R)</td>
<td>2nd</td>
<td>New Martinsville</td>
<td></td>
<td>Appt. 1/23, 2018, 83rd</td>
</tr>
<tr>
<td>Cline, Sue (R)</td>
<td>9th</td>
<td>Brenton</td>
<td>Real Estate Agent</td>
<td>Appt. 1/2016, 82nd; 83rd</td>
</tr>
<tr>
<td>Drennan, Mark A. (R)</td>
<td>4th</td>
<td>Hurricane</td>
<td>Exec. Director of WV Behavioral Providers Association</td>
<td>Appt. 9/5/2017, 83rd</td>
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<tr>
<td>Facemire, Doug (D)</td>
<td>12th</td>
<td>Sutton</td>
<td>Owner, Grocery Chain</td>
<td>79th – 83rd</td>
</tr>
<tr>
<td>Ferns, Ryan (R)</td>
<td>1st</td>
<td>Wheeling</td>
<td>Physical Therapist</td>
<td>80th – 81st (House); 83rd</td>
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<tr>
<td>Gauch, Ed (R)</td>
<td>8th</td>
<td>Charleston</td>
<td>Retired/Former President/ Insurance</td>
<td>82nd – 83rd</td>
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<tr>
<td>Jeffries, Glenn (D)</td>
<td>8th</td>
<td>Red House</td>
<td>Businessman</td>
<td>83rd</td>
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<tr>
<td>Karnes, Robert (R)</td>
<td>11th</td>
<td>Tallmansville</td>
<td>Information and Technology Field Services</td>
<td>82nd – 83rd</td>
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<tr>
<td>Mann, Kenny (R)</td>
<td>10th</td>
<td>Ballard</td>
<td>Funeral Director</td>
<td>83rd</td>
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<tr>
<td>Maroney, Mike (R)</td>
<td>2nd</td>
<td>Glen Dale</td>
<td>Physician</td>
<td>83rd</td>
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<tr>
<td>Maynard, Mark (R)</td>
<td>6th</td>
<td>Genoa</td>
<td>Automobile Dealer</td>
<td>82nd – 83rd</td>
</tr>
<tr>
<td>Ojeda, Richard II (D)</td>
<td>7th</td>
<td>Holden</td>
<td>Retired US Army/JROTC Instructor</td>
<td>83rd</td>
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<tr>
<td>Palumbo, Corey (D)</td>
<td>17th</td>
<td>Charleston</td>
<td>Attorney</td>
<td>76th – 78th (House); 79th – 83rd</td>
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<tr>
<td>Plymale, Robert (D)</td>
<td>5th</td>
<td>Huntington</td>
<td>Businessman</td>
<td>71st – 83rd</td>
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<tr>
<td>Prezioso, Roman (D)</td>
<td>13th</td>
<td>Fairmont</td>
<td>Administrator</td>
<td>69th – 73rd (House); 73rd – 83rd</td>
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<tr>
<td>Romano, Mike (D)</td>
<td>12th</td>
<td>Clarksburg</td>
<td>Attorney/CPA</td>
<td>82nd – 83rd</td>
</tr>
<tr>
<td>Rucker, Patricia (R)</td>
<td>16th</td>
<td>Harpers Ferry</td>
<td>Home Schooling Mother</td>
<td>83rd</td>
</tr>
<tr>
<td>Smith, Randy (R)</td>
<td>14th</td>
<td>Davis</td>
<td>Coal Miner</td>
<td>81st – 82nd (House); 83rd</td>
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<tr>
<td>Stollings, Ron (D)</td>
<td>7th</td>
<td>Madison</td>
<td>Physician</td>
<td>78th – 83rd</td>
</tr>
<tr>
<td>Swope, Chandler (R)</td>
<td>6th</td>
<td>Bluefield</td>
<td>Retired</td>
<td>83rd</td>
</tr>
<tr>
<td>Syropy, Dave (R)</td>
<td>14th</td>
<td>Kingwood</td>
<td>Professional Land Surveyor</td>
<td>78th – 83rd</td>
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<tr>
<td>Takubo, Tom (R)</td>
<td>17th</td>
<td>South Charleston</td>
<td></td>
<td>82nd – 83rd</td>
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<tr>
<td>Trump, Charles (R)</td>
<td>15th</td>
<td>Berkeley Springs</td>
<td></td>
<td>71st – 78th (House); 82nd – 83rd</td>
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<tr>
<td>Unger, John II (D)</td>
<td>16th</td>
<td>Martinsburg</td>
<td>Businessman/Economic Development</td>
<td>74th – 83rd</td>
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<tr>
<td>Weld, Ryan (R)</td>
<td>1st</td>
<td>Wellsburg</td>
<td>Physical Therapist</td>
<td>82nd – 83rd</td>
</tr>
<tr>
<td>Woelfel, Mike (D)</td>
<td>5th</td>
<td>Huntington</td>
<td>Lawyer</td>
<td>82nd – 83rd</td>
</tr>
</tbody>
</table>

1 Appointed January 6, 2018, to fill the vacancy created by the resignation of the Honorable Clark Barnes, who resigned January 5, 2017, and elected on January 8, 2018, as the 22nd Clerk of the Senate.
2 Appointed January 23, 2018, to fill the vacancy created by the resignation of Jeff Mullens, who resigned on January 12, 2018.
3 Appointed October 16, 2017, to fill the vacancy created by the resignation of Ronald Miller, who resigned September 30, 2017.
4 Appointed September 5, 2017, to fill the vacancy created by the resignation of Mike Hall, who resigned on August 20, 2017.

[XXXVIII]

STANDING

AGRICULTURE AND NATURAL RESOURCES

A. Evans (Chair, Agriculture), Hamilton (Chair, Natural Resources), R. Romine (Vice Chair, Agriculture), Ambler (Vice Chair, Natural Resources), Sponaugle (Minority Chair, Agriculture), Rodighiero (Minority Chair, Natural Resources), Thompson (Minority Vice Chair, Agriculture), Hicks (Minority Vice Chair, Natural Resources), Anderson, Atkinson, Cooper, Folk, Hanshaw, Harshbarger, C. Miller, Moore, Overington, Statler, Summers, Wagner, Brewer, Campbell, Eldridge, Love and Lynch.

BANKING AND INSURANCE

Frich (Chair, Banking), Westfall (Chair, Insurance), White (Vice Chair, Insurance), Upson (Vice Chair, Banking), Marcum (Minority Chair, Banking), Hartman (Minority Chair, Insurance), Lovejoy (Minority Vice Chair, Banking), Robinson (Minority Vice Chair, Insurance), Adkins, Capito, Criss, Deem, A. Evans, Householder, Martin, McGeehan, Nelson, C. Romine, Shott, Walters, Bates, Iaquinta, Isner, Rowe and Sponaugle.

EDUCATION

Espinosa (Chair), Statler (Vice Chair), Moye (Minority Chair), Hornbuckle (Minority Vice Chair), Atkinson, Blair, Cooper, Dean, Folk, Higginbotham, Kelly, Rohrbach, R. Romine, Rowan, Upson, Wagner, Westfall, Wilson, Campbell, E. Evans, Hicks, Pyles, Rodighiero, Rowe and Thompson.
ENERGY

Anderson (Chair), Kelly (Vice Chair, Oil and Gas), Zatezalo (Vice Chair, Coal), Pethtel (Minority Chair), Eldridge (Minority Vice Chair), Hamilton, Harshbarger, Higginbotham, Kessinger, Martin, Maynard, Paynter, Phillips, R. Romine, Statler, Storch, Sypolt, Upson, Ward, Boggs, Caputo, Hicks, Lynch, Marcum and Miley.

ENROLLED BILLS (JOINT)

Hanshaw (Chair), Westfall (Vice Chair), Lane, Marcum and Pushkin.

FINANCE

Nelson (Chair), Householder (Vice Chair), Boggs (Minority Chair), Bates (Minority Vice Chair), Ambler, Anderson, Butler, Cowles, Ellington, Espinosa, A. Evans, Frich, Gearheart, Hamilton, C. Miller, Storch, Walters, Westfall, Barrett, Hartman, Longstreth, Moye, Pethtel, Rowe and Sponaugle.

FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES

Statler (Chair), Maynard (Vice Chair), R. Miller (Minority Chair), Lovejoy (Minority Vice Chair), Cooper, Deem, Jennings, Sypolt, Ward, Love and Sponaugle.

GOVERNMENT ORGANIZATION

Howell (Chair), Hamrick (Vice Chair), Ferro (Minority Chair), Diserio (Minority Vice Chair), Adkins, Criss, Graves, Hill, Jennings, Martin, Maynard, McGeehan, Pack, Paynter, C. Romine, Sypolt, Ward, Brewer, Caputo, Eldridge, Iaquinta, Lynch, Marcum, Pyles and Williams.
HOUSE OF DELEGATES COMMITTEES

HEALTH AND HUMAN RESOURCES

Ellington (Chair), Summers (Vice Chair), Longstreth (Minority Chair), Pushkin (Minority Vice Chair), Atkinson, Butler, Cooper, Criss, Dean, Frich, Hill, Hollen, Householder, Queen, Rohrbach, Rowan, Sobonya, White, Bates, Campbell, Fleischauer, Iaquinta, Love, Robinson and Rodighiero.

INDUSTRY AND LABOR

Fast (Chair), Foster (Vice Chair), Brewer (Minority Chair), Isner (Minority Vice Chair), Blair, Cowles, Dean, Ellington, Harshbarger, Hill, Householder, Jennings, Overington, Shott, Sobonya, Statler, Ward, White, Caputo, Diserio, Ferro, Fluharty, Hicks, R. Miller and Pushkin.

INTERSTATE COOPERATION

Storch (Chair), Hamrick (Vice Chair), Ellington, Higginbotham, R. Romine, Barrett and Ferro.

JUDICIARY

Shott (Chair), Hanshaw (Vice Chair), Fleischauer (Minority Chair), Fluharty (Minority Vice Chair), Capito, Deem, Fast, Foster, Harshbarger, Hollen, Kessinger, Lane, Moore, Overington, Queen, Sobonya, Summers, Zatezalo, Byrd, Canestraro, Isner, Lovejoy, R. Miller, Pushkin and Robinson.

PENSIONS AND RETIREMENT

Hamilton (Vice Chair), Anderson, Hollen, Storch, Walters, E. Evans and Pethtel.

POLITICAL SUBDIVISIONS

Storch (Chair), Blair (Vice Chair), R. Miller (Minority Chair), Williams (Minority Vice Chair), Anderson, Cowles, Folk, Foster, Gearheart, Graves, Hamrick, Hanshaw, Householder, Jennings, Lane,
HOUSE OF DELEGATES COMMITTEES

Rohrbach, Summers, Barrett, Byrd, Canestraro, Longstreth, Moye, Pyles, Robinson and Rowe.

PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

Ellington (Chair), Kessinger (Vice Chair), Frich, Hollen Sobonya, Storch, Upson, Bates, Boggs, Campbell and Hornbuckle.

ROADS AND TRANSPORTATION

Gearheart (Chair), Capito (Vice Chair), Caputo (Minority Chair), E. Evans (Minority Vice Chair), Ambler, Butler, Criss, Dean, Espinosa, Fast, Hamrick, Howell, Lane, Maynard, Paynter, Phillips, Rohrbach, Statler, Wagner, Boggs, Canestraro, Diserio, Hartman, Moye and Williams.

RULE MAKING REVIEW (JOINT)

Sobonya (Cochair), Frich (Vice Cochair), Hanshaw, Fleischauer and Rowe.

RULES

Armstead (Chair), Anderson, Cowles, Ellington, Espinosa, Foster, Hanshaw, Howell, C. Miller, Nelson, Overington, Shott, Sobonya, Boggs, Caputo, Ferro, Fleischauer, Miley, Moye and Pethtel.

SENIOR CITIZEN ISSUES

Rowan (Chair), Rohrbach (Vice Chair), Lynch (Minority Chair), Pyles (Minority Vice Chair), A. Evans, Graves, Kelly, Martin, Maynard, Paynter, Queen, C. Romine, R. Romine, Sypolt, Walters, White, Zatezalo, Boggs, Eldridge, Ferro, Fleischauer, Love, Lovejoy, Moye and Pethtel.

[XLIII]
HOUSE OF DELEGATES COMMITTEES

SMALL BUSINESS ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

Hill (Chair), Atkinson (Vice Chair), Rowe (Minority Chair), Barrett (Minority Vice Chair), Blair, Espinosa, Higginbotham, Kelly, Kessinger, Martin, C. Miller, Moore, Pack, Phillips, Queen, Storch, Ward, Westfall, Zatezalo, Bates, Byrd, Marcum, Miley, Sponaugle and Thompson.

VETERANS’ AFFAIRS AND HOMELAND SECURITY

Butler (Chair, Homeland Security), Cooper (Chair, Veterans’ Affairs), McGeehan (Vice Chair, Homeland Security), Wagner (Vice Chair, Veterans’ Affairs), Byrd (Minority Chair, Homeland Security), Iaquinta (Minority Chair, Veterans’ Affairs), Baldwin (Minority Vice Chair, Homeland Security), Canestraro (Minority Vice Chair, Veterans’ Affairs), Higginbotham, Hollen, Howell, Kelly, Kessinger, Pack, Paynter, Rowan, Sypolt, Upson, Campbell, Ferro, Fleischauer, Jennings, Longstreth, Lynch and Pushkin.
SENATE COMMITTEES

COMMITTEES OF THE SENATE
Regular Session, 2018

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

Sypolt (Chair), Rucker (Vice Chair), Clements, Cline, Mann, Maynard, Smith, Baldwin, Beach, Ojeda and Woelfel.

BANKING AND INSURANCE

Azinger (Chair), Clements (Vice Chair), Drennan, Mann, Maroney, Swope, Sypolt, Weld, Facemire, Palumbo, Prezioso, Romano and Woelfel.

CONFIRMATIONS

Boley (Chair), Ferns (Vice Chair), Azinger, Blair, Boso, Gaunch, Palumbo, Plymale and Prezioso.

ECONOMIC DEVELOPMENT

Maroney (Chair), Maynard (Vice Chair), Arvon, Cline, Drennan, Mann, Smith, Swope, Takubo, Baldwin, Jeffries, Romano, Stollings and Woelfel.

EDUCATION

Mann (Chair), Karnes (Vice Chair), Azinger, Boley, Cline, Drennan, Rucker, Swope, Trump, Beach, Plymale, Romano, Stollings and Unger.

ENERGY, INDUSTRY AND MINING

Smith (Chair), Sypolt (Vice Chair), Blair, Boley, Cline, Drennan, Ferns, Mann, Swope, Facemire, Jeffries, Ojeda and Woelfel.

[XLV]
SENATE COMMITTEES

ENROLLED BILLS (JOINT)

Maynard *(Chair)*, Azinger, Gauch, Palumbo and Prezioso.

FINANCE

Blair *(Chair)*, Boso *(Vice Chair)*, Arvon, Boley, Drennan, Ferns, Gauch, Mann, Maroney, Sypolt, Takubo, Facemire, Palumbo, Plymale, Prezioso, Stollings and Unger.

GOVERNMENT ORGANIZATION

Gauch *(Chair)*, Maynard *(Vice Chair)*, Boso, Clements, Maroney, Smith, Sypolt, Takubo, Weld, Baldwin, Facemire, Jeffries, Palumbo and Woelfel.

HEALTH AND HUMAN RESOURCES

Takubo *(Chair)*, Maroney *(Vice Chair)*, Arvon, Azinger, Clements, Karnes, Rucker, Weld, Palumbo, Plymale, Prezioso, Stollings and Unger.

INTERSTATE COOPERATION

Cline *(Chair)*, Azinger *(Vice Chair)*, Maroney, Maynard, Sypolt, Palumbo and Unger.

JUDICIARY

Trump *(Chair)*, Weld *(Vice Chair)*, Azinger, Clements, Cline, Ferns, Karnes, Maynard, Rucker, Smith, Swope, Baldwin, Beach, Jeffries, Ojeda, Romano and Woelfel.

MILITARY

Weld *(Chair)*, Boley *(Vice Chair)*, Azinger, Clements, Cline, Sypolt, Facemire, Ojeda and Palumbo.

[XLVI]
SENATE COMMITTEES

NATURAL RESOURCES

Maynard (Chair), Mann (Vice Chair), Cline, Karnes, Mann, Rucker, Smith, Sypolt, Takubo, Beach, Facemire, Prezioso, Stollings and Woelfel.

PENSIONS

Karnes (Chair), Gaunch (Vice Chair), Arvon, Maroney, Weld, Plymale and Romano.

RULE-MAKING REVIEW (JOINT)

Maynard (Cochair), Weld (Vice Cochair), Karnes, Sypolt, Jeffries, Miller and Carmichael (ex officio).

RULES

Carmichael (Chair), Blair, Boley, Ferns, Gaunch, Sypolt, Trump, Palumbo, Plymale, Prezioso and Stollings.

TAX REFORM

Karnes (Chair), Blair (Vice Chair), Boso, Ferns, Gaunch, Jeffries and Plymale.

TRANSPORTATION AND INFRASTRUCTURE

Boso (Chair), Swope (Vice Chair), Gaunch, Maroney, Maynard, Rucker, Beach, Jeffries and Plymale.

WORKFORCE

Swope (Chair), Weld (Vice Chair), Arvon, Boso, Karnes, Rucker, Smith, Beach, Jeffries, Ojeda and Stollings.
AN ACT to amend and reenact §55-7C-3 of the Code of West Virginia, 1931, as amended, relating to liability for qualified directors of volunteer organizations and entities; and providing that a qualified director is not personally liable for the torts of a volunteer organization or entity, or the torts of the agents or employees of a volunteer organization or entity, unless he or she approved of, ratified, directed, sanctioned, or participated in the wrongful acts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7C. IMMUNITY FROM CIVIL LIABILITY FOR QUALIFIED DIRECTORS OF CERTAIN GOVERNMENTAL AND NONPROFIT ENTITIES.

§55-7C-3. Limited civil liability of qualified directors.

    (a) Notwithstanding any other provision of this code, a qualified director is not personally liable for negligence, either through act or omission, or whether actual or imputed, in the performance of managerial functions performed on behalf of a volunteer organization or entity: Provided, That this section shall not exempt a qualified director from
liability when he or she is found to be grossly negligent in the performance of his or her duties.

(b) Notwithstanding any other provision of this code to the contrary, a qualified director is not personally liable for the torts of a volunteer organization or entity, or the torts of the agents or employees of a volunteer organization or entity, unless he or she approved of, ratified, directed, sanctioned, or participated in the wrongful acts.

c) Nothing in this section relieves a volunteer organization or entity from imputed liability for the negligent acts of a qualified director committed within the scope of the qualified director’s duties. Nothing in this article shall be construed as a grant of immunity to any person who, through his or her operation of a motor vehicle, causes any injury or damage to another person.

CHAPTER 2

(S. B. 576 - By Senators Gaunch, Palumbo, Ferns, Trump and Plymale)

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]
the amount of certain circuit clerk filing fees; and correcting cross-references.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.

§29-12D-1a. Additional funding for Patient Injury Compensation Fund; assessment on licensed physicians; assessment on hospitals; assessment on certain awards.

(a) Annual assessment on licensed physicians. —

(1) The Board of Medicine and the Board of Osteopathic Medicine shall collect a biennial assessment in the amount of $125 from every physician licensed by each board for the privilege of practicing medicine in this state. The assessment is to be imposed and collected on forms prescribed by each licensing board. The assessment shall be collected as part of licensure or license renewal beginning July 1, 2016, for licenses issued or renewed through December 31, 2021: Provided, That the following physicians shall be exempt from the assessment:

(A) A resident physician who is a graduate of a medical school or college of osteopathic medicine enrolled and who is participating in an accredited full-time program of post-graduate medical education in this state;

(B) A physician who has presented suitable proof that he or she is on active duty in the armed forces of the United States and who will not be reimbursed by the armed forces for the assessment;

(C) A physician who practices solely under a special volunteer medical license authorized by §30-3-10a or §30-14-12b of this code;
(D) A physician who holds an inactive license pursuant to §30-3-12(j) or §30-14-10 of this code, or a physician who voluntarily surrenders his or her license: *Provided*, that a retired osteopathic physician who submits to the Board of Osteopathic Medicine an affidavit asserting that he or she receives no monetary remuneration for any medical services provided, executed under the penalty of perjury and if executed outside the State of West Virginia, verified, may be considered to be licensed on an inactive basis: *Provided, however*, that if a physician or osteopathic physician elects to resume an active license to practice in the state and the physician or osteopathic physician has not paid the assessments during his or her inactive status, then as a condition of receiving an active status license, the physician or osteopathic physician shall pay the assessment due in the year in which physicians or the osteopathic physician resumes an active license; and

(E) A physician who practices less than 40 hours a year providing medical genetic services to patients within this state.

(2) The entire proceeds of the annual assessment collected pursuant to §29-12D-1a(a) of this code shall be dedicated to the Patient Injury Compensation Fund. The Board of Medicine and the Board of Osteopathic Medicine shall promptly pay over to the Board of Risk and Insurance Management all amounts collected pursuant to this subsection for deposit in the fund.

(3) Notwithstanding any provision of the code to the contrary, a physician required to pay the annual assessment who fails to do so shall not be granted a license or renewal of an existing license by the Board of Medicine or the Board of Osteopathic Medicine. Any license which expires as a result of a failure to pay the required assessment shall not be reinstated or reactivated until the assessment is paid in full.
(b) **Assessment on trauma centers.** — The Board of Risk and Insurance Management shall levy an assessment of $25 for each trauma patient treated at a health care facility designated by the Office of Emergency Medical Services as a trauma center, as reported to the West Virginia Trauma Registry, from January 1, 2016, through June 30, 2021. The assessment is due June 30 following each calendar year for which assessments are levied: **Provided,** That the assessment for the period January 1, 2021, through June 30, 2021, shall be due by December 31, 2021.

(c) **Assessment on claims filed under the Medical Professional Liability Act.** — From July 1, 2016, through December 31, 2021, an assessment of one percent of the gross amount of any settlement or judgment in a qualifying claim shall be levied.

(1) For purposes of this subsection, a qualifying claim is any claim for which a screening certificate of merit is required, or for which a statement setting forth the basis of the alleged liability of the health care provider is allowed in lieu of the screening certificate of merit, as defined in §55-7B-6 of this code.

(2) For any assessment levied pursuant to this subsection for which a judgment is entered by a court, the date of the entry of judgment shall be used to determine applicability of this provision. The defendant or defendants shall remit the assessment to the clerk of the court in which the qualified claim was filed. The clerk of the court shall then remit the assessment monthly to the State Treasury to be deposited in the fund.

(3) For any assessment levied pursuant to this subsection on a settlement entered into by the parties, the date on which the agreement is formalized in writing by the parties shall be used to determine applicability of this provision. At the time that an action alleging a qualified claim is dismissed by the parties, the assessment shall be remitted by the plaintiff or his or her counsel to the clerk of
the court, who shall then remit the assessment to the State Treasury to be deposited in the fund. Collected assessments shall be remitted no less often than monthly. If a qualifying claim is settled prior to the filing of an action, the claimant, or his or her counsel, shall remit the payment to the Board of Risk and Insurance Management within 60 days of the date of the settlement agreement to be paid into the fund.

(d) Annual Report; transfer of fund balance. — The requirements of this section shall terminate on the dates set forth in this section or sooner if the liability of the Patient Injury Compensation Fund has been paid or has been funded in its entirety. The Board of Risk and Insurance Management shall submit a report to the Joint Committee of Government and Finance each year beginning January 1, 2018, giving recommendations based on actuarial analysis of the fund’s liability. The recommendations shall include, but not be limited to, discontinuance of the assessments provided for in this section, closure of the fund and transfer of the fund’s liability. Any funds remaining in the fund on June 30, 2022, and determined by the Board of Risk and Insurance Management to not be necessary for claim payments or administrative costs of the fund, shall be transferred to the General Revenue Fund.

CHAPTER 59. FEES, ALLOWANCES, AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for services rendered by the clerk the following fees which shall be paid in advance by the parties for whom services are to be rendered:

(1) Except as provided in §59-1-11(a)(2) and §59-1-11(a)(3) of this code, for instituting any civil action under the Rules of Civil Procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of
civil appeals or removals of civil cases from magistrate
court, or any other action, cause, suit or proceeding, $200,
of which $30 shall be deposited in the Courthouse Facilities
Improvement Fund created by §29-26-6 of this code and
$45 shall be deposited in the special revenue account
designated the Fund for Civil Legal Services for Low
Income Persons, established by §59-1-10(c)(4)(B) of this
code, and $20 deposited in the special revenue account
created in §48-26-603 of this code to provide legal services
for domestic violence victims;

(2) For instituting an action for medical professional
liability, $400, of which $10 shall be deposited in the
Courthouse Facilities Improvement Fund created by §29-
26-6 of this code: Provided, That after December 31, 2021,
the filing fee for instituting an action for medical
professional liability shall be $280, of which $10 shall be
deposited in the Courthouse Facilities Improvement Fund
created by §29-26-6 of this code;

(3) Beginning on and after July 1, 1999, for instituting
an action for divorce, separate maintenance, or annulment,
$135;

(4) For petitioning for the modification of an order
involving child custody, child visitation, child support, or
spousal support, $85;

(5) For petitioning for an expedited modification of a
child support order, $35;

(6) For filing any pleading that includes a counterclaim,
cross claim, third-party complaint, or motion to intervene,
$200, which shall be deposited in the special revenue
account designated the Fund for Civil Legal Services for
Low Income Persons, established by §59-1-10(c)(4)(B) of
this code: Provided, That this subdivision and the fee it
imposes does not apply in family court cases nor may more
than one such fee be imposed on any one party in any one
civil action; and
(7) Except for civil actions within the jurisdiction of family courts, for each defendant or respondent named in the initial pleading upon the institution of a civil action in which there are two or more named defendants, and for each additional defendant, respondent, or third-party defendant subsequently named in a pleading filed in the civil action, $15, payable upon the institution of the civil action or upon the filing of the initial pleading that names the additional defendant, respondent, or third-party defendant, of which $10 shall be deposited in the general fund of the county in which the office of the circuit clerk is located, and $5 shall be deposited in the State Police Forensic Laboratory Fund, established under §15-2-24d of this code: Provided, That for purposes of this subdivision, “defendant or respondent named” does not include those defendants or respondents identified as “John/Jane Doe”.

(b) In addition to the foregoing fees, the following fees shall be charged and collected:

(1) For preparing an abstract of judgment, $5;

(2) For a transcript, copy, or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, $1;

(3) For issuing a suggestion and serving notice to the debtor by certified mail, $25;

(4) For issuing an execution, $25;

(5) For issuing or renewing a suggestee execution and serving notice to the debtor by certified mail, $25;

(6) For vacation or modification of a suggestee execution, $1;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate court, $3;
For arranging the papers in a certified question, writ of error, appeal, or removal to any other court, $10, of which $5 shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code;

For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, 50 cents;

For additional service, plaintiff or appellant, where any case remains on the docket longer than three years, for each additional year or part year, $20; and

For administering funds deposited into a federally insured interest-bearing account or interest-bearing instrument pursuant to a court order, $50, to be collected from the party making the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.

(c) In addition to the foregoing fees, a fee for the actual amount of the postage and express may be charged and collected for sending decrees, orders, or records that have not been ordered by the court to be sent by mail or express.

(d) The clerk shall tax the following fees for services in a criminal case against a defendant convicted in such court:

(1) In the case of a misdemeanor, $85; and

(2) In the case of a felony, $105, of which $10 shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code.

(e) The clerk of a circuit court shall charge and collect a fee of $25 per bond for services rendered by the clerk for processing of criminal bonds and the fee shall be paid at the time of issuance by the person or entity set forth below:

(1) For cash bonds, the fee shall be paid by the person tendering cash as bond;
(2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of the real estate serving as surety;

(3) For recognizance bonds secured by a surety company, the fee shall be paid by the surety company;

(4) For 10 percent recognizance bonds with surety, the fee shall be paid by the person serving as surety; and

(5) For 10 percent recognizance bonds without surety, the fee shall be paid by the person tendering 10 percent of the bail amount.

In instances in which the total of the bond is posted by more than one bond instrument, the above fee shall be collected at the time of issuance of each bond instrument processed by the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code. Nothing in this subsection authorizes the clerk to collect the above fee from any person for the processing of a personal recognizance bond.

(f) The clerk of a circuit court shall charge and collect a fee of $10 for services rendered by the clerk for processing of bail piece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code.

(g) No clerk is required to handle or accept for disbursement any fees, costs, or amounts of any other officer or party not payable into the county treasury except on written order of the court or in compliance with the provisions of law governing such fees, costs, or accounts.

(h) Fees for removal of civil cases from magistrate court shall be collected by the magistrate court when the case is still properly before the magistrate court. The magistrate
court clerk shall forward the fees collected to the circuit court clerk.

§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.

(a) Except for those payments to be made from amounts equaling filing fees received for the institution of divorce actions as prescribed in §59-1-28a(b) of this code, and except for those payments to be made from amounts equaling filing fees received for the institution of actions for divorce, separate maintenance, and annulment as prescribed in §59-1-28a(b) of this code, for each civil action instituted under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit, or proceeding in the circuit court the clerk of the court shall, at the end of each month, pay into the funds or accounts described in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the action as follows:

(1) Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury established pursuant to the provisions of §31-20-10 of this code the amount of $60;

(2) Into the Court Security Fund in the State Treasury established pursuant to the provisions of §51-3-14 of this code the amount of $5; and

(3) Into the Regional Jail Operations Partial Reimbursement Fund established pursuant to the provisions of §31-20-10b of this code the amount of $20.

(b) For each action for divorce, separate maintenance, or annulment instituted in the circuit court, the clerk of the court shall, at the end of each month, report to the Supreme Court of Appeals the number of actions filed by persons unable to pay and pay into the funds or accounts in this subsection an amount equal to the amount set forth in this
subsection of every filing fee received for instituting the
divorce action as follows:

(1) Into the Regional Jail and Correctional Facility
Authority Fund in the State Treasury established pursuant to
the provisions of §31-20-10 of this code the amount of $10;

(2) Into the special revenue account of the State Treasury
established pursuant to §48-2-604 of this code an amount of
$30;

(3) Into the Family Court Fund established under §51-
2A-22 of this code an amount of $70; and

(4) Into the Court Security Fund in the State Treasury
established pursuant to the provisions of §51-3-14 of this
code the amount of $5.

(c) Notwithstanding any provision of §59-1-28a(a) or
§59-1-28a(b) of this code to the contrary, the clerk of the
court shall, at the end of each month, pay into the Family
Court Fund established under §51-2A-22 of this code an
amount equal to the amount of every fee received for
petitioning for the modification of an order involving child
custody, child visitation, child support, or spousal support as
determined by §59-1-11(a)(4) of this code and for petitioning
for an expedited modification of a child support order as
provided in §59-1-11(a)(5) of this code.

(d) The clerk of the court from which a protective order
is issued shall, at the end of each month, pay into the Family
Court Fund established under §51-2A-22 of this code an
amount equal to every fee received pursuant to the provisions
of §48-27-508 of this code.

(e) Of every fee for service received in any criminal case
against any respondent convicted in circuit court, the clerk of
each circuit court shall, at the end of each month, pay into the
Regional Jail and Correctional Facility Authority Fund in the
State Treasury an amount equal to $40, into the Court
Security Fund in the State Treasury established pursuant to
the provisions of §51-3-14 of this code an amount equal to
§5, and into the Regional Jail Operations Partial Reimbursement Fund established pursuant to the provisions of §31-20-10b of this code an amount equal to $30.

(f) The clerk of the circuit court shall, at the end of each month, pay into the Patient Injury Compensation Fund established under §29-12D-1 et seq. of this code, an amount equal to $285 of every filing fee received for instituting a medical professional liability action: Provided, That the payments into the Patient Injury Compensation Fund required by this subsection shall cease following payment by the clerk based on filing fees received through December 31, 2021.

(g) The clerk of the circuit court shall, at the end of each month, pay into the Courthouse Facilities Improvement Fund created by §29-26-6 of this code those amounts received by the clerk which are dedicated for deposit in the fund.

(h) The clerk of each circuit court shall, at the end of each month, pay into the Regional Jail Operations Partial Reimbursement Fund established in the State Treasury pursuant to the provisions of §31-20-10b of this code those amounts received by the clerk which are dedicated for deposit in the fund.

CHAPTER 3

(Com. Sub. for H. B. 4013 - By Delegates Hanshaw, C. Miller, Overington, Graves, Westfall, Anderson, Frich, Cooper, Atkinson, R. Romine and Hollen)

[Passed March 10, 2018; in effect ninety days from passage.] [Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §6-9A-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §14-2-2a
of said code; and to amend and reenact §56-1-1 of said code, all relating to venue in West Virginia state courts; providing that the circuit court in the county where the public agency regularly meets is a proper venue for certain claims; providing that any civil action in which the governing board of any state institution of higher education or any state institution of higher education is made a party defendant shall be brought in the circuit court of the county wherein the cause of action arose, unless otherwise agreed upon; providing that nonresidents may not bring actions in the courts of this state unless all or a substantial part of the acts or omissions giving rise to the claim occurred in the state; providing an effective date; providing that nonresidents may file actions in the state courts if they cannot otherwise obtain jurisdiction in the state where the action arose, unless barred by the statute of limitations in the state the action arose; requiring the filing of an affidavit; providing that the provisions do not apply to actions filed against West Virginia citizens, residents, corporations, or other corporate entities; providing that each plaintiff must establish venue; providing that persons may not intervene or join in a pending action as plaintiff unless they independently establish venue; providing that courts shall dismiss claims without prejudice if venue is not proper as to a nonresident plaintiff; providing that venue is proper as to other defendants if venue is proper as to one defendant with respect to all actions arising out of the same transaction or occurrence; providing a definition of “nonresident”; and providing exceptions for members of the armed forces of the United States and students of any college or university of this state.

Be it enacted by the Legislature of West Virginia:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.
The circuit court in the county where the public agency regularly meets has jurisdiction and is a proper venue to enforce this article upon civil action commenced by any citizen of this state within 120 days after the action complained of was taken or the decision complained of was made. Where the action seeks injunctive relief, no bond may be required unless the petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

The court is empowered to compel compliance or enjoin noncompliance with the provisions of this article and to annul a decision made in violation of this article. An injunction may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article: Provided, That no bond issue that has been passed or approved by any governing body in this state may be annulled under this section if notice of the meeting at which the bond issue was finally considered was given at least 10 days prior to the meeting by a Class I legal advertisement published in accordance with the provisions of §59-3-1 et seq. of this code in a qualified newspaper having a general circulation in the geographic area represented by that governing body.

In addition to or in conjunction with any other acts or omissions which may be determined to be in violation of this article, it is a violation of this article for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action.

Any order which compels compliance or enjoins noncompliance with the provisions of this article, or which annuls a decision made in violation of this article shall include findings of fact and conclusions of law and shall be recorded in the minutes of the governing body.
CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-2a. Venue for suits and actions involving state institutions of higher education.

(a) Notwithstanding the provisions of §14-2-2 of this code, any civil action in which the governing board of any state institution of higher education, any state institution of higher education, or any department or office of any of those entities, or any officer, employee, agent, intern or resident of any of those entities, acting within the scope of his or her employment, is made a party defendant, shall be brought in the circuit court of any county wherein the cause of action arose, unless otherwise agreed by the parties.

(b) The exclusive venue provisions of this section are not applicable to:

(1) An action involving an entity or person named in subsection (a) of this section as garnishee or suggestee; and

(2) A proceeding for injunctive or mandamus relief involving the taking, title, or collection for or prevention of damage to real property, and where general laws or court rules provide that proper venue is in the county in which the real property affected is situate.

(c) This section applies only to proceedings not prohibited by the constitutional immunity of the state from suit under section thirty-five, article VI of the Constitution of the State.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 1. VENUE.

§56-1-1. Venue generally.

(a) Any civil action or other proceeding, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:
(1) Wherein any of the defendants may reside or the cause of action arose, except that an action of ejectment or unlawful detainer must be brought in the county wherein the land sought to be recovered, or some part thereof, is;

(2) If a corporation or other corporate entity is a defendant, wherein its principal office is or wherein its mayor, president or other chief officer resides; or if its principal office be not in this state, and its mayor, president or other chief officer do not reside therein, wherein it does business; or if it is a corporation or other corporate entity organized under the laws of this state which has its principal office located outside of this state and which has no office or place of business within the state, the circuit court of the county in which the plaintiff resides or the circuit court of the county in which the seat of state government is located has jurisdiction of all actions at law or suits in equity against the corporation or other corporate entity, where the cause of action arose in this state or grew out of the rights of stockholders with respect to corporate management;

(3) If it is to recover land or subject it to a debt, where the land or any part may be;

(4) If it is against one or more nonresidents of the state, where any one of them may be found and served with process or may have estate or debts due him, her, or them;

(5) If it is to recover a loss under any policy of insurance upon either property, life or health or against injury to a person, where the property insured was situated either at the date of the policy or at the time when the right of action accrued or the person insured had a legal residence at the date of his or her death or at the time when the right of action accrued;

(6) If it is on behalf of the state in the name of the Attorney General or otherwise, where the seat of government is; or
(7) If a judge of a circuit is interested in a case which, but for such interest, would be proper for the jurisdiction of his or her court, the action or suit may be brought in any county in an adjoining circuit.

(b) Whenever a civil action or proceeding is brought in the county where the cause of action arose under the provisions of subsection (a) of this section, if no defendant resides in the county, a defendant to the action or proceeding may move the court before which the action is pending for a change of venue to a county where one or more of the defendants resides and upon a showing by the moving defendant that the county to which the proposed change of venue would be made would better afford convenience to the parties litigant and the witnesses likely to be called, and if the ends of justice would be better served by the change of venue, the court may grant the motion.

(c) For all civil actions filed on or after July 1, 2018, a nonresident of the state may not bring an action in a court of this state unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in this state: Provided, That unless barred by the statute of limitations or otherwise time barred in the state where the action arose, a nonresident of this state may file an action in state court in this state if the nonresident cannot obtain jurisdiction in either federal or state court against the defendant in the state where the action arose. A nonresident bringing such an action in this state shall be required to establish, by filing an affidavit with the complaint for consideration by the court, that the action cannot be maintained in the state where the action arose due to lack of any legal basis to obtain personal jurisdiction over the defendant: Provided, however, That the provisions of this subsection do not apply to civil actions filed against West Virginia citizens, residents, corporations, or other corporate entities.

In a civil action where more than one plaintiff is joined, each plaintiff must independently establish proper venue. A person may not intervene or join in a pending civil action as
a plaintiff unless the person independently establishes proper venue. If venue is not proper as to any such nonresident plaintiff in any court of this state, the court shall dismiss the claims of such plaintiff without prejudice to refile in a court in any other state or jurisdiction. When venue is proper as to one defendant, it is also proper as to any other defendant with respect to all actions arising out of the same transaction or occurrence.

For purposes of this subsection, “nonresident” means any person, whether a citizen of this state or another state, who was domiciled outside the State of West Virginia at the time of the acts or omissions giving rise to the claim asserted: Provided, That a member of the armed forces of the United States who is stationed beyond the territorial limits of this state, but who was a resident of this state at the time of his or her entry into such service, and any full-time student of any college or university of this state, even though he or she is paying nonresident tuition, is considered a resident under this subsection.

CHAPTER 4

(Com. Sub. for H. B. 4187 - By Delegates Foster, Graves, Butler, Summers, Zatezalo, R. Miller, Barrett, Isner, Hollen and Blair)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2018.]

AN ACT to amend and reenact §61-7-14 of the Code of West Virginia, 1931, as amended, relating to creating the “Business Liability Protection Act”; providing definitions; prohibiting owners, lessees, or other persons charged with the care,
custody, and control of real property from prohibiting any customer, employee, or invitee from possessing a legal owned firearm under certain circumstances; prohibiting owners, lessees, or other persons charged with the care, custody, and control of real property from violating certain privacy rights of a customer, employee, or invitee; providing that no employer may condition employment under certain circumstances; providing that no owner, lessee, or other person charged with the care, custody, and control of real property may prevent a customer, employee, or invitee from entering the parking lot because the motor vehicle contains a legal firearm; providing immunity and limitations of liability; providing that the Attorney General is authorized to enforce the such provisions; providing customers, employees, and invitees with a civil cause of action; and providing forms of relief and civil penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

This section may be referred to as “The Business Liability Protection Act”.

(a) As used in this section:

(1) “Parking lot” means any property that is used for parking motor vehicles and is available to customers, employees, or invitees for temporary or long-term parking or storage of motor vehicles: Provided, That for purposes of this section, parking lot does not include the private parking area at a business located at the primary residence of the property owner.

(2) “Motor vehicle” means any privately-owned automobile, truck, minivan, sports utility vehicle, motor home, recreational vehicle, motorcycle, motor scooter, or
any other vehicle operated on the roads of this state and, which is required to be registered under state law: Provided, That for purposes of this section, motor vehicle does not mean vehicles owned, rented, or leased by an employer and used by the employee in the course of employment.

(3) “Employee” means any person, who is over 18 years of age, not prohibited from possessing firearms by the provisions of this code or federal law; and

(A) Works for salary, wages, or other remuneration;

(B) Is an independent contractor; or

(C) Is a volunteer, intern, or other similar individual for an employer.

(4) “Employer” means any business that is a sole proprietorship, partnership, corporation, limited liability company, professional association, cooperative, joint venture, trust, firm, institution, association, or public-sector entity, that has employees.

(5) “Invitee” means any business invitee, including a customer or visitor, who is lawfully on the premises of a public or private employer.

(6) “Locked inside or locked to” means;

(A) The vehicle is locked; or

(B) The firearm is in a locked trunk, glove box, or other interior compartment; or

(C) The firearm is in a locked container securely fixed to the vehicle; or

(D) The firearm is secured and locked to the vehicle itself by the use of some form of attachment and lock.

(b) Notwithstanding the provisions of this article, any owner, lessee or other person charged with the care,
custody, and control of real property may prohibit the carrying openly or concealing of any firearm or deadly weapon on property under his or her domain: Provided, That for purposes of this section “person” means an individual or any entity which may acquire title to real property: Provided, however, That for purposes of this section “natural person” means an individual human being.

(c) Any natural person carrying or possessing a firearm or other deadly weapon on the property of another who refuses to temporarily relinquish possession of the firearm or other deadly weapon, upon being requested to do so, or to leave the premises, while in possession of the firearm or other deadly weapon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than six months, or both: Provided, That the provisions of this section do not apply to a natural person as set forth in §61-7-6(a)(5) through §61-7-6(a)(7) and §61-7-6(a)(9) through §61-7-6(a)(10) of this code while acting in his or her official capacity or to a natural person as set forth in §61-7-6(b)(1) through §61-7-6(b)(8) of this code, while acting in his or her official capacity: Provided, however, That under no circumstances, except as provided for by the provisions of §61-7-11a(b)(2)(A) through (I) of this code, may any natural person possess or carry or cause the possession or carrying of any firearm or other deadly weapon on the premises of any primary or secondary educational facility in this state unless the natural person is a law-enforcement officer or he or she has the express written permission of the county school superintendent.

(d) Prohibited acts. – Notwithstanding the provisions of subsections (b) and (c) of this section:

(1) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit any customer, employee, or invitee from possessing any legally owned firearm, when the firearm is:

(A) Lawfully possessed;
(B) Out of view;

(C) Locked inside or locked to a motor vehicle in a parking lot; and

(D) When the customer, employee, or invitee is lawfully allowed to be present in that area.

(2) No owner, lessee, or other person charged with the care, custody, and control of real property may violate the privacy rights of a customer, employee, or invitee either:

(A) By verbal or written inquiry, regarding the presence or absence of a firearm locked inside or locked to a motor vehicle in a parking lot; or

(B) By conducting an actual search of a motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle: Provided, That a search of a motor vehicle in a parking lot to ascertain the presence of a firearm within that motor vehicle may only be conducted by on-duty, law enforcement personnel, in accordance with statutory and constitutional protections.

(C) No owner, lessee, or other person charged with the care, custody, and control of real property may take any action against a customer, employee, or invitee based upon verbal or written statements of any party concerning possession of a firearm stored inside a motor vehicle in a parking lot for lawful purposes, except upon statements made pertaining to unlawful purposes or threats of unlawful actions involving a firearm made in violation of §61-6-24 of this code.

(3) No employer may condition employment upon either:

(A) The fact that an employee or prospective employee holds or does not hold a license issued pursuant to §61-7-4 or §61-7-4a of this code; or
(B) An agreement with an employee or a prospective employee prohibiting that natural person from keeping a legal firearm locked inside or locked to a motor vehicle in a parking lot when the firearm is kept for lawful purposes.

(4) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit or attempt to prevent any customer, employee, or invitee from entering the parking lot of the person’s place of business because the customer’s, employee’s, or invitee’s motor vehicle contains a legal firearm being carried for lawful purposes that is out of view within the customer’s, employee’s, or invitee’s motor vehicle.

(e) Limitations on duty of care; immunity from civil liability. —

(1) When subject to the provisions of subsection (d) of this section, an employer, owner, lessee, or other person charged with the care, custody, and control of real property has no duty of care related to the acts prohibited under said subsection.

(2) An employer, owner, lessee, or other person charged with the care, custody, and control of real property is not liable in a civil action for money damages based upon any actions or inactions taken in compliance with subsection (d) of this section. The immunity provided in this subdivision does not extend to civil actions based on actions or inactions of employers, owners, lessees, or other persons charged with the care, custody, and control of real property unrelated to subsection (d) of this section.

(3) Nothing contained in this section may be interpreted to expand any existing duty or create any additional duty on the part of an employer, owner, lessee, or other person charged with the care, custody, and control of real property.
(f) **Enforcement.** – The Attorney General is authorized to enforce the provisions of subsection (d) of this section and may bring an action seeking either:

1. Injunctive or other appropriate equitable relief to protect the exercise or enjoyment of the rights secured in subsection (d) of any customer, employee, or invitee;

2. Civil penalties of no more than $5,000 for each violation of subsection (d) and all costs and attorney’s fees associated with bringing the action; or

3. Both the equitable relief and civil penalties described in subdivisions (1) and (2) of this section, including costs and attorney’s fees. This action must be brought in the name of the state and instituted in the Circuit Court of Kanawha County. The Attorney General may negotiate a settlement with any alleged violator in the course of his or her enforcement of subsection (d) of this section.

4. Notwithstanding any other provision in this section to the contrary, the authority granted to the Attorney General in this subsection does not affect the right of a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section to bring an action for violation of the rights protected under this section in his or her own name and instituted in the circuit court for the county where the alleged violator resides, has a principal place of business, or where the alleged violation occurred. In any successful action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court may award injunctive or other appropriate equitable relief and civil penalties as set forth in subdivisions one, two and three of this subsection. In any action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court shall award all court costs and attorney’s fees to the prevailing party.
CHAPTER 5

(Com. Sub. for H. B. 4242 - By Delegates Shott and Hanshaw)

[Passed February 16, 2018; in effect ninety days from passage.]
[Approved by the Governor on February 27, 2018.]

AN ACT to amend and reenact §50-4-8 of the Code of West Virginia, 1931, as amended, relating to clarifying the jurisdictional amount for removal of a civil action from magistrate court to circuit court; and providing an exception for landlord-tenant actions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-8. Removal to circuit court.

At any time before trial in a civil action involving less than $5,000 the action may be removed to circuit court upon the concurrence of all parties and upon the payment of the circuit court filing fee. At any time before trial in a civil action involving $5,000 or more, any party may, upon payment of the circuit court filing fee, cause such action to be removed to the circuit court: Provided, That at any time before trial in any action for wrongful occupation or unlawful detainer involving $2,500 or more any party may, upon payment of the circuit court filing fee, cause such action to be removed to circuit court. All appropriate documents shall then be forwarded along with the fee to the clerk of the circuit court. The matter shall then be heard by the circuit court.
CHAPTER 6

(Com. Sub. for H. B. 4603 - By Delegates Lane, Pushkin, Byrd, Capito, Robinson and Rowe)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7K-1 and §55-7K-2, relating to providing immunity from civil liability to certain facilities, including their directors, officers, employees, and agents, providing crisis stabilization and/or drug and alcohol detoxification services, substance use disorder services, and/or drug overdose services on a short-term basis; providing an effective date; and providing that the provisions of this article are to operate in addition to, and not in derogation of, any of the provisions contained in the Medical Professional Liability Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7K. IMMUNITY FROM CIVIL LIABILITY FOR BEHAVIORAL HEALTH FACILITIES AND RESIDENTIAL RECOVERY FACILITIES.

§55-7K-1. Limiting civil liability for certain behavioral health facilities and residential recovery facilities providing crisis stabilization services and/or drug and alcohol detoxification services, substance use disorder services, and/or drug overdose services on a short-term basis.

1 Notwithstanding any other provision of this code, no behavioral health facility that is licensed in this state, another state, or operated by the state, or one of its political subdivisions, and no residential recovery facility
certified by or meeting the standards of a national certifying body, nor any of their directors, officers, employees, and agents shall be liable for injury or civil damages related to the provision of short-term crisis stabilization and/or drug and alcohol detoxification services, substance use disorder services, drug overdose services, and/or withdrawal services to the extent the injury or damages arise from an individual’s refusal of services, election to discontinue services, failure to follow the orders or instructions of a facility, voluntary departure, elopement, or abandonment from a facility, with or without notice to others, so long as the services are offered in good faith, the facility does not require payment from the individual receiving the services, and the injury or damages are not proximately caused by the gross negligence or willful or wanton misconduct of the facility, or its directors, officers, employees, or agents.


(a) The provisions of this article are applicable to all causes of action accruing on or after July 1, 2018.

(b) The provisions of this article operate in addition to, and not in derogation of, any of the provisions contained in §55-7B-1 et seq. of this code.

CHAPTER 7

(Com. Sub. for S. B. 375 - By Senators Sypolt, Rucker, Takubo, Baldwin and Boso)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]
amend said code by adding thereto a new section, designated §19-35-5, all relating to farmers markets; removing local health departments from farmers market vendor permit process; transferring rules and regulations for farmers markets, cottage foods, acidified foods, nonpotentially hazardous foods, and exempted foods from Department of Health and Human Resources to Department of Agriculture; requiring rules to set forth quantity limitations for cottage foods; clarifying consignment farmers markets; defining terms; requiring registration of farmers markets; expanding farmers market vendor permit to permit the sale of cottage foods; establishing fees for farmers market vendor permits; clarifying certain farm and food products require other permits; permitting local health departments to inspect and suspend food establishment permits in certain circumstances; permitting the Department of Agriculture to establish regulations permitting the sampling of certain farm and food products; permitting local health departments to sample and inspect farmers market vendors in certain circumstances; permitting local health departments to invoke cessation of production in certain circumstances; clarifying scope, labeling, and sources of cottage foods; requiring online farmers market sales be delivered in person; permitting home, farm, community, or commercial kitchen to be used by cottage foods vendor as determined by the Department of Agriculture; and clarifying that a farmers market vendor permit is not required to sell nonpotentially hazardous foods and exempted foods.

Be it enacted by the Legislature of West Virginia:

ARTICLE 35. FARMERS MARKETS.


For purposes of this article:

“Consignment farmers market” means a farmers market in which two or more vendors deliver their own farm and food products to a common location maintained by a third
party that markets the vendors’ products and receives a percentage share of the profits from sales, with the individual vendor retaining ownership of the farm and food product until it is sold. A consignment farmers market may be mobile or in a stationary location.

“Department” means the Department of Agriculture.

“Farm and food product” means any agriculture, horticulture, agroforestry, animal husbandry, dairy, livestock, cottage food, beekeeping, or other similar product. Farm and food products are to be properly labeled.

“Farmers market” means:

(1) A traditional farmers market in which two or more vendors gather to sell farm and food products directly to consumers at a fixed location;

(2) An on farm market or farm stand run by an individual producer that sells farm and food products;

(3) An online farmers market in which two or more vendors collectively market farm and food products and retain ownership of those products until they are sold; or

(4) A consignment farmers market as defined herein.

“Farmers market vendor” or “vendor” means a person or entity that sells farm and food products at a farmers market.

§19-35-3. Farmers markets; farmers market vendor permits; fees; scope.

(a) Farmers markets shall register with the department and provide information to the department regarding the farmers market and its vendors.

(b) Vendors at a farmers market selling farm and food products shall apply for a farmers market vendor permit and pay the annual permit fee to the department. The permit is
valid in all counties in this state. A farmers market vendor permit shall be required in lieu of the food establishment permit, notwithstanding any other provisions of code or rule that require a food establishment permit or any other permit from a local health department. The department shall take final action upon all completed permit applications within 30 days of receipt if the application is uncontested, or within 90 days if the application is contested.

(c) The annual farmers market vendor permit fee is $35.

(d) The following vendors are exempt from obtaining a farmers market vendor permit:

(1) Producers delivering their products to a consignment farmers market only; or

(2) Vendors selling fresh, uncut produce.

(e) A consignment farmers market shall obtain a food establishment permit issued by the local health department. Certain farm and food product also require food establishment or other permits to be sold at farmers markets including, but not limited to, meat, poultry, dairy, fish, and sprouted seeds. Notwithstanding the provisions of this article, the local health department in the jurisdiction in which the farmers market is located has the right to inspect and suspend the food establishment permit of a farmers market vendor that sells or serves food for which a food establishment permit is required.

(f) All farmers market vendor permits shall be displayed in a conspicuous manner.

(g) Nothing in this article eliminates or limits other state and federal rules and regulations that apply to certain farm and food products sold at a farmers market or a consignment farmers market.

(h) The department may establish regulations permitting the sampling of certain farm and food products at farmers markets by vendors.
(i) A vendor is subject to food sampling and inspection by the local health department in the jurisdiction in which the farmers market is located if the local health department determines that the vendor’s food product is misbranded pursuant to §19-35-5(c) of this code, or adulterated, or if a consumer complaint has been received: Provided, That all sampling and inspection shall be performed in consultation with the Department of Agriculture.

(j) If the local health department in the jurisdiction in which the farmers market is located has reason to believe that an imminent health hazard exists it may invoke cessation of production until it deems that the hazardous situation has been addressed to the satisfaction of the local health department: Provided, That a local health department that invokes cessation of production under this subsection shall do so in consultation with the Department of Agriculture.


(a) The Department of Agriculture shall propose emergency or legislative rules for approval in accordance with the provisions of §29A-3-1 et seq. of this code for the purposes of implementing this article.

(b) The Department of Agriculture shall consult with the Department of Health and Human Resources and shall consider the guidelines established in the Farmers Market Vendor Guide in promulgating the rules. The rules shall set forth quantity limitations for each type of farm and food product for which a farmers market vendor permit is required pursuant to §19-35-5(d) of this code.

§19-35-5. Cottage foods; acidified foods; non-potentially hazardous foods; other exempted foods.

(a) Notwithstanding any provision of §16-1-1 et seq. of this code or any rules or regulations to the contrary, the department shall regulate cottage foods, acidified foods, nonpotentially hazardous foods and other exempted foods.
(b) Online farmers market sales shall be delivered in person and are not permitted to be shipped. A home, farm, community, or commercial kitchen may be used by a cottage foods vendor, as determined by the department.

(c) All foods for which a farmers market vendor permit is required pursuant to §19-35-5(d) of this code shall be labeled in compliance with the department’s labeling standards and provide information about its content and sources. The label shall include the words “MADE IN A WV ______ KITCHEN” in capital, bold, 10-point type or larger words, with the blank space to state whether the product was made in a home, farm, community, or commercial kitchen.

(d) A farmers market vendor permit is required to sell the following farm and food products at farmers markets: Certain canned acidified foods, including, but not limited to, pickled products, sauces, and salsas. Acidified foods are low-acid foods to which acid or acid foods are added with a water activity of greater than .085 and a finished equilibrium of pH 4.6 or below. The majority of the produce in canned acidified foods shall be sourced from the vendor’s West Virginia farm or garden, and records of the source of the produce shall be maintained.

(e) A farmers market vendor permit is not required to sell the following farm and food products at farmers markets:

1. Nonpotentially hazardous foods, including, but not limited to: Breads, cakes, and candies; honey, tree syrup, apple butter, and molasses; standardized, nondietary jams and jellies; and dehydrated fruits and vegetables; and

2. Other foods that are exempted from certain regulations, including, but not limited to, certain fermented products, certain exempted condiments, commercially harvested mushrooms, and canned, whole, or chopped
tomatoes, tomato sauce, and tomato juice having a finished equilibrium of pH 4.6 or below.

(f) The Department of Agriculture shall consult with the Department of Health and Human Resources to promulgate any rules deemed necessary by the Commissioner of Agriculture to ensure the health, sanitation, and safety of the products produced and sold pursuant to this section.

CHAPTER 8

(Com. Sub. for S. B. 446 - By Senators Rucker, Sypolt, Unger, Trump and Boso)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-36-1, §19-36-2, §19-36-3, §19-36-4, and §19-36-5, all relating to agritourism generally; creating the Agritourism Responsibility Act; making findings; establishing authority and duties of the Commissioner of Agriculture related to agritourism business; authorizing Commissioner of Agriculture, in consultation with the Secretary of Commerce, to promulgate and propose rules; defining terms; establishing duties of agritourism businesses and participants in agritourism activities; immunizing agritourism business, employees, and volunteers associated therewith from certain acts of simple negligence and creating exceptions thereto; requiring notice of certain rights, limitations on liability, and responsibilities of participants in agritourism activities; clarifying that operation of agritourism business does not change status of the facilities and property used for building code and tax purposes; and exempting structures of agritourism business occasionally used for events from building code
requirements for entities engaged in such activities on a full-time basis.

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

**ARTICLE 36. AGRITOURISM RESPONSIBILITY ACT.**

§19-36-1. Legislative purposes; authority.

Every year, in rapidly increasing numbers, residents and nonresidents of the State of West Virginia are enjoying the recreational value of the state’s many agritourism venues. The tourist trade is of vital importance to the State of West Virginia and the services offered by agritourism significantly contribute to the revenue enterprise and economic development of the state. The Legislature recognizes that there are inherent risks in the recreational activities provided by agritourism which should be understood by each participant. It is essentially impossible for agritourism to eliminate these risks. It is the purpose of this article to define those areas of responsibility and affirmative acts for which agritourism is liable for loss, damage, or injury.

The Commissioner of Agriculture is hereby authorized to, and shall devise means of, advancing agritourism in the state, and in the performance of such duty, he or she shall have the authority to call upon any department, division, or officer of the state or county to cooperate with him or her in promoting agritourism in the state.

The Commissioner of Agriculture, in consultation with the Secretary of Commerce, shall promulgate rules in accordance with chapter 29A of this code for the promotion, marketing, and regulation of agritourism business.


Unless the context of usage clearly requires otherwise:

“Agritourism” activity means any lawful activity carried out on a farm or ranch that allows members of the
“Agritourism business” means any person, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group or entity which is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

“Agritourism professional” means owners, operators, employees, and volunteers working for or under the direction of the operators of an agritourism business.

“Farm” or “ranch” means an area of land used for the production, cultivation, growing, harvesting, or processing of agricultural products.

“Inherent risks of agritourism activity” are those dangers or conditions that are part of an agritourism activity including certain hazards, natural conditions of land and terrain, vegetation, and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

“Participant” as used in this article means any person, other than the agritourism professional, who engages in an agritourism activity.

§19-36-3. Duties of agritourism businesses and participants.

(a) An agritourism business, or agritourism business employee or volunteer acting under the direction of the agritourism business operator, is not liable for injury or death of a participant, or loss or damage to a participant’s property, as the result of the inherent risks of agritourism
activities if such agritourism business has posted the notice
in substantially the form as is provided in §19-36-4(b) of
this code.

(b) The provisions of §19-36-3(a) of this code shall not
prevent or in any way limit the liability of an agritourism
business that does any of the following:

(1) Commits an act or omission that constitutes gross
negligence or willful or wanton disregard for the health and
safety of the participant which proximately causes injury,
death, loss, or damage to the participant; or

(2) Commits an intentional act or omission which
proximately causes injury, death, loss, or damage to the
participant.

(c) Any limitation on legal liability afforded by this
section to an agritourism business is in addition to any other
limitations of legal liability otherwise provided by law.

(d) Participants have a duty to act as a reasonably
prudent person when engaging in recreational activities
offered by agritourism businesses in this state.

§19-36-4. Liability of agritourism businesses.

(a) To qualify for the limitation on liability afforded
by §19-36-3 of this code, an agritourism business shall
post and maintain signs that contain the notice specified
in §19-36-4(b) of this code. The sign must be placed in a
clearly visible location at the entrance to the agritourism
location and at the site of the agritourism activity. The
notice must be clearly legible, with each letter to be a
minimum of one inch in height. Every written contract
entered into by an agritourism professional for the
providing of professional services, instruction, or the
rental of equipment to a participant, whether or not the
contract involves agritourism activities on or off the
location or at the site of the agritourism activity, must
contain in clearly legible print the notice specified in §19-36-4(b) of this code.

(b) The signs and contracts described in §19-36-4(a) of this code must contain the following notice:

**NOTICE**

Under West Virginia law, there may be limited liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism business if the injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to landscape, terrain, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity.

(c) Failure to comply with the requirements concerning notices provided in this section will prevent an agritourism business from invoking the privileges of immunity provided by this article.

§19-36-5. Maintenance of property status for certain purposes; exceptions.

(a) Notwithstanding any provision of this code to the contrary, the occurrence of agritourism does not change the nature or use of property that otherwise qualifies as agricultural for building code and property tax classification purposes.

(b) An agritourism business may use certain of its facilities for occasional events without complying with building codes applicable to structures used for such purposes on a full-time basis as long as such facilities are deemed structurally sound and otherwise safe for the intended use.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-16-3a, relating generally to industrial hemp; authorizing the Commissioner of Agriculture to create and administer an industrial hemp seed certification program; authorizing the commissioner to obtain and develop seed varieties for industrial hemp production; permitting holders of an industrial hemp license to obtain a license for the development of industrial hemp varieties for certification; authorizing imposition of a fee to be determined by the commissioner; authorizing emergency rulemaking and requiring legislative rulemaking; and requiring the program be consistent with state and federal law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA SEED LAW.

§19-16-3a. Industrial hemp seed certification program; requirements; fees; rulemaking.

(a) The commissioner may create and administer an industrial hemp seed certification program to obtain and develop varieties of seeds which meet the purposes and provisions of §19-12E-1 et seq. of this code. The program shall be consistent with this article and applicable federal law. This program may include West Virginia landrace cannabis seed varieties. For the purposes of this article,
“West Virginia landrace cannabis seed” means seed from the plant cannabis sativa that possesses characteristics of a unique and specialized cannabis seed variety that is present in West Virginia or has been recognized as produced in West Virginia.

(b) Persons or entities, licensed pursuant to §19-12E-1 et seq. of this code, may obtain a license for the development of industrial hemp varieties for certification. The commissioner may assess a fee, consistent with the provisions of §19-12E-7 of this code, to operate and administer the seed certification program. The fees shall be deposited in the Agricultural Fees Fund established by §19-1-4c of this code.

(c) The commissioner may promulgate emergency rules and shall propose rules for legislative approval pursuant to §29A-3-1 et seq. of this code for the purpose of implementing the provisions of this section.

CHAPTER 10

(Com. Sub. for H. B. 4162 - By Delegates Hanshaw, Ambler, Kessinger, Lynch, Pethtel and Mr. Speaker (Mr. Armstead))

[Passed February 15, 2018; in effect ninety days from passage.] [Approved by the Governor on February 27, 2018.]

AN ACT to amend and reenact §19-21A-4 of the Code of West Virginia, 1931, as amended, relating to the duties and powers conferred upon the State Conservation Committee; granting authority to the State Conservation Committee to contract for services directly related to natural disaster recovery and stream restoration related to flooding, on an as needed basis; permitting the State Conservation Committee to comply with present and future federal aid statutes and regulations.
including execution of contracts or agreements with programs of the United States government and its proper departments, bureaus or agencies relating to natural disaster response, recovery or stream restoration related to flooding; permitting the State Conservation Committee to promulgate emergency and legislative rules to effectuate the provisions as amended during the 2018 regular session of the Legislature; and removing references to outdated and incorrect code citations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-4. State Conservation Committee; continuation.

(a) The State Conservation Committee is continued. It serves as an agency of the state and is to perform the functions conferred upon it in this article. The committee consists of the following ten members:

(1) Four citizen members;

(2) The following ex officio members or his or her designee:

(A) The Director of the state Cooperative Extension Service;

(B) The Director of the state Agricultural and Forestry Experiment Station;

(C) The Secretary of the Department of Environmental Protection;

(D) The State Commissioner of Agriculture, who is the chairperson of the committee;

(E) The Director of the Division of Forestry; and

(F) The President of the West Virginia Association of Conservation Districts.
(b) The Governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

(c) The committee may invite the Secretary of Agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

(d) The committee shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform those acts, hold public hearings and adopt or propose for legislative approval rules necessary for the execution of its functions under this article.

(e) The State Conservation Committee may employ an administrative officer, technical experts and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff shall be known as the West Virginia Conservation Agency. The committee shall determine their qualifications, duties and compensation. The committee may call upon the Attorney General of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees powers and duties it considers proper. The committee may secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee, members of the staff or personnel of the agency or institution of learning and make special reports, surveys or studies required by the committee.
(f) A member of the committee holds office so long as he or she retains the office by virtue of which he or she is serving on the committee. A majority of the committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the committee may receive no compensation for their services on the committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules and orders issued or adopted; and

(3) Provide for an annual audit of the accounts of receipts and disbursements.

(g) In addition to other duties and powers conferred upon the state Conservation Committee, it may:

(1) Offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;

(2) Keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized under this article and facilitate an interchange of advice and experience between the districts and cooperation between them;

(3) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;
(4) Contract for services directly related to natural disaster recovery and stream restoration related to flooding, on an as needed basis;

(5) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with, and cooperation in, programs of the United States government and any of its proper departments, bureaus, or agencies relating to natural disaster response, natural disaster recovery, or stream restoration related to flooding;

(6) Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;

(7) Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;

(8) Accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise from the United States or any of its agencies, from the State of West Virginia or from other sources and use or expend the money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations; and

(9) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate and improve any properties acquired; receive and retain income from the property and to expend the income as required for operation, maintenance, administration or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease or otherwise dispose of any of its property or interests in the property in
123 furtherance of the purposes and the provisions of this article.
124 Money received from the sale of land acquired in the small
125 watershed program shall be deposited in the special account
126 of the state Conservation Committee and expended as
127 provided in this article.

128 (10) To promulgate emergency and legislative rules to
129 effectuate the provisions of this article as amended and
130 reenacted by the Legislature during the 2018 regular session
131 of the Legislature.

132 (11) Upon a Governor’s proclamation declaring a state
133 of emergency or federal disaster declaration, the state
134 committee, its employees or agents may enter any water of
135 the state for the purpose of removing debris and other
136 obstruction which impede water flow and present additional
137 flood hazards. The agency shall make reasonable efforts to
138 secure the permission of the landowner before entering any
139 private property in connection with these removal activities.
140 The exercise of this limited authority does not constitute
141 taking of private property or trespass. This authority shall
142 continue for the duration of the Governor’s proclamation or
143 the federal disaster declaration.

CHAPTER 11

(Com. Sub. for H. B. 4214 - By Delegates Eldridge,
Maynard, Diserio, R. Miller, Campbell, Marcum,
Dean, Phillips, Ambler, Paynter and Cooper)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §19-1A-3a of the Code of West
Virginia, 1931, as amended; and to amend and reenact §61-3-
35 of said code, all relating to increasing penalties for
unlawfully possessing or digging ginseng; requiring ginseng
dealers to maintain a photocopy of a valid identification card of all diggers, growers, and dealers involved in a ginseng transaction; and requiring written consent by the landowner to enter the lands of another to dig or prospect for ginseng.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3a. Providing criminal penalties for the illegal possession of uncertified ginseng.

(a) (1) The Legislature finds that ginseng trade must be controlled in order to protect the survival of wild ginseng as evidenced by its listing in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. It is the policy of this state to regulate the commerce in ginseng in a manner that protects the survival of wild ginseng.

(2) For purposes of this section:

(A) “Certified” means the ginseng carries a certificate of origin issued by the director which allows the export from West Virginia of ginseng legally harvested in this state;

(B) “Commercial use” means to sell or to use ginseng for financial gain;

(C) “Cultivated ginseng” means ginseng that is purposefully planted in beds under artificial shade using standard horticultural practices such as mechanical tillage, fertilization, weed control, irrigation and pesticides;

(D) “Dealer” means a person who purchases ginseng for purposes of commercial use;

(E) “Digger” means a person who digs, collects or gathers wild ginseng by searching woodlands to find the plants;
(F) “Director” means the Director of the Division of Forestry;

(G) “Division” means the Division of Forestry;

(H) “Export” means the movement of ginseng from state to state as well as sending it abroad;

(I) “Ginseng” means whole, sliced or parts of roots of cultivated ginseng, woods grown ginseng, wild simulated ginseng and wild ginseng, excluding manufactured parts, products, and derivatives, such as powders, pills, extracts, tonics, teas and confectionary;

(J) “Green ginseng” means a fresh wild ginseng root that has not been intentionally subjected to a drying process and from which most natural moisture has not been removed by drying;

(K) “Grower” means a person who purposefully plants and grows cultivated ginseng, woods-grown ginseng or wild simulated ginseng for purposes of commercial use: Provided, That a grower does not include a digger who plants wild ginseng seed from the wild ginseng plants he or she digs, collects or gathers;

(L) “Harvest” means to dig, collect or gather ginseng;

(M) “Person” means an individual, corporation, partnership, firm or association;

(N) “Rootlets” means woods-grown or wild simulated one-to-two year old ginseng roots commonly sold as transplants to growers;

(O) “Wild ginseng” means Panax quinquefolius L. that is not grown or nurtured by a person regardless of the putative origin of the plants: Provided, That wild ginseng may originate from seeds planted by a digger at the same site from which the digger harvests the wild ginseng;
(P) "Wild simulated ginseng" means ginseng that is purposefully planted in the woods without a bed being prepared and without the use of any chemical weed, disease or pest control agents;

(Q) "Woods-grown ginseng" means ginseng that is purposefully planted in beds prepared in the woods in a manner that uses trees to provide necessary shade and which may be grown with the use of chemical or mechanical weed, disease or pest control agents.

(3) (A) The Division of Forestry shall regulate the growing, digging, collecting, gathering, possessing and selling of ginseng.

(B) The division may propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to implement the provisions of this section including the amount of any permit fee.

(C) For purposes of regulating the growing, harvesting and commercial use of ginseng, a division employee may enter upon any public or private property, other than a dwelling house, at reasonable times, in order to inspect the ginseng operation or records. A person may not obstruct or hinder the employee in the discharge of his or her enforcement duties.

(D) All moneys received from permit fees and civil penalties assessed pursuant to this section shall be credited to the special account within the Division of Forestry to be used for the purposes set forth in section three of this article.

(E) The site plats required to be submitted to the division and other information identifying the specific location of ginseng plants are not open to public inspection pursuant to §29B-1-1 et seq. of this code since they disclose information having a significant commercial value.

(b) (1) The digging season for wild ginseng begins on September 1, and ends on November 30, of each year. It is
unlawful for a person to dig, collect or gather wild ginseng between December 1, and August 31 of the following year.

(2) A person digging, collecting or gathering wild ginseng upon the enclosed or posted lands of another person shall first obtain written permission from the landowner, tenant or agent, and shall carry the written permission on his or her person while digging, collecting or gathering wild ginseng upon the enclosed or posted lands. It is unlawful to dig, collect or gather wild ginseng from the property of another without the written permission of the landowner.

(3) A person digging, collecting or gathering wild ginseng shall plant the seeds from the wild ginseng plants at the time and at the site from which the wild ginseng is harvested. It is unlawful to remove wild ginseng seeds from the site of collection.

(4) It is unlawful to dig, collect or gather wild ginseng less than five years old.

(5) A person may not rescue wild ginseng plants endangered by ground-disturbing activities unless he or she has first obtained a moving permit from the division. The person shall provide the reason for moving the plants, the current location of the plants, the proposed new planting site and other information required by the division.

(6) It is unlawful to plant ginseng or ginseng seed and to dig, collect or gather ginseng on West Virginia public lands, except by land grant university researchers performing research or demonstration projects regarding the growing, cultivating or harvesting of ginseng: Provided, That it is unlawful for anyone to plant ginseng or ginseng seed and to dig, collect or gather ginseng on state wildlife management areas or on state parks.

(c) (1) A person may not act as a grower unless he or she has obtained a grower’s permit from the division.
(2) Prior to planting cultivated, woods-grown or wild simulated ginseng, a grower shall:

(A) Submit to the director a plat of the exact planting location prepared by a licensed surveyor or a registered forester as defined in §30-19-1 et seq. of this code, along with information verifying the name of the landowner: Provided, That if the grower is not the landowner, the grower shall also submit written permission from the landowner to grow and harvest cultivated, woods-grown or wild simulated ginseng on that property.

(B) Obtain a written determination from the director certifying that the planting area is free from wild ginseng; and

(C) Submit other information required by the division.

(3) A grower shall keep accurate and complete records on each ginseng planting on forms provided by the division. The records shall be available for inspection by a division employee and shall be submitted to the division at intervals established by rule by the division. A grower shall maintain records for a period of not less than ten years. The information required to be kept shall include:

(A) The origin of ginseng seed, rootlets or plants;

(B) The location of purposefully planted cultivated, wild simulated and woods-grown ginseng and a site plat of the planting;

(C) The original of the director’s determination that the site was free from wild ginseng at the time of planting;

(D) The date each site was planted;

(E) The number of pounds of seeds planted, or the number and age of rootlets, or both; and

(F) Other information required by the division.
(4) A grower may harvest cultivated ginseng on or after the effective date of this section throughout the year.

(5) A grower may harvest wild simulated and woods-grown ginseng from September 1, through November 30, of each year.

(6) It is unlawful for a person to dig, collect or gather wild simulated and woods-grown ginseng between December 1 and August 31.

(7) It is unlawful to dig, collect and gather wild simulated and woods-grown ginseng less than five years old.

(8) A grower shall comply with the certification procedures set forth in subdivision (f) of this section.

(9) For planting locations in existence prior to July 1, 2005, provide proof of having purchased ginseng seed, rootlets or plants for planting for a minimum of one or more of the five years immediately prior to July 1, 2005, and sign a certification that to the best of his or her knowledge, no wild ginseng existed on the site at the time the ginseng was planted: Provided, That no grower may certify a planting location in existence prior to July 1, 2005, under this provision after December 31, 2009.

(d) (1) A person may not act as a dealer unless he or she has obtained a dealer’s permit from the division.

(2) A dealer shall keep accurate and complete records on his or her ginseng transactions on forms provided by the division. A dealer is required to maintain a record of all persons, including a digger, grower and dealer, involved in each purchase or sale transaction and shall include the name, address, a photocopy of a valid photo identification card issued by the West Virginia Division of Motor Vehicles, any other state, or the federal government, permit number and a copy of each ginseng certification issued by the division. All records shall be available for inspection by a
division employee. A dealer shall maintain records for a period of not less than ten years. In addition, a dealer is required to report the following information to the division monthly:

(A) The date of the transaction;

(B) The type of ginseng, whether wild, cultivated, woods-grown or wild simulated ginseng;

(C) Whether the ginseng is dried or green at the time of the transaction;

(D) The weight of the ginseng;

(E) The county from which the ginseng was harvested;

(F) The identification number from the state ginseng certification; and

(G) Other information required by the division.

(3) A dealer shall include a West Virginia export certificate, numbered by the division, with each shipment of ginseng transported out-of-state.

(4) A dealer may not import out-of-state ginseng into this state unless the ginseng is accompanied by a valid export certificate issued by the state of origin. A dealer must return uncertified ginseng to the state of origin within fifteen calendar days.

(5) It is unlawful to include false information on any certificate or record required to be completed or maintained by this section. All ginseng harvested in West Virginia must be certified by the director before being transported or shipped out-of-state.

(e) (1) A person may not act as a grower or act as a dealer unless he or she has been issued the appropriate permit by the division. A person must obtain a separate permit for each activity. Permit applications shall be made
on forms provided by the division. The application for a permit shall be accompanied by the applicable permit fee. The division shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested. The division shall assign a permit number to each person granted a permit and it shall keep records of the permits issued.

(2) Permits expire on December 31 of each year for growers and August 31 of each year for dealers. All permits must be renewed annually. Renewal forms will be mailed to current permit holders. The failure to receive a renewal form does not relieve the permit holder of the obligation to renew. The division may require a late fee when renewal is received more than sixty days after the expiration of the current permit.

(3) The permit holder shall notify the division of any changes in the information on the permit.

(f) All ginseng harvested in this state shall be certified as to type, whether wild, cultivated, woods-grown or wild simulated, and to its origin, weight and lawful harvest. Other information may be required for ginseng to be certified by the division to comply with the Convention on International Trade in Endangered Species of Wild Fauna and Flora to allow for its export: Provided, That live one and two-year old cultivated, woods-grown or wild simulated rootlets sold by growers for propagation purposes within the United States are not regarded as harvested and are exempt from the certification requirement. All ginseng, except cultivated ginseng, must be certified or weight receipted by April 1 of the year following harvest: Provided, however, That no ginseng may be certified between January 1 through March 31 unless the person requesting certification displays a valid permit. It is unlawful for a person to have in his or her possession uncertified wild ginseng from April 1 through August 31.
(g) The director shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code designed to implement the ginseng certification process.

(h) The division may, by order entered in accordance with the provisions of §29A-5-1 et seq. of this code, deny, suspend or revoke the permit of a grower or dealer and may invalidate an export certificate completed by a dealer when the division finds that a grower or dealer has violated any provision of this section or a legislatively approved rule.

(i) The division may assess a civil penalty against a person who violates any provision of this section or a provision of a legislatively approved rule. The division may assess a monetary penalty of not less than $500 nor more than $1,000.

(j) Any person violating a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000 for the first offense, and for each subsequent offense, shall be fined not less than $1,000 nor more than $2,000 or confined in jail not more than six months, or both fined and confined. The court, in imposing the sentence of a person convicted of an offense under this section, shall order the person to forfeit all ginseng involved in the offense.

(k) It is the duty of the prosecuting attorney of the county in which the violation occurred to represent the division, to institute proceedings and to prosecute the person charged with the violation.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-35. Digging cultivated ginseng; penalty.

(a) It shall be unlawful for any person to dig cultivated ginseng or prospect for the same, on the lands of another without written consent of the owner or owners thereof first
obtained. The property must be properly posted with “No Trespassing” signs, “Private Property” signs, or other signs that explain to a person to stay off the property. The signs must be of reasonable size to be read by an average person and must be posted at reasonable intervals of at least two hundred feet around the property.

(b) Any person violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000, and, for each subsequent offense, shall be fined not less than $1,000.

CHAPTER 12

(Com. Sub. for S. B. 152 - By Senators Carmichael (Mr. President) and Prezioso) [By Request of the Executive]

[Passed March 10, 2018; in effect from passage.] [Approved by the Governor on March 15, 2018.]

AN ACT making appropriations of public money out of the Treasury in accordance with section 51, 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.
§1. General policy.
§2. Definitions.
§3. Classification of appropriations.
§5. Maximum expenditures.
TITLE I—GENERAL PROVISIONS.

Section 1. General policy. – The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year 2019.

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

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

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

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

The “fiscal year 2019” shall mean the period from July 1, 2018, through June 30, 2019.

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

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

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

Sec. 3. Classification of appropriations. — An appropriation for:

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

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

“Employee benefits” shall mean social security matching, workers’ compensation, unemployment compensation, pension and retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be paid by each spending unit from its “unclassified” appropriation, or its “current expenses” appropriation or other appropriate appropriation. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of Article 2, Chapter 11B of the Code.

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

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

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

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

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

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

“Repairs and alterations” shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.
“Buildings” shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.

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

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

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

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: Provided, that the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: Provided, however, that no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: and no funds may be transferred to a “personal services and employee benefits” appropriation unless the source funds are also wholly from a “personal services and employee benefits” line, or unless the source funds are from another appropriation that has exclusively funded employment expenses for at least twelve consecutive months prior to the time of transfer and the position(s) supported by the transferred funds are also permanently transferred to the receiving agency or board within the department: Provided further, that the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as
established by Chapter 5F of the Code shall have the authority to transfer funds appropriated to “personal services and employee benefits,” “current expenses,” “repairs and alterations,” “equipment,” “other assets,” “land,” and “buildings” to other appropriations within the same account and no funds from other appropriations shall be transferred to the “personal services and employee benefits” or the “unclassified” appropriation except that for funds appropriated in Title II – Section 3, 6, or 7 funds may be transferred to the “personal services and employee benefits” appropriation of the same fund in an amount not to exceed 5% of the enrolled appropriation for “personal services and employee benefits”: And provided further, That no authority exists hereunder to transfer funds into appropriations to which no funds are legislatively appropriated: And provided further, That if the Legislature consolidates, reorganizes or terminates agencies, boards or functions, the secretary or other appropriate agency head, or in the case of the termination of a spending unit of the state, the Director of the State Budget Office, in the absence of general law providing otherwise, may transfer the funds formerly appropriated to such agency, board or function, allocating items of appropriation as may be necessary if only part of the item may be allocated, in order to implement such consolidation, reorganization or termination. No funds may be transferred from a Special Revenue Account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the State Road Fund for the office of the Secretary of the Department of Transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

Appropriations otherwise classified shall be expended only where the distribution of expenditures for different purposes cannot well be determined in advance or it is necessary or desirable to permit the spending unit the freedom to spend an appropriation for more than one of the above classifications.
Sec. 4. Method of expenditure. — Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of Article 3, Chapter 12 of the Code or according to any law detailing a procedure specifically limiting that article.

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

TITLE II – APPROPRIATIONS.

§1. Appropriations from general revenue.

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Prosecuting Attorneys’ Institute, West Virginia - Fund No. 0557
Public Defender Services - Fund No. 0226
Public Employees Grievance Board - Fund No. 0220
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Real Estate Division— Fund No. 0610
Travel Management - Fund No. 0615
Uniform State Laws, Commission on - Fund No. 0214

COMMERCE, DEPARTMENT OF
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§19. General school fund.
Section 1. Appropriations from general revenue. –
From the State Fund, General Revenue, there are hereby
appropriated conditionally upon the fulfillment of the
provisions set forth in Article 2, Chapter 11B the following
amounts, as itemized, for expenditure during the fiscal year
2019.

LEGISLATIVE

1-Senate

Fund 0165 FY 2019 Org 2100

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members (R)...... 00300</td>
<td>$ 1,010,000</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers and Employees (R) .... 00500</td>
<td>4,011,332</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund (R)............... 02100</td>
<td>276,392</td>
</tr>
<tr>
<td>Repairs and Alterations (R) ........... 06400</td>
<td>50,000</td>
</tr>
<tr>
<td>Computer Supplies (R) .................. 10100</td>
<td>20,000</td>
</tr>
<tr>
<td>Computer Systems (R) ................... 10200</td>
<td>60,000</td>
</tr>
<tr>
<td>Printing Blue Book (R) .................. 10300</td>
<td>125,000</td>
</tr>
<tr>
<td>Expenses of Members (R)............... 39900</td>
<td>370,000</td>
</tr>
<tr>
<td>BRIM Premium (R) ....................... 91300</td>
<td>29,482</td>
</tr>
<tr>
<td>Total.........................................</td>
<td>$ 5,952,206</td>
</tr>
</tbody>
</table>

The appropriations for the Senate for the fiscal year
2018 are to remain in full force and effect and are hereby
reappropriated to June 30, 2019. Any balances so
reappropriated may be transferred and credited to the fiscal
year 2018 accounts.

Upon the written request of the Clerk of the Senate, the
Auditor shall transfer amounts between items of the total
appropriation in order to protect or increase the efficiency
of the service.
The Clerk of the Senate, with the approval of the President, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the Senate, for any bills for supplies and services that may have been incurred by the Senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the Senate offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session. The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such Senate resolution, to be fixed by the President of the Senate. The Clerk is hereby authorized to draw his or her requisitions upon the Auditor for the payment of all such staff personnel for such services, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

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

The distribution of the blue book shall be by the office of the Clerk of the Senate and shall include 75 copies for
each member of the Legislature and two copies for each 
classified and approved high school and junior high or 
middle school and one copy for each elementary school 
within the state.

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

2-House of Delegates

Fund 0170 FY 2019 Org 2200

1 Compensation of Members (R)...... 00300  $ 3,000,000
2 Compensation and Per Diem of 
3 Officers and Employees (R) .... 00500  575,000
4 Current Expenses and 
5 Contingent Fund (R).............. 02100  3,909,031
6 Expenses of Members (R)......... 39900  1,350,000
7 BRIM Premium (R)............... 91300  70,000
8 Total.................................   $ 8,904,031

The appropriations for the House of Delegates for the fiscal year 2018 are to remain in full force and effect and are hereby reappropriated to June 30, 2019. Any balances so reappropriated may be transferred and credited to the fiscal year 2018 accounts.

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

The Clerk of the House of Delegates, with the approval of the Speaker, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the House of Delegates, for any bills for supplies and services that may have been incurred by the House of Delegates and not included in the appropriation bill, for bills for services and supplies incurred in
preparation for the opening of the session and after adjournment, and for the necessary operation of the House of Delegates’ offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

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

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

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

3-Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2019 Org 2300
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Committee on Government and Finance (R)</td>
<td>10400</td>
<td>$5,725,138</td>
</tr>
<tr>
<td>Legislative Printing (R)</td>
<td>10500</td>
<td>760,000</td>
</tr>
<tr>
<td>Legislative Rule-Making Review Committee (R)</td>
<td>10600</td>
<td>147,250</td>
</tr>
<tr>
<td>Legislative Computer System (R)</td>
<td>10700</td>
<td>1,447,500</td>
</tr>
<tr>
<td>BRIM Premium (R)</td>
<td>91300</td>
<td>60,569</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$8,140,457</strong></td>
</tr>
</tbody>
</table>

The appropriations for the Joint Expenses for the fiscal year 2018 are to remain in full force and effect and are hereby reappropriated to June 30, 2019. Any balances reappropriated may be transferred and credited to the fiscal year 2018 accounts.

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

### JUDICIAL

#### Supreme Court –

**General Judicial**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits (R)</td>
<td>00100</td>
<td>$102,856,258</td>
</tr>
<tr>
<td>Children’s Protection Act (R)</td>
<td>09000</td>
<td>214,700</td>
</tr>
<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>32,882,879</td>
</tr>
<tr>
<td>Repairs and Alterations (R)</td>
<td>06400</td>
<td>236,450</td>
</tr>
<tr>
<td>Equipment (R)</td>
<td>07000</td>
<td>1,800,000</td>
</tr>
<tr>
<td>Judges’ Retirement System (R)</td>
<td>11000</td>
<td>779,000</td>
</tr>
<tr>
<td>Buildings (R)</td>
<td>25800</td>
<td>100,000</td>
</tr>
<tr>
<td>Other Assets (R)</td>
<td>69000</td>
<td>200,000</td>
</tr>
<tr>
<td>BRIM Premium (R)</td>
<td>91300</td>
<td>690,383</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$139,759,670</strong></td>
</tr>
</tbody>
</table>
The appropriations to the Supreme Court of Appeals for the fiscal years 2017 and 2018 are to remain in full force and effect and are hereby reappropriated to June 30, 2019. Any balances so reappropriated may be transferred and credited to the fiscal year 2018 accounts.

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

The appropriation for the Judges’ Retirement System (fund 0180, appropriation 11000) is to be transferred to the Consolidated Public Retirement Board, in accordance with the law relating thereto, upon requisition of the Administrative Director of the Supreme Court of Appeals.

**EXECUTIVE**

*5-Governor’s Office*

(WV Code Chapter 5)

Fund 0101 FY 2019 Org 0100

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 2019</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Personal Services and</td>
<td>00100</td>
<td>$ 3,171,318</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>760,888</td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>2,000</td>
<td></td>
</tr>
<tr>
<td>National Governors Association</td>
<td>12300</td>
<td>60,700</td>
<td></td>
</tr>
<tr>
<td>Herbert Henderson Office of Minority Affairs</td>
<td>13400</td>
<td>146,726</td>
<td></td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>183,645</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$ 4,325,277</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, appropriation 09900), and Current Expenses (fund 0101, appropriation 13000) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.
The above appropriation for Herbert Henderson Office of Minority Affairs (fund 0101, appropriation 13400) shall be transferred to the Minority Affairs Fund (fund 1058).

6-Governor’s Office –

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2019 Org 0100

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 2019</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td></td>
<td>364,421</td>
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<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td></td>
<td>183,158</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
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<tr>
<td>Total</td>
<td></td>
<td></td>
<td>552,579</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0102, appropriation 13000) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

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

7-Governor’s Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2019 Org 0100

Any unexpended balances remaining in the appropriations for Business and Economic Development Stimulus – Surplus (fund 0105, appropriation 08400), Civil Contingent Fund – Total (fund 0105, appropriation 11400), 2012 Natural Disasters – Surplus (fund 0105, appropriation 13500), Civil Contingent Fund – Total – Surplus (fund
0105, appropriation 23800), Civil Contingent Fund – Surplus (fund 0105, appropriation 26300), Business and Economic Development Stimulus (fund 0105, appropriation 58600), Civil Contingent Fund (fund 0105, appropriation 61400), and Natural Disasters – Surplus (fund 0105, appropriation 76400) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year.

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

The above fund is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned events which may occur during the fiscal year and is not to be expended 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 2019 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
<th>00100</th>
<th>13000</th>
<th>91300</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>2,694,191</td>
<td>13,429</td>
<td>12,077</td>
</tr>
<tr>
<td>Total</td>
<td>2,719,697</td>
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</tr>
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</table>

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0116, appropriation 13000) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0116, appropriation 00100), is $95,000 for the Salary of the Auditor.
### Treasurer’s Office

(WV Code Chapter 12)

**Fund 0126 FY 2019 Org 1300**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$2,480,419</td>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>30,415</td>
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<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>475,100</td>
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<tr>
<td>Abandoned Property Program</td>
<td>11800</td>
<td>41,794</td>
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<tr>
<td>Other Assets</td>
<td>69000</td>
<td>10,000</td>
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<tr>
<td>ABLE Program</td>
<td>69202</td>
<td>150,000</td>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>59,169</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,246,897</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Current Expenses (fund 0126, appropriation 13000) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

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

### Department of Agriculture

(WV Code Chapter 19)

**Fund 0131 FY 2019 Org 1400**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$5,301,277</td>
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<tr>
<td>Animal Identification Program</td>
<td>03900</td>
<td>126,318</td>
</tr>
<tr>
<td>State Farm Museum</td>
<td>05500</td>
<td>87,759</td>
</tr>
<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>141,960</td>
</tr>
<tr>
<td>Gypsy Moth Program (R)</td>
<td>11900</td>
<td>954,230</td>
</tr>
<tr>
<td>WV Farmers Market</td>
<td>12801</td>
<td>150,467</td>
</tr>
<tr>
<td>Black Fly Control</td>
<td>13700</td>
<td>453,164</td>
</tr>
<tr>
<td>Donated Foods Program</td>
<td>36300</td>
<td>45,000</td>
</tr>
</tbody>
</table>
Veterans to Agriculture Program... 36301 250,000
Predator Control (R) .................. 47000 176,400
Bee Research.......................... 69100 67,822
Microbiology Program................ 78500 97,016
Moorefield Agriculture Center ..... 78600 933,624
Chesapeake Bay Watershed......... 83000 106,803
Livestock Care Standards Board.... 84300 8,820
BRIM Premium.......................... 91300 138,905
State FFA-FHA Camp and
Conference Center ..................... 94101 613,246
Threat Preparedness................... 94200 70,731
WV Food Banks.......................... 96900 126,000
Senior’s Farmers’ Market
Nutrition Coupon Program...... 97000 55,835
Total..................................... $ 9,905,377

Any unexpended balances remaining in the
appropriations for Gypsy Moth Program (fund 0131, appropriation 11900), Current Expenses (fund 0131, appropriation 13000), Predator Control (fund 0131, appropriation 47000), and Agricultural Disaster and Mitigation Needs – Surplus (fund 0131, appropriation 85000) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

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

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

A portion of the Current Expenses appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for marketing and development activities.
From the above appropriation for WV Food Banks (fund 0131, appropriation 96900), $20,000 is for House of Hope and the remainder of the appropriation shall be allocated to the Huntington Food Bank and the Mountaineer Food Bank in Braxton County.

11-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2019 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>00100</td>
<td>Personal Services and Employee Benefits</td>
<td>$ 754,823</td>
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<tr>
<td>2</td>
<td>09900</td>
<td>Unclassified</td>
<td>77,059</td>
</tr>
<tr>
<td>3</td>
<td>13000</td>
<td>Current Expenses (R)</td>
<td>317,848</td>
</tr>
<tr>
<td>4</td>
<td>12000</td>
<td>Soil Conservation Projects (R)</td>
<td>6,649,447</td>
</tr>
<tr>
<td>5</td>
<td>91300</td>
<td>BRIM Premium</td>
<td>34,428</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>Total</td>
<td>$ 7,833,605</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Soil Conservation Projects (fund 0132, appropriation 12000), and Current Expenses (fund 0132, appropriation 13000) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

12-Department of Agriculture – Meat Inspection Fund

(WV Code Chapter 19)

Fund 0135 FY 2019 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>00100</td>
<td>Personal Services and Employee Benefits</td>
<td>$ 640,093</td>
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<tr>
<td>2</td>
<td>09900</td>
<td>Unclassified</td>
<td>7,090</td>
</tr>
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<td>3</td>
<td>13000</td>
<td>Current Expenses</td>
<td>82,605</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>Total</td>
<td>$ 729,788</td>
</tr>
</tbody>
</table>
Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

13-Department of Agriculture –

**Agricultural Awards Fund**

(WV Code Chapter 19)

Fund 0136 FY 2019 Org 1400

1 Programs and Awards for
   2 4-H Clubs and FFA/FHA ........ 57700 $ 15,000
   3 Commissioner’s Awards
   4 and Programs ...................... 73700 39,250
   5 Total .................................. $ 54,250

14-Department of Agriculture –

**West Virginia Agricultural Land Protection Authority**

(WV Code Chapter 8A)

Fund 0607 FY 2019 Org 1400

1 Personal Services and
   2 Employee Benefits .............. 00100 $ 96,735
   3 Unclassified ......................... 09900 950
   4 Total .................................. $ 97,685

15-Attorney General

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2019 Org 1500

1 Personal Services and
   2 Employee Benefits (R) ......... 00100 $ 2,537,784
   3 Unclassified (R) ................... 09900 24,428
   4 Current Expenses (R) .......... 13000 762,097
   5 Repairs and Alterations ....... 06400 1,000
   6 Equipment ........................ 07000 1,000
Criminal Convictions and Habeas Corpus Appeals (R) .... 26000 923,582
Better Government Bureau .............. 74000 275,194
BRIM Premium.............................. 91300 120,654
Total.......................................... $ 4,645,739

Any unexpended balances remaining in the above appropriations for Personal Services and Employee Benefits (fund 0150, appropriation 00100), Unclassified (fund 0150, appropriation 09900), Current Expenses (fund 0150, appropriation 13000), Criminal Convictions and Habeas Corpus Appeals (fund 0150, appropriation 26000), and Agency Client Revolving Liquidity Pool (fund 0150, appropriation 36200) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0150, appropriation 00100), is $95,000 for the Salary of the Attorney General.

When legal counsel or secretarial help is appointed by the Attorney General for any state spending unit, this account shall be reimbursed from such spending units specifically appropriated account or from accounts appropriated by general language contained within this bill: Provided, That the spending unit shall reimburse at a rate and upon terms agreed to by the state spending unit and the Attorney General: Provided, however, That if the spending unit and the Attorney General are unable to agree on the amount and terms of the reimbursement, the spending unit and the Attorney General shall submit their proposed reimbursement rates and terms to the Governor for final determination.

16-Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2019 Org 1600
Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, appropriation 09900) and Current Expenses (fund 0155, appropriation 13000) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0155, appropriation 00100), is $95,000 for the Salary of the Secretary of State.

17-State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2019 Org 1601

DEPARTMENT OF ADMINISTRATION

18-Department of Administration –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2019 Org 0201
<table>
<thead>
<tr>
<th>Appropriation Description</th>
<th>Account No.</th>
<th>Amount</th>
<th>Notes</th>
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<tbody>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>85,446</td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td>Financial Advisor (R)</td>
<td>30400</td>
<td>27,546</td>
<td></td>
</tr>
<tr>
<td>Lease Rental Payments</td>
<td>51600</td>
<td>15,000,000</td>
<td></td>
</tr>
<tr>
<td>Design-Build Board</td>
<td>54000</td>
<td>4,000</td>
<td></td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>6,299</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$15,724,786</strong></td>
<td></td>
</tr>
</tbody>
</table>

13 Any unexpended balance remaining in the appropriation for Financial Advisor (fund 0186, appropriation 30400) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

17 The appropriation for Lease Rental Payments (fund 0186, appropriation 51600) shall be disbursed as provided by W.Va. Code §31-15-6b.

19-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2019 Org 0205

1 The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

20-Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2019 Org 0209
### Personal Services and Employee Benefits

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$64,696</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>1,400</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>66,721</td>
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<tr>
<td>GAAP Project (R)</td>
<td>12500</td>
<td>593,684</td>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>7,517</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$734,018</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, appropriation 12500) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

### 21-Division of General Services

(WV Code Chapter 5A)

**Fund 0230 FY 2019 Org 0211**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>00100</td>
<td>$2,593,147</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>20,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>728,849</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>500</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>5,000</td>
</tr>
<tr>
<td>Fire Service Fee</td>
<td>12600</td>
<td>14,000</td>
</tr>
<tr>
<td>Buildings (R)</td>
<td>25800</td>
<td>500</td>
</tr>
<tr>
<td>Preservation and Maintenance of Statues and Monuments</td>
<td>37100</td>
<td>68,000</td>
</tr>
<tr>
<td>Capital Outlay, Repairs and Equipment (R)</td>
<td>58900</td>
<td>14,078,888</td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
<td>500</td>
</tr>
<tr>
<td>Land (R)</td>
<td>73000</td>
<td>500</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>129,983</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$17,639,867</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the above appropriations for Buildings (fund 0230, appropriation 25800), Capital Outlay, Repairs and Equipment (fund 0230,
appropriation 58900), Capital Outlay, Repairs and Equipment – Surplus (fund 0230, appropriation 67700), and Land (fund 0230, appropriation 73000) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

From the above appropriation for Preservation and Maintenance of Statues and Monuments on Capitol Grounds (fund 0230, appropriation 37100), the Division shall consult the Division of Culture and History and Capitol Building Commission in all aspects of planning, assessment, maintenance and restoration.

The above appropriation for Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900) shall be expended for capital improvements, maintenance, repairs and equipment for state-owned buildings.

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2019 Org 0213

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$1,023,307</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>144</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>1,285</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>200</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>6,922</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,031,858</strong></td>
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</table>

The Division of Highways shall reimburse Fund 2031 within the Division of Purchasing for all actual expenses incurred pursuant to the provisions of W.Va. Code §17-2A-13.

23-Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2019 Org 0215
Ch. 12] APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Account Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>00100</td>
<td>Personal Services and Employee Benefits</td>
<td>$779,867</td>
</tr>
<tr>
<td>2</td>
<td>09900</td>
<td>Unclassified</td>
<td>12,032</td>
</tr>
<tr>
<td>3</td>
<td>13000</td>
<td>Current Expenses</td>
<td>440,247</td>
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<tr>
<td>4</td>
<td>06400</td>
<td>Repairs and Alterations</td>
<td>1,000</td>
</tr>
<tr>
<td>5</td>
<td>07000</td>
<td>Equipment</td>
<td>5,000</td>
</tr>
<tr>
<td>6</td>
<td>25800</td>
<td>Buildings (R)</td>
<td>100</td>
</tr>
<tr>
<td>7</td>
<td>69000</td>
<td>Other Assets</td>
<td>100</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>Total</td>
<td>$1,238,346</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Buildings (fund 0615, appropriation 25800) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

24-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2019 Org 0217

<table>
<thead>
<tr>
<th>Item</th>
<th>Account Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>13000</td>
<td>Current Expenses</td>
<td>$45,550</td>
</tr>
</tbody>
</table>

To pay expenses for members of the commission on uniform state laws.

25-West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2019 Org 0219

<table>
<thead>
<tr>
<th>Item</th>
<th>Account Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>00100</td>
<td>Personal Services and Employee Benefits</td>
<td>$935,883</td>
</tr>
<tr>
<td>2</td>
<td>09900</td>
<td>Unclassified</td>
<td>1,000</td>
</tr>
<tr>
<td>3</td>
<td>13000</td>
<td>Current Expenses</td>
<td>143,754</td>
</tr>
<tr>
<td>4</td>
<td>07000</td>
<td>Equipment</td>
<td>50</td>
</tr>
<tr>
<td>5</td>
<td>91300</td>
<td>BRIM Premium</td>
<td>10,281</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>Total</td>
<td>$1,090,968</td>
</tr>
</tbody>
</table>
### 26-Ethics Commission

(WV Code Chapter 6B)

**Fund 0223 FY 2019 Org 0220**

| 1. Personal Services and Employee Benefits | 00100 | $588,831 |
| 2. Unclassified | 09900 | 2,200 |
| 3. Current Expenses | 13000 | 104,501 |
| 4. Repairs and Alterations | 06400 | 500 |
| 5. Other Assets | 69000 | 100 |
| 6. BRIM Premium | 91300 | 5,574 |
| 8. Total | | $701,706 |

### 27-Public Defender Services

(WV Code Chapter 29)

**Fund 0226 FY 2019 Org 0221**

| 1. Personal Services and Employee Benefits | 00100 | $1,367,785 |
| 2. Unclassified | 09900 | 314,700 |
| 3. Current Expenses | 13000 | 12,740 |
| 4. Public Defender Corporations | 35200 | 19,204,999 |
| 5. Appointed Counsel Fees (R) | 78800 | 10,723,115 |
| 6. BRIM Premium | 91300 | 10,575 |
| 8. Total | | $31,633,914 |

Any unexpended balance remaining in the above appropriation for Appointed Counsel Fees (fund 0226, appropriation 78800) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

The director shall have the authority to transfer funds from the appropriation to Public Defender Corporations (fund 0226, appropriation 35200) to Appointed Counsel Fees (fund 0226, appropriation 78800).
28-Committee for the Purchase of Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2019 Org 0224

1 Personal Services and
2 Employee Benefits ................... 00100 $ 3,187
3 Current Expenses ..................... 13000 868
4 Total .................................. $ 4,055

29-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2019 Org 0225

1 PEIA Subsidy ............................ 80100 $21,000,000
2 The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions.
3 The above appropriation for PEIA Subsidy (fund 0200, appropriation 80100) may be transferred to a special revenue fund and shall be utilized by the West Virginia Public Employees Insurance Agency for the purposes of offsetting benefit changes to offset the aggregate premium cost-sharing percentage requirements between employers and employees. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

30-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)
### Fund 0557 FY 2019 Org 0228

<table>
<thead>
<tr>
<th>Description</th>
<th>Fund</th>
<th>FY 2019 Org</th>
<th>Appropriation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forensic Medical Examinations (R)</td>
<td>68300</td>
<td>139,611</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal Funds/Grant Match (R)</td>
<td>74900</td>
<td>101,418</td>
<td></td>
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</tr>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>241,029</strong></td>
<td></td>
<td></td>
</tr>
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</table>

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, appropriation 68300) and Federal Funds/Grant Match (fund 0557, appropriation 74900) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

#### 31-Real Estate Division

(WV Code Chapter 5A)

### Fund 0610 FY 2019 Org 0233

<table>
<thead>
<tr>
<th>Description</th>
<th>Fund</th>
<th>FY 2019 Org</th>
<th>Appropriation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
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<td>660,855</td>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>1,000</td>
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<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>138,631</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>2,500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>8,534</td>
<td></td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
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</table>

### DEPARTMENT OF COMMERCE

#### 32-Division of Forestry

(WV Code Chapter 19)

### Fund 0250 FY 2019 Org 0305

<table>
<thead>
<tr>
<th>Description</th>
<th>Fund</th>
<th>FY 2019 Org</th>
<th>Appropriation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<td>13000</td>
<td>338,953</td>
<td></td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>80,000</td>
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</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for Equipment (fund 0250, Appropriation 07000) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

Out of the above appropriations a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

33-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2019 Org 0306

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
<td>00100</td>
<td>$1,614,784</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>09900</td>
<td>27,678</td>
</tr>
<tr>
<td>Unclassified</td>
<td>13000</td>
<td>51,524</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>06400</td>
<td>968</td>
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<tr>
<td>Repairs and Alterations</td>
<td>20700</td>
<td>1,114,009</td>
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<tr>
<td>Mineral Mapping System (R)</td>
<td>91300</td>
<td>24,486</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$2,833,449</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, appropriation 20700) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

The above Unclassified and Current Expense appropriations include funding to secure federal and other contracts and may be transferred to a special revolving fund (fund 3105) for the purpose of providing advance funding for such contracts.
### West Virginia Development Office

(WV Code Chapter 5B)

**Fund 0256 FY 2019 Org 0307**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<tr>
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<td>Current Expenses</td>
<td>13000</td>
<td>3,769,645</td>
</tr>
<tr>
<td>National Youth Science Camp</td>
<td>13200</td>
<td>241,570</td>
</tr>
<tr>
<td>Local Economic Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Partnerships (R)</td>
<td>13300</td>
<td>792,000</td>
</tr>
<tr>
<td>ARC Assessment</td>
<td>13600</td>
<td>152,585</td>
</tr>
<tr>
<td>Infrastructure and Economic Development Projects</td>
<td>23401</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Guaranteed Work Force Grant (R)</td>
<td>24200</td>
<td>970,955</td>
</tr>
<tr>
<td>Mainstreet Program</td>
<td>79400</td>
<td>164,655</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>3,157</td>
</tr>
<tr>
<td>Hatfield McCoy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recreational Trail</td>
<td>96000</td>
<td>198,415</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>13,606,154</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified – Surplus (fund 0256, appropriation 09700), Partnership Grants (fund 0256, appropriation 13100), Local Economic Development Partnerships (fund 0256, appropriation 13300), Guaranteed Work Force Grant (fund 0256, appropriation 24200), Industrial Park Assistance (fund 0256, appropriation 48000), and Local Economic Development Assistance (fund 0256, appropriation 81900) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

The above appropriation to Local Economic Development Partnerships (fund 0256, appropriation 13300) shall be used by the West Virginia Development Office for the award of funding assistance to county and regional economic development corporations or authorities.
participating in the Certified Development Community Program developed under the provisions of W.Va. Code §5B-2-14. The West Virginia Development Office shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed $34,000 per county served by an economic development or redevelopment corporation or authority.

35-Division of Labor -

Weights and Measures Fund

(WV Code Chapter 47)

Fund 0260 FY 2019 Org 0308

1 Personal Services and
2 Employee Benefits ................... 00100 $ 1,500,000
3 Current Expenses ...................... 13000 227,000
4 Repairs and Alterations ............... 06400 28,000
5 Equipment .................................. 07000 15,000
6 BRIM Premium .......................... 91300 8,500
7 Total ....................................... $ 1,778,500

36-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2019 Org 0310

1 Personal Services and
2 Employee Benefits ................... 00100 $ 16,193,634
3 Unclassified .............................. 09900 184,711
4 Current Expenses ...................... 13000 196,302
5 Repairs and Alterations ............... 06400 100
6 Equipment .................................. 07000 100
7 Buildings .................................... 25800 100
8 Capital Outlay – Parks ............... 28800 3,000,000
9 Litter Control
10 Conservation Officers ............... 56400 142,712
11 Upper Mud River Flood Control .. 65400 163,385
Any unexpended balances remaining in the appropriations for Buildings (fund 0265, appropriation 25800), Land (fund 0265, appropriation 73000), and State Park Improvements – Surplus (fund 0265, appropriation 76300) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

Any revenue derived from mineral extraction at any state park shall be deposited in a special revenue account of the Division of Natural Resources, first for bond debt payment purposes and with any remainder to be for park operation and improvement purposes.

37-Division of Miners’ Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2019 Org 0314

Included in the above appropriation for Current Expenses (fund 0277, appropriation 13000) is $500,000 to be used for coal mine training activities at an established mine training facility in southern West Virginia.
38-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2019 Org 0319

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<td>1</td>
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<td>00100</td>
<td>$231,169</td>
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<td>09900</td>
<td>3,480</td>
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<td>3</td>
<td>Current Expenses</td>
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<td>4</td>
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<td>$352,787</td>
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</table>

Included in the above appropriation for Current Expenses (fund 0280, appropriation 13000) up to $29,000 shall be used for the Coal Mine Safety and Technical Review Committee.

39-WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2019 Org 0323

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<td>1</td>
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40-Department of Commerce –

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2019 Org 0327

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<td>Personal Services and Employee Benefits</td>
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<td>$555,128</td>
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<td>Unclassified</td>
<td>09900</td>
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<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
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<td>$573,717</td>
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</tbody>
</table>
41-Office of Energy

(WV Code Chapter 5B)

Fund 0612 FY 2019 Org 0328

1 Personal Services and
2 Employee Benefits............... 00100 $ 195,487
3 Unclassified ......................... 09900 12,395
4 Current Expenses .................... 13000 1,029,679
5 BRIM Premium....................... 91300 3,894
6 Total................................... $ 1,241,455

From the above appropriation for Current Expenses (fund 0612, appropriation 13000) $558,247 is for West Virginia University and $308,247 is for Southern West Virginia Community and Technical College for the Mine Training and Energy Technologies Academy.

DEPARTMENT OF EDUCATION

42-State Board of Education –

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2019 Org 0402

1 Personal Services and
2 Employee Benefits............... 00100 $ 335,494
3 Current Expenses .................... 13000 2,118,865
4 Total................................... $ 2,454,359

43-State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2019 Org 0402
<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$ 4,387,599</td>
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<tr>
<td>Teachers’ Retirement</td>
<td>09500</td>
<td>35,000,000</td>
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<tr>
<td>Savings Realized</td>
<td>09900</td>
<td>300,000</td>
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<tr>
<td>Unclassified (R)</td>
<td>13000</td>
<td>2,572,000</td>
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<tr>
<td>Current Expenses (R)</td>
<td>07000</td>
<td>5,000</td>
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<tr>
<td>Increased Enrollment</td>
<td>14000</td>
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<td>Teachers’ Retirement</td>
<td>14300</td>
<td>4,869,447</td>
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<td>National Teacher Certification (R)</td>
<td>15800</td>
<td>550,000</td>
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<td>Buildings (R)</td>
<td>25800</td>
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<tr>
<td>Technology Repair</td>
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<td>951,003</td>
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<td>HVAC Technicians</td>
<td>35500</td>
<td>506,851</td>
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<tr>
<td>Early Retirement</td>
<td>36600</td>
<td>300,000</td>
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<tr>
<td>MATH Program</td>
<td>36800</td>
<td>336,532</td>
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<tr>
<td>Assessment Programs</td>
<td>39600</td>
<td>1,339,588</td>
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<tr>
<td>21st Century Fellows</td>
<td>50700</td>
<td>274,899</td>
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<tr>
<td>21st Century Assessment and Modernization</td>
<td>52800</td>
<td>297,188</td>
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<tr>
<td>Early Retirement</td>
<td>57300</td>
<td>96,000</td>
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<tr>
<td>Hospitality Training</td>
<td>60000</td>
<td>270,103</td>
</tr>
<tr>
<td>Hi-Y Youth in Government</td>
<td>61600</td>
<td>100,000</td>
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<tr>
<td>High Acuity Special Needs (R)</td>
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<tr>
<td>Foreign Student Education</td>
<td>64900</td>
<td>69,250</td>
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<tr>
<td>Principals Mentorship</td>
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<td>271,779</td>
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<tr>
<td>State Board of Education</td>
<td>69000</td>
<td>1,000</td>
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<tr>
<td>IT Academy (R)</td>
<td>72100</td>
<td>1,000</td>
</tr>
<tr>
<td>Land (R)</td>
<td>75600</td>
<td>5,700,000</td>
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<tr>
<td>School Based</td>
<td>75600</td>
<td>5,700,000</td>
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<tr>
<td>Truancy Prevention (R)</td>
<td>78101</td>
<td>2,015,366</td>
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<tr>
<td>Communities in Schools</td>
<td>78103</td>
<td>400,000</td>
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<tr>
<td>21st Century Learners (R)</td>
<td>88600</td>
<td>1,726,944</td>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>342,859</td>
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<tr>
<td>21st Century Assessment and Modernization</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The above appropriations include funding for the state board of education and their executive office.

Any unexpended balances remaining in the appropriations for Unclassified (fund 0313, appropriation 09900), Current Expenses (fund 0313, appropriation 13000), National Teacher Certification (fund 0313, appropriation 16100), Buildings (fund 0313, appropriation 25800), High Acuity Special Needs (fund 0313, appropriation 63400), IT Academy (fund 0313, appropriation 72100), Land (fund 0313, appropriation 73000), School Based Truancy Prevention (fund 0313, appropriation 78101), and 21st Century Learners (fund 0313, appropriation 88600) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

The above appropriation for Teachers’ Retirement Savings Realized (fund 0313, appropriation 09500) shall be transferred to the Employee Pension and Health Care Benefit Fund (fund 2044).

The above appropriation for Hospitality Training (fund 0313, appropriation 60000), shall be allocated only to entities that have a plan approved for funding by the Department of Education, at the funding level determined by the State Superintendent of Schools. Plans shall be submitted to the State Superintendent of Schools to be considered for funding.

From the above appropriation for Educational Program Allowance (fund 0313, appropriation 99600), $100,000 shall be expended for Webster County Board of Education.
for Hacker Valley; $150,000 shall be for the Randolph County Board of Education for Pickens School; $100,000 shall be for the Preston County Board of Education for the Aurora School; $100,000 shall be for the Fayette County Board of Education for Meadow Bridge; and $66,250 is for Project Based Learning in STEM fields.

44-State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2019 Org 0402

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>FY 2019 Org 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Special Education – Counties ........................................</td>
<td>$7,271,757</td>
</tr>
<tr>
<td>2</td>
<td>Special Education – Institutions ....................................</td>
<td>3,858,654</td>
</tr>
<tr>
<td>3</td>
<td>Education of Juveniles</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Held in Predispositional</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Juvenile Detention Centers ...........................................</td>
<td>625,614</td>
</tr>
<tr>
<td>6</td>
<td>Education of Institutionalized Juveniles</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Juveniles and Adults (R)</td>
<td>18,472,954</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$30,228,979</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles and Adults (fund 0314, appropriation 47200) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

From the above appropriations, the superintendent shall have authority to expend funds for the costs of special education for those children residing in out-of-state placements.

45-State Board of Education –

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2019 Org 0402
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Other Current Expenses</td>
</tr>
<tr>
<td>2</td>
<td>Advanced Placement</td>
</tr>
<tr>
<td>3</td>
<td>Professional Educators</td>
</tr>
<tr>
<td>4</td>
<td>Service Personnel</td>
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<tr>
<td>5</td>
<td>Fixed Charges</td>
</tr>
<tr>
<td>6</td>
<td>Transportation</td>
</tr>
<tr>
<td>7</td>
<td>Professional Student Support Services</td>
</tr>
<tr>
<td>8</td>
<td>Improved Instructional Programs</td>
</tr>
<tr>
<td>9</td>
<td>21st Century Strategic Technology Learning Growth</td>
</tr>
<tr>
<td>10</td>
<td>Basic Foundation Allowances</td>
</tr>
<tr>
<td>11</td>
<td>Less Local Share</td>
</tr>
<tr>
<td>12</td>
<td>Adjustments</td>
</tr>
<tr>
<td>13</td>
<td>Total Basic State Aid</td>
</tr>
<tr>
<td>14</td>
<td>Public Employees’ Insurance Matching</td>
</tr>
<tr>
<td>15</td>
<td>Teachers’ Retirement System</td>
</tr>
<tr>
<td>16</td>
<td>School Building Authority</td>
</tr>
<tr>
<td>17</td>
<td>Retirement Systems – Unfunded Liability</td>
</tr>
<tr>
<td>18</td>
<td>Total</td>
</tr>
</tbody>
</table>

---

46-State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2019 Org 0402

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
</tr>
<tr>
<td>2</td>
<td>Unclassified</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>4</td>
<td>Wood Products – Forestry Vocational Program</td>
</tr>
<tr>
<td>5</td>
<td>Albert Yanni Vocational Program</td>
</tr>
<tr>
<td>6</td>
<td>Vocational Aid</td>
</tr>
</tbody>
</table>
10 Adult Basic Education ..................... 14900  4,894,607
11 Program Modernization .................. 30500  884,313
12 High School Equivalency
13  Diploma Testing (R) ...................... 72600  790,743
14 FFA Grant Awards ......................... 83900  11,496
15 Pre-Engineering
16  Academy Program ......................... 84000  265,294
17 Total ....................................... $32,748,588

Any unexpended balance remaining in the appropriation for High School Equivalency Diploma Testing (fund 0390, appropriation 72600) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

47-State Board of Education –
West Virginia Schools for the Deaf and the Blind
(WV Code Chapters 18 and 18A)
Fund 0320 FY 2019 Org 0403

1  Personal Services and
2  Employee Benefits ....................... 00100  $11,588,010
3 Unclassified .................................. 09900  110,000
4 Current Expenses .......................... 13000  2,145,469
5 Repairs and Alterations .................... 06400  85,000
6 Equipment .................................... 07000  70,000
7 Buildings (R) .................................. 25800  50,000
8 Capital Outlay and
9  Maintenance (R) ............................ 75500  82,500
10 BRIM Premium .............................. 91300  140,842
11 Total ......................................... $14,271,821

Any unexpended balances remaining in the appropriations for Buildings (fund 0320, appropriation 25800) and Capital Outlay and Maintenance (fund 0320, appropriation 75500) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.
DEPARTMENT OF EDUCATION AND THE ARTS

48-Department of Education and the Arts –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2019 Org 0431

1 Personal Services and
2 Employee Benefits ................. 00100 $ 533,834
3 Unclassified ........................... 09900 35,000
4 Center for Professional
5 Development (R) ..................... 11500 1,511,331
6 Current Expenses ...................... 13000 7,162
7 WV Humanities Council ............. 16800 250,000
8 Benedum Professional Development
9 Collaborative (R) ................. 42700 429,775
10 Governor’s Honors Academy (R) .... 47800 1,059,270
11 Educational Enhancements .......... 69500 573,500
12 S.T.E.M. Education and
13 Grant Program (R) .............. 71900 492,262
14 Energy Express ......................... 86100 382,935
15 BRIM Premium ......................... 91300 5,336
16 Special Olympic Games ............. 96600 25,000
17 Total ..................................... $ 5,305,405

18 Any unexpended balances remaining in the
19 appropriations for Center for Professional Development
20 (fund 0294, appropriation 11500), Benedum Professional
21 Development Collaborative (fund 0294, appropriation
22 42700), Governor’s Honors Academy (fund 0294, appropriation
23 47800), and S.T.E.M. Education and Grant
24 Program (fund 0294, appropriation 71900) at the close of
25 the fiscal year 2018 are hereby reappropriated for
26 expenditure during the fiscal year 2019.

27 From the above appropriation for Educational
28 Enhancements (fund 0294, appropriation 69500), $73,500
shall be used for the Clay Center and $500,000 for Save the Children.

49-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2019 Org 0432

<table>
<thead>
<tr>
<th>Description</th>
<th>Fund</th>
<th>FY 2019</th>
<th>Org 0432</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100 $3,299,919</td>
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<tr>
<td>Current Expenses</td>
<td>13000 610,843</td>
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<td></td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400 1,000</td>
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<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>07000 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>09900 28,483</td>
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<tr>
<td>Buildings (R)</td>
<td>25800 1</td>
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<tr>
<td>Other Assets</td>
<td>69000 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land (R)</td>
<td>73000 1</td>
<td></td>
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<tr>
<td>History Programming</td>
<td>73200 231,573</td>
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<td></td>
</tr>
<tr>
<td>Capital Outlay and Maintenance (R)</td>
<td>75500 19,600</td>
<td></td>
<td></td>
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<tr>
<td>Historical Highway</td>
<td>84400 57,548</td>
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<tr>
<td>BRIM Premium</td>
<td>91300 39,337</td>
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<tr>
<td><strong>Total</strong></td>
<td>$4,288,307</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0293, appropriation 09900), Buildings (fund 0293, appropriation 25800), Capital Outlay, Repairs and Equipment (fund 0293, appropriation 58900), Capital Improvements – Surplus (fund 0293, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0293, appropriation 67700), Land (fund 0293, appropriation 73000), and Capital Outlay and Maintenance (fund 0293, appropriation 75500) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.
The Current Expense appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals and Camp Washington Carver and shall be expended only upon authorization of the Division of Culture and History and in accordance with the provisions of Chapter 5A, Article 3, and Chapter 12 of the Code.

50-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2019 Org 0433

<table>
<thead>
<tr>
<th>Description</th>
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<th>Amount</th>
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<tr>
<td>Repairs and Alterations</td>
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<td>6,500</td>
</tr>
<tr>
<td>Services to Blind &amp; Handicapped</td>
<td>18100</td>
<td>161,717</td>
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<td>BRIM Premium</td>
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<td>18,205</td>
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<td>$1,587,362</td>
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</table>

51-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2019 Org 0439

<table>
<thead>
<tr>
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<th>Amount</th>
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<td>Current Expenses</td>
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<tr>
<td>Mountain Stage</td>
<td>24900</td>
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</tr>
<tr>
<td>Capital Outlay and Maintenance (R)</td>
<td>75500</td>
<td>50,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
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<td>48,453</td>
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<tr>
<td>Total</td>
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<td>$3,757,579</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0300, appropriation 75500) at the close of the fiscal year
2018 is hereby reappropriated for expenditure during the fiscal year 2019.

**52-State Board of Rehabilitation –**

**Division of Rehabilitation Services**

(WV Code Chapter 18)

Fund 0310 FY 2019 Org 0932

<table>
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<tr>
<th>Item</th>
<th>Code</th>
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<tr>
<td>Personal Services and Employee Benefits</td>
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<tr>
<td>Independent Living Services</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>558,815</td>
</tr>
<tr>
<td>Workshop Development</td>
<td>16300</td>
<td>1,817,427</td>
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<tr>
<td>Supported Employment</td>
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<tr>
<td>Extended Services</td>
<td>20600</td>
<td>77,960</td>
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<tr>
<td>Ron Yost Personal</td>
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<tr>
<td>Assistance Fund</td>
<td>40700</td>
<td>333,828</td>
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<tr>
<td>Employment Attendant</td>
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<tr>
<td>Care Program</td>
<td>59800</td>
<td>131,575</td>
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<td>BRIM Premium</td>
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<td>77,464</td>
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<tr>
<td>Total</td>
<td></td>
<td>$14,380,303</td>
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</tbody>
</table>

From the above appropriation for Workshop Development (fund 0310, appropriation 16300), funds shall be used exclusively with the private nonprofit community rehabilitation program organizations known as work centers or sheltered workshops. The appropriation shall also be used to continue the support of the program, services, and individuals with disabilities currently in place at those organizations.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**53-Environmental Quality Board**

(WV Code Chapter 20)

Fund 0270 FY 2019 Org 0311
1  Personal Services and
2   Employee Benefits................. 00100 $  76,915
3  Current Expenses .................... 13000 29,353
4  Repairs and Alterations............. 06400 100
5  Equipment ............................. 07000 300
6  Other Assets........................... 69000 400
7  BRIM Premium.......................... 91300  791
8  Total................................... $ 107,859

54-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2019 Org 0313

1  Personal Services and
2   Employee Benefits................. 00100 $ 4,051,891
3  Water Resources
4   Protection and Management .... 06800 570,654
5  Current Expenses .................... 13000 96,916
6  Repairs and Alterations............. 06400 1,500
7  Unclassified ........................... 09900 14,825
8  Dam Safety .............................. 60700 212,186
9  West Virginia Stream
10  Partners Program .................... 63700  77,396
11  Meth Lab Cleanup ..................... 65600 199,616
12  WV Contributions to
13   River Commissions............... 77600 148,485
14  Office of Water Resources
15   Non-Enforcement Activity ...... 85500 934,525
16  Total................................... $ 6,307,994

A portion of the appropriations for Current Expense
(fund 0273, appropriation 13000) and Dam Safety (fund
0273, appropriation 60700) may be transferred to the
special revenue fund Dam Safety Rehabilitation Revolving
Fund (fund 3025) for the state deficient dams rehabilitation
assistance program.
### 55-Air Quality Board

(WV Code Chapter 16)

Fund **0550 FY 2019 Org 0325**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$60,737</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>12,462</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>50</td>
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<td>Equipment</td>
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<td>Other Assets</td>
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<td>BRIM Premium</td>
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<td><strong>Total</strong></td>
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<td><strong>$76,053</strong></td>
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### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

**56-Department of Health and Human Resources – Office of the Secretary**

(WV Code Chapter 5F)

Fund **0400 FY 2019 Org 0501**

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<td>Current Expenses</td>
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<td>50,613</td>
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<td>Commission for the Deaf and Hard of Hearing</td>
<td>70400</td>
<td>219,910</td>
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<td><strong>Total</strong></td>
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<td><strong>$655,996</strong></td>
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</table>

8 Any unexpended balance remaining in the appropriation for the Women’s Commission (fund 0400, appropriation 19100) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

### 57-Division of Health – Central Office

(WV Code Chapter 16)
<table>
<thead>
<tr>
<th>Item Description</th>
<th>Fund</th>
<th>FY 2019</th>
<th>Org</th>
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<tr>
<td>Personal Services and Employee Benefits</td>
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<td>$12,446,690</td>
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<td>Chief Medical Examiner</td>
<td>04500</td>
<td>6,618,003</td>
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<td>Unclassified</td>
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<td>671,795</td>
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<td>Current Expenses</td>
<td>13000</td>
<td>4,677,059</td>
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<td>State Aid for Local and</td>
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<tr>
<td>Basic Public Health Services</td>
<td>18400</td>
<td>12,652,756</td>
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<td>Safe Drinking Water Program (R)</td>
<td>18700</td>
<td>2,188,827</td>
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<tr>
<td>Women, Infants and Children</td>
<td>21000</td>
<td>38,621</td>
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<tr>
<td>Early Intervention</td>
<td>22300</td>
<td>8,134,060</td>
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<tr>
<td>Cancer Registry</td>
<td>22500</td>
<td>200,682</td>
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<tr>
<td>Statewide EMS</td>
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<tr>
<td>Program Support (R)</td>
<td>38300</td>
<td>1,835,429</td>
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<tr>
<td>Black Lung Clinics</td>
<td>46700</td>
<td>170,885</td>
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<td>Vaccine for Children</td>
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<td>Tuberculosis Control</td>
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<td>Maternal and Child Health Clinics, Clinicians Medical Contracts</td>
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<td></td>
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<tr>
<td>and Fees (R)</td>
<td>57500</td>
<td>6,335,115</td>
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<tr>
<td>Epidemiology Support</td>
<td>62600</td>
<td>1,513,869</td>
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<tr>
<td>Primary Care Support</td>
<td>62800</td>
<td>4,245,849</td>
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<td>Sexual Assault Intervention</td>
<td>72300</td>
<td>125,000</td>
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<td>Health Right Free Clinics</td>
<td>72700</td>
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<tr>
<td>Capital Outlay</td>
<td></td>
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<tr>
<td>and Maintenance (R)</td>
<td>75500</td>
<td>100,000</td>
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<tr>
<td>Maternal Mortality Review</td>
<td>83400</td>
<td>47,712</td>
<td></td>
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<tr>
<td>Diabetes Education</td>
<td></td>
<td></td>
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<tr>
<td>and Prevention</td>
<td>87300</td>
<td>97,125</td>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>169,791</td>
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<tr>
<td>State Trauma and</td>
<td></td>
<td></td>
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<tr>
<td>Emergency Care System</td>
<td>91800</td>
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<tr>
<td>Total</td>
<td></td>
<td>$67,731,507</td>
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</table>

Any unexpended balances remaining in the appropriations for Safe Drinking Water Program (fund 0407, appropriation 18700), Statewide EMS Program
Support (fund 0407, appropriation 38300), Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500), Capital Outlay and Maintenance (fund 0407, appropriation 75500), Emergency Response Entities – Special Projects (fund 0407, appropriation 82200).

From the above appropriation for Current Expenses (fund 0407, appropriation 13000), an amount not less than $100,000 is for the West Virginia Cancer Coalition; $50,000 shall be expended for the West Virginia Aids Coalition; $100,000 is for Adolescent Immunization Education; $73,065 is for informal dispute resolution relating to nursing home administrative appeals; and $50,000 is for Hospital Hospitality House of Huntington.

From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500) up to $400,000 may be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund (fund 5197) and $11,000 is for the Marshall County Health Department for dental services.

58-Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2019 Org 0506

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>FY 2019 Org 0506</th>
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<tbody>
<tr>
<td>00100</td>
<td>Personal Services and Employee Benefits</td>
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<td>13000</td>
<td>Current Expenses</td>
<td>$ 14,113</td>
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<tr>
<td>21900</td>
<td>Behavioral Health Program (R) .....</td>
<td>$ 64,462,622</td>
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<tr>
<td>22100</td>
<td>Family Support Act..................</td>
<td>$ 251,226</td>
</tr>
<tr>
<td>33500</td>
<td>Institutional Facilities Operations (R)</td>
<td>$ 134,223,239</td>
</tr>
<tr>
<td>35400</td>
<td>Substance Abuse</td>
<td>$ 5,000,000</td>
</tr>
<tr>
<td>75500</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>$ 950,000</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Behavioral Health Program (fund 0525, appropriation 21900), Institutional Facilities Operations (fund 0525, appropriation 33500), Substance Abuse Continuum of Care (fund 0525, appropriation 35400), and Capital Outlay and Maintenance (fund 0525, appropriation 75500) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: Provided, That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: Provided, however, That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

Included in the above appropriation for Behavioral Health Program (fund 0525, appropriation 21900) is $100,000 for the Healing Place of Huntington.

From the above appropriation for Institutional Facilities Operations (fund 0525, appropriation 33500), together with available funds from the Division of Health – Hospital Services Revenue Account (fund 5156, appropriation 33500), on July 1, 2018, the sum of *$0 shall be transferred to the Department of Agriculture – Land Division – Farm Operating Fund (1412) as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

*NOTE: The Governor reduced Item 58, line 39, by $160,000 to $0.
The above appropriation for Institutional Facilities Operations (fund 0525, appropriation 33500) contains prior year salary increases due to the Hartley court order in the amount of $2,202,013 for William R. Sharpe Jr. Hospital, and $2,067,984 for Mildred Mitchel-Bateman Hospital.

From the above appropriation for Substance Abuse Continuum of Care (fund 0525, appropriation 35400), the funding will be consistent with the goal areas outlined in the Comprehensive Substance Abuse Strategic Action Plan.

Additional funds have been appropriated in fund 5156, fiscal year 2019, organization 0506, for the operation of the institutional facilities. The secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations appropriation to facilitate cost effective and cost saving services at the community level.

59-Division of Health –

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2019 Org 0506

West Virginia Drinking
Water Treatment
Revolving Fund-Transfer ....... 68900 $ 647,500

The above appropriation for Drinking Water Treatment Revolving Fund – Transfer shall be transferred to the West Virginia Drinking Water Treatment Revolving Fund or appropriate bank depository and the Drinking Water Treatment Revolving – Administrative Expense Fund as provided by Chapter 16 of the Code.

60-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2019 Org 0510
<table>
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<th>Item</th>
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<td>Personal Services and Employee Benefits</td>
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<tr>
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<td>Current Expenses</td>
<td>13000</td>
<td>331,304</td>
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<tr>
<td>BRIM Premium</td>
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<td>10,764</td>
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<td><strong>Total</strong></td>
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<td><strong>$1,374,653</strong></td>
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</table>

### 61-Division of Human Services

(WV Code Chapters 9, 48 and 49)

**Fund 0403 FY 2019 Org 0511**

<table>
<thead>
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<th>Item</th>
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<td>09900</td>
<td>5,688,944</td>
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<td>11,404,008</td>
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<td>Child Care Development</td>
<td>14400</td>
<td>4,090,908</td>
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<tr>
<td>Medical Services</td>
<td>18900</td>
<td>413,957,363</td>
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<tr>
<td>Social Services</td>
<td>19300</td>
<td>154,183,734</td>
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<td>Family Preservation Program</td>
<td>19600</td>
<td>1,565,000</td>
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<tr>
<td>Family Resource Networks</td>
<td>27400</td>
<td>1,762,464</td>
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<tr>
<td>Domestic Violence</td>
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<tr>
<td>Legal Services Fund</td>
<td>38400</td>
<td>400,000</td>
</tr>
<tr>
<td>James “Tiger” Morton</td>
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</tr>
<tr>
<td>Catastrophic Illness Fund</td>
<td>45500</td>
<td>102,883</td>
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<tr>
<td>I/DD Waiver</td>
<td>46600</td>
<td>88,753,483</td>
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<td>OSCAR and RAPIDS</td>
<td>51500</td>
<td>6,453,502</td>
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<tr>
<td>Title XIX Waiver for Seniors</td>
<td>53300</td>
<td>13,593,620</td>
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<td>WV Teaching Hospitals</td>
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<td>Tertiary/Safety Net</td>
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<td>Child Welfare System</td>
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<td>In-Home Family Education</td>
<td>68800</td>
<td>1,000,000</td>
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<tr>
<td>WV Works</td>
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<tr>
<td>Separate State Program</td>
<td>69800</td>
<td>1,935,000</td>
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<tr>
<td>Child Support Enforcement</td>
<td>70500</td>
<td>6,487,501</td>
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<tr>
<td>Temporary Assistance</td>
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<tr>
<td>for Needy Families/</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance of Effort</td>
<td>70700</td>
<td>25,819,096</td>
</tr>
</tbody>
</table>
Child Care –
  Maintenance of Effort Match .... 70800  5,693,743
Grants for Licensed
  Domestic Violence Programs
  and Statewide Prevention ....... 75000  2,500,000
Capital Outlay and
  Maintenance (R)..................... 75500  11,875
Community Based Services and
  Pilot Programs for Youth........ 75900  1,000,000
Medical Services
  Administrative Costs .............. 78900  38,127,412
Traumatic Brain Injury Waiver..... 83500  800,000
Indigent Burials (R)................. 85100  2,050,000
BRIM Premium.......................... 91300  892,642
Rural Hospitals Under 150 Beds..... 94000  2,596,000
Children’s Trust Fund – Transfer... 95100  220,000
Total...................................... $ 867,565,501

Any unexpended balances remaining in the
appropriations for Capital Outlay and Maintenance (fund
0403, appropriation 75500) and Indigent Burials (fund
0403, appropriation 85100) at the close of the fiscal year
2018 are hereby reappropriated for expenditure during the
fiscal year 2019.

Notwithstanding the provisions of Title I, section three
of this bill, the secretary of the Department of Health and
Human Resources shall have the authority to transfer funds
within the above appropriations: Provided, That no more
than five percent of the funds appropriated to one
appropriation may be transferred to other appropriations:
Provided, however, That no funds from other appropriations
shall be transferred to the personal services and employee
benefits appropriation.

The secretary shall have authority to expend funds for
the educational costs of those children residing in out-of-
state placements, excluding the costs of special education
programs.
Included in the above appropriation for Social Services (fund 0403, appropriation 19500) is funding for continuing education requirements relating to the practice of social work.

The above appropriation for Domestic Violence Legal Services Fund (fund 0403, appropriation 38400) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).

The above appropriation for James “Tiger” Morton Catastrophic Illness Fund (fund 0403, appropriation 45500) shall be transferred to the James “Tiger” Morton Catastrophic Illness Fund (fund 5454) as provided by Article 5Q, Chapter 16 of the Code.

The above appropriation for WV Works Separate State Program (fund 0403, appropriation 69800), shall be transferred to the WV Works Separate State College Program Fund (fund 5467), and the WV Works Separate State Two-Parent Program Fund (fund 5468) as determined by the secretary of the Department of Health and Human Resources.

From the above appropriation for Child Support Enforcement (fund 0403, appropriation 70500) an amount not to exceed $300,000 may be transferred to a local banking depository to be utilized to offset funds determined to be uncollectible.

From the above appropriation for the Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), 50% of the total shall be divided equally and distributed among the fourteen (14) licensed programs and the West Virginia Coalition Against Domestic Violence (WVCADV). The balance remaining in the appropriation for Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), shall be
distributed according to the formula established by the Family Protection Services Board.

The above appropriation for Children’s Trust Fund – Transfer (fund 0403, appropriation 95100) shall be transferred to the Children’s Trust Fund (fund 5469, org 0511).

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

62-Department of Military Affairs and Public Safety –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2019 Org 0601

<table>
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<td>Personal Services and Employee Benefits</td>
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<tr>
<td>00100</td>
<td>Unclassified (R)</td>
<td>09900</td>
<td>18,949</td>
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<tr>
<td>00100</td>
<td>Current Expenses</td>
<td>13000</td>
<td>58,320</td>
</tr>
<tr>
<td>00100</td>
<td>Repairs and Alterations</td>
<td>06400</td>
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<td>00100</td>
<td>Equipment</td>
<td>07000</td>
<td>2,500</td>
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<tr>
<td>00100</td>
<td>Fusion Center (R)</td>
<td>46900</td>
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<td>00100</td>
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<td>00100</td>
<td>BRIM Premium</td>
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<td>18,190</td>
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<td>00100</td>
<td>WV Fire and EMS Survivor Benefit (R)</td>
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<td>200,000</td>
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<td>00100</td>
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<td>$1,928,535</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, appropriation 09900), Fusion Center (fund 0430, appropriation 46900), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State...
Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

The above appropriation for Directed Transfer (fund 0430, appropriation 70000) shall be transferred to the Law-Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund (fund 6003).

63-Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2019 Org 0603

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Fund</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified (R)</td>
<td>09900</td>
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<tr>
<td>College Education Fund</td>
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<td>4,000,000</td>
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<tr>
<td>Civil Air Patrol</td>
<td>23400</td>
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<td>249,664</td>
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<tr>
<td>Mountaineer ChalleNGe Academy</td>
<td>70900</td>
<td></td>
<td>1,500,000</td>
</tr>
<tr>
<td>Armory Board Transfer</td>
<td>70015</td>
<td></td>
<td>2,317,555</td>
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<tr>
<td>Military Authority (R)</td>
<td>74800</td>
<td></td>
<td>6,029,611</td>
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<tr>
<td>Drug Enforcement and Support</td>
<td>74801</td>
<td></td>
<td>1,500,000</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>$15,703,628</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriations for Unclassified (fund 0433, appropriation 09900) and Military Authority (fund 0433, appropriation 74800) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

From the above appropriations an amount approved by the Adjutant General and the secretary of Military Affairs and Public Safety may be transferred to the State Armory Board for operation and maintenance of National Guard Armories.

The adjutant general shall have the authority to transfer between appropriations.
From the above appropriation and other state and federal funding, the Adjutant General shall provide an amount not less than $4,500,000 to the Mountaineer ChalleNGe Academy to meet anticipated program demand.

64-Adjutant General –

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2019 Org 0603

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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</table>

65-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2019 Org 0605

<table>
<thead>
<tr>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
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<td>Salaries of Members of West Virginia Parole Board</td>
<td>22700</td>
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<td>BRIM Premium</td>
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<td>Total</td>
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</table>

The above appropriation for Salaries of Members of West Virginia Parole Board (fund 0440, appropriation 22700) includes funding for salary, annual increment (as provided for in W.Va. Code §5-5-1), and related employee benefits of board members.

66-Division of Homeland Security and Emergency Management
(WV Code Chapter 15)

**Fund 0443 FY 2019 Org 0606**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
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<td>00100</td>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>26,342</td>
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<td>Current Expenses</td>
<td>13000</td>
<td>53,024</td>
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<tr>
<td>Repairs and Alterations</td>
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<td>600</td>
</tr>
<tr>
<td>Radiological Emergency</td>
<td></td>
<td></td>
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<tr>
<td>Preparedness</td>
<td>55400</td>
<td>17,052</td>
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<tr>
<td>SIRN</td>
<td>55401</td>
<td>600,000</td>
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<tr>
<td>Federal Funds/Grant Match (R)</td>
<td>74900</td>
<td>663,463</td>
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<tr>
<td>Mine and Industrial Accident Rapid</td>
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<td>Response Call Center</td>
<td>78100</td>
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<tr>
<td>Early Warning Flood System (R)</td>
<td>87700</td>
<td>475,832</td>
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<td>BRIM Premium</td>
<td>91300</td>
<td>96,529</td>
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<td>WVU Charleston</td>
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<td>Poison Control Hotline</td>
<td>94400</td>
<td>712,942</td>
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Any unexpended balances remaining in the appropriations for Federal Funds/Grant Match (fund 0443, appropriation 74900), Early Warning Flood System (fund 0443, appropriation 87700), and Disaster Mitigation (fund 0443, appropriation 95200) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

---

**67-Division of Corrections – Central Office**

(WV Code Chapters 25, 28, 49 and 62)

**Fund 0446 FY 2019 Org 0608**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</table>
### 68-Division of Corrections –

**Correctional Units**

(WV Code Chapters 25, 28, 49 and 62)

**Fund 0450 FY 2019 Org 0608**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
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<tr>
<td>Employee Benefits</td>
<td>01000</td>
<td>$1,258,136</td>
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<tr>
<td>Children’s Protection Act (R)</td>
<td>09000</td>
<td>838,437</td>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>1,578,800</td>
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<td>Current Expenses (R)</td>
<td>13000</td>
<td>21,151,011</td>
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<tr>
<td>Facilities Planning and Administration (R)</td>
<td>38600</td>
<td>1,274,200</td>
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<tr>
<td>Charleston Correctional Center</td>
<td>45600</td>
<td>3,026,773</td>
</tr>
<tr>
<td>Beckley Correctional Center</td>
<td>49000</td>
<td>2,027,265</td>
</tr>
<tr>
<td>Anthony Correctional Center</td>
<td>50400</td>
<td>5,468,335</td>
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<tr>
<td>Huttonsville Correctional Center</td>
<td>51400</td>
<td>20,907,772</td>
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<tr>
<td>Northern Correctional Center</td>
<td>53400</td>
<td>7,205,041</td>
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<tr>
<td>Inmate Medical Expenses (R)</td>
<td>53500</td>
<td>21,226,064</td>
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<tr>
<td>Pruntytown Correctional Center</td>
<td>54300</td>
<td>7,630,256</td>
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<td>Corrections Academy</td>
<td>56900</td>
<td>1,666,247</td>
</tr>
<tr>
<td>Information Technology Services</td>
<td>59901</td>
<td>2,259,052</td>
</tr>
<tr>
<td>Martinsburg Correctional Center</td>
<td>66300</td>
<td>3,856,727</td>
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<tr>
<td>Parole Services</td>
<td>68600</td>
<td>5,361,413</td>
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<tr>
<td>Special Services</td>
<td>68700</td>
<td>7,100,452</td>
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<td>Investigative Services</td>
<td>71600</td>
<td>3,129,759</td>
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<tr>
<td>Capital Outlay and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance (R)</td>
<td>75500</td>
<td>2,000,000</td>
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<tr>
<td>Salem Correctional Center</td>
<td>77400</td>
<td>10,260,770</td>
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<tr>
<td>McDowell County</td>
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<tr>
<td>Correctional Center</td>
<td>79000</td>
<td>2,542,590</td>
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<tr>
<td>Stevens Correctional Center</td>
<td>79100</td>
<td>7,863,195</td>
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<tr>
<td>Parkersburg Correctional Center</td>
<td>82800</td>
<td>3,412,708</td>
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<tr>
<td>St. Mary’s Correctional Center</td>
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<td>12,939,805</td>
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<tr>
<td>Denmar Correctional Center</td>
<td>88200</td>
<td>4,666,171</td>
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<tr>
<td>Ohio County Correctional Center</td>
<td>88300</td>
<td>1,874,033</td>
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<tr>
<td>Mt. Olive Correctional Complex</td>
<td>88800</td>
<td>20,063,054</td>
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<td>Lakin Correctional Center</td>
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<td>9,510,551</td>
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<tr>
<td>BRIM Premium</td>
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<td>2,527,657</td>
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<tr>
<td>Total</td>
<td></td>
<td>$194,626,274</td>
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</table>
Any unexpended balances remaining in the appropriations for Children’s Protection Act (fund 0450, appropriation 09000), Unclassified – Surplus (fund 0450, appropriation 09700), Current Expenses (fund 0450, appropriation 13000), Facilities Planning and Administration (fund 0450, appropriation 38600), Inmate Medical Expenses (fund 0450, appropriation 53500), Capital Improvements – Surplus (fund 0450, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0450, appropriation 67700), Capital Outlay and Maintenance (fund 0450, appropriation 75500), and Security System Improvements – Surplus (fund 0450, appropriation 75501) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

The Commissioner of Corrections shall have the authority to transfer between appropriations to the individual correctional units above and may transfer funds from the individual correctional units to Current Expenses (fund 0450, appropriation 13000) or Inmate Medical Expenses (fund 0450, appropriation 53500).

From the above appropriation to Unclassified (fund 0450, appropriation 09900), on July 1, 2018, the sum of *$0 shall be transferred to the Department of Agriculture – Land Division – Farm Operating Fund (1412) as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

From the above appropriation to Current Expenses (fund 0450, appropriation 13000) payment shall be made to house Division of Corrections inmates in federal, county, and/or regional jails.

Any realized savings from Energy Savings Contract may be transferred to Facilities Planning and Administration (fund 0450, appropriation 38600).

*NOTE: The Governor reduced Item 68, line 55, by $300,000 to $0.
**West Virginia State Police**

(WV Code Chapter 15)

Fund 0453 FY 2019 Org 0612

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>Children’s Protection Act</td>
<td>09000</td>
<td>972,973</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>10,384,394</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>450,523</td>
</tr>
<tr>
<td>Trooper Class</td>
<td>52100</td>
<td>4,000,000</td>
</tr>
<tr>
<td>Barracks Lease Payments</td>
<td>55600</td>
<td>237,898</td>
</tr>
<tr>
<td>Communications and Other Equipment (R)</td>
<td>55800</td>
<td>570,968</td>
</tr>
<tr>
<td>Trooper Retirement Fund</td>
<td>60500</td>
<td>5,584,775</td>
</tr>
<tr>
<td>Handgun Administration Expense</td>
<td>74700</td>
<td>72,268</td>
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<tr>
<td>Capital Outlay and Maintenance (R)</td>
<td>75500</td>
<td>250,000</td>
</tr>
<tr>
<td>Retirement Systems – Unfunded Liability</td>
<td>77500</td>
<td>15,415,000</td>
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<tr>
<td>Automated Fingerprint</td>
<td>89800</td>
<td>3,185,756</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>5,743,921</td>
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<tr>
<td>Total</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Communications and Other Equipment (fund 0453, appropriation 55800), and Capital Outlay and Maintenance (fund 0453, appropriation 75500) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

From the above appropriation for Personal Services and Employee Benefits (fund 0453, appropriation 00100), an amount not less than $25,000 shall be expended to offset the costs associated with providing police services for the West Virginia State Fair.
70-Fire Commission
(WV Code Chapter 29)

Fund 0436 FY 2019 Org 0619

1 Current Expenses ....................... 13000 $ 64,021

71-Division of Justice and Community Services
(WV Code Chapter 15)

Fund 0546 FY 2019 Org 0620

1 Personal Services and Employee Benefits ........... 00100 $ 550,620
2 Current Expenses ....................... 13000 133,360
3 Repairs and Alterations .................. 06400 1,804
4 Child Advocacy Centers (R) .............. 45800 1,704,001
5 Community Corrections (R) ............. 56100 6,919,589
6 Statistical Analysis Program ............ 59700 48,272
7 Sexual Assault Forensic Examination Commission (R) ... 71400 76,963
8 Qualitative Analysis and Training for Youth Services (R) .... 76200 332,446
9 Law Enforcement Professional Standards ........... 83800 157,692
10 BRIM Premium ............................ 91300 2,123
11 Total .................................... $ 9,926,870

Any unexpended balances remaining in the appropriations for Child Advocacy Centers (fund 0546, appropriation 45800), Community Corrections (fund 0546, appropriation 56100), Sexual Assault Forensic Examination Commission (fund 0546, appropriation 71400), and Qualitative Analysis and Training for Youth Services (fund 0546, appropriation 76200) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.
From the above appropriation for Child Advocacy Centers (fund 0546, appropriation 45800), the division may retain an amount not to exceed four percent of the appropriation for administrative purposes.

72-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2019 Org 0621

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Fund 0570 FY 2019</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statewide Reporting Centers</td>
<td>26200</td>
<td>$6,730,137</td>
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<tr>
<td>Robert L. Shell Juvenile Center</td>
<td>26700</td>
<td>2,183,169</td>
</tr>
<tr>
<td>Resident Medical Expenses (R)</td>
<td>53501</td>
<td>3,604,999</td>
</tr>
<tr>
<td>Central Office</td>
<td>70100</td>
<td>2,496,733</td>
</tr>
<tr>
<td>Capital Outlay and Maintenance (R)</td>
<td>75500</td>
<td>250,000</td>
</tr>
<tr>
<td>Gene Spadaro Juvenile Center</td>
<td>79300</td>
<td>2,356,207</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>115,967</td>
</tr>
<tr>
<td>Kenneth Honey Rubenstein Juvenile Center</td>
<td>98000</td>
<td>5,325,233</td>
</tr>
<tr>
<td>Vicki Douglas Juvenile Center</td>
<td>98100</td>
<td>2,083,190</td>
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<tr>
<td>Northern Regional Juvenile Center</td>
<td>98200</td>
<td>2,876,302</td>
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<tr>
<td>Lorrie Yeager Jr. Juvenile Center</td>
<td>98300</td>
<td>2,118,510</td>
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<tr>
<td>Sam Perdue Juvenile Center</td>
<td>98400</td>
<td>2,220,766</td>
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<tr>
<td>Tiger Morton Center</td>
<td>98500</td>
<td>2,322,188</td>
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<tr>
<td>Donald R. Kuhn Juvenile Center</td>
<td>98600</td>
<td>4,465,381</td>
</tr>
<tr>
<td>J.M. “Chick” Buckbee Juvenile Center</td>
<td>98700</td>
<td>2,227,993</td>
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<tr>
<td>Total</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Resident Medical Expenses (fund 0570, appropriation 53501), Capital Outlay and Maintenance (fund 0570, appropriation 75500), and Kenneth Honey Rubenstein Juvenile Center (fund 0570, appropriation 98000) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.
From the above appropriations, on July 1, 2018, the sum of *$0 shall be transferred to the Department of Agriculture – Land Division – Farm Operating Fund (1412) as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

The Director of Juvenile Services shall have the authority to transfer between appropriations to the individual juvenile centers above and may transfer funds from the individual juvenile centers to Resident Medical Expenses (fund 0570, appropriation 53501).

73-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2019 Org 0622

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
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<tr>
<td>2</td>
<td>Unclassified (R)</td>
<td>09900</td>
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<td>3</td>
<td>Current Expenses</td>
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<td>4</td>
<td>Repairs and Alterations</td>
<td>06400</td>
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<td>5</td>
<td>Equipment (R)</td>
<td>07000</td>
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<td>6</td>
<td>BRIM Premium</td>
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<tr>
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</table>

Any unexpended balances remaining in the appropriations for Equipment (fund 0585, appropriation 07000), and Unclassified (fund 0585, appropriation 09900) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

DEPARTMENT OF REVENUE

74-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2019 Org 0701

*NOTE: The Governor reduced Item 72, line 28, by $50,000 to $0.*
1 Personal Services and
2 Employee Benefits............... 00100 $ 502,846
3 Unclassified ....................... 09900 5,837
4 Current Expenses .................. 13000 81,594
5 Repairs and Alterations ........... 06400 1,262
6 Equipment ............................ 07000 8,000
7 Other Assets ........................ 69000 500
8 Total .................................... $ 600,039

9 Any unexpended balance remaining in the
10 appropriation for Unclassified – Total (fund 0465,
11 appropriation 09600) at the close of the fiscal year 2018 is
12 hereby reappropriated for expenditure during the fiscal year
13 2019.

75-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2019 Org 0702

1 Personal Services and
2 Employee Benefits (R) ............ 00100 $18,211,688
3 Unclassified (R) ..................... 09900 224,578
4 Current Expenses (R) .............. 13000 5,770,589
5 Repairs and Alterations ........... 06400 10,000
6 Equipment ............................ 07000 50,000
7 Tax Technology Upgrade .......... 09400 3,700,000
8 Integrated Tax Assessment System 29200 5,000,000
9 Multi State Tax Commission ...... 65300 77,958
10 Other Assets ........................ 69000 10,000
11 BRIM Premium ...................... 91300 15,579
12 Total ................................. $33,070,392

13 Any unexpended balances remaining in the appropriations
14 for Personal Services and Employee Benefits (fund 0470,
15 appropriation 00100), Unclassified (fund 0470, appropriation
16 09900), and Current Expenses (fund 0470, appropriation
17 13000) at the close of the fiscal year 2018 are hereby
18 reappropriated for expenditure during the fiscal year 2019.
### 76-State Budget Office

(WV Code Chapter 11B)

**Fund 0595 FY 2019 Org 0703**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<td><strong>$673,645</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0595, appropriation 09900) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

### 77-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

**Fund 0593 FY 2019 Org 0709**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
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<tr>
<td><strong>Total</strong></td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0593, appropriation 13000) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

### 78-Division of Professional and Occupational Licenses – State Athletic Commission

(WV Code Chapter 29)

**Fund 0523 FY 2019 Org 0933**
1 Personal Services and  
2 Employee Benefits.........  00100 $  7,200  
3 Current Expenses ............  13000 $ 29,611  
4 Total ........................... $ 36,811

**DEPARTMENT OF TRANSPORTATION**

*79-State Rail Authority*  
(WV Code Chapter 29)  
Fund 0506 FY 2019 Org 0804

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>00100</td>
<td>$ 319,933</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$ 287,707</td>
</tr>
<tr>
<td>Other Assets (R)</td>
<td>69000</td>
<td>$ 1,303,277</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>$ 201,541</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 2,112,458</td>
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</table>

Any unexpended balance remaining in the appropriation Other Assets (fund 0506, appropriation 69000) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

*80-Division of Public Transit*  
(WV Code Chapter 17)  
Fund 0510 FY 2019 Org 0805

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equipment (R)</td>
<td>07000</td>
<td>$ 384,710</td>
</tr>
<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>$ 1,878,279</td>
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<tr>
<td>Total</td>
<td></td>
<td>$ 2,262,989</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Equipment (fund 0510, appropriation 07000), Current Expenses (fund 0510, appropriation 13000), Buildings (fund 0510, appropriation 25800), and Other Assets (fund 0510, appropriation 69000) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.
81-Public Port Authority
(WV Code Chapter 17)

Fund 0581 FY 2019 Org 0806

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$200,000</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>300,000</td>
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<tr>
<td><strong>Total</strong></td>
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<td>$500,000</td>
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</table>

82-Aeronautics Commission
(WV Code Chapter 29)

Fund 0582 FY 2019 Org 0807

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$170,304</td>
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<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>591,839</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>100</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>4,438</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$766,681</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0582, appropriation 09900) and Current Expenses (fund 0582, appropriation 13000) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

DEPARTMENT OF VETERANS’ ASSISTANCE

83-Department of Veterans’ Assistance
(WV Code Chapter 9A)

Fund 0456 FY 2019 Org 0613

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$1,887,475</td>
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<tr>
<td>Unclassified</td>
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<td>Current Expenses</td>
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<td>140,161</td>
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<tr>
<td>Item Description</td>
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</tr>
<tr>
<td>------------------------------------------------</td>
<td>--------</td>
<td>------------</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>5,000</td>
</tr>
<tr>
<td>Veterans’ Field Offices</td>
<td>22800</td>
<td>248,345</td>
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<tr>
<td>Veterans’ Nursing Home (R)</td>
<td>28600</td>
<td>5,770,950</td>
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<tr>
<td>Veterans’ Toll Free Assistance Line</td>
<td>32800</td>
<td>2,015</td>
</tr>
<tr>
<td>Veterans’ Reeducation Assistance (R)</td>
<td>32900</td>
<td>29,502</td>
</tr>
<tr>
<td>Veterans’ Grant Program (R)</td>
<td>34200</td>
<td>30,741</td>
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<tr>
<td>Veterans’ Grave Markers</td>
<td>47300</td>
<td>10,254</td>
</tr>
<tr>
<td>Veterans’ Transportation</td>
<td>48500</td>
<td>625,000</td>
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<tr>
<td>Veterans Outreach Programs</td>
<td>61700</td>
<td>162,107</td>
</tr>
<tr>
<td>Memorial Day Patriotic Exercise...</td>
<td>69700</td>
<td>20,000</td>
</tr>
<tr>
<td>Veterans Cemetery</td>
<td>80800</td>
<td>382,085</td>
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<td>BRIM Premium</td>
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<td>25,530</td>
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<tr>
<td>Total</td>
<td></td>
<td>$ 9,359,165</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Veterans’ Nursing Home (fund 0456, appropriation 28600), Veterans’ Reeducation Assistance (fund 0456, appropriation 32900), Veterans’ Grant Program (fund 0456, appropriation 34200), Veterans’ Bonus – Surplus (fund 0456, appropriation 34400), and Educational Opportunities for Children of Deceased Veterans (fund 0456, appropriation 85400) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

84-Department of Veterans’ Assistance –

Veterans’ Home

(WV Code Chapter 9A)

Fund 0460 FY 2019 Org 0618

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
<td>00100</td>
<td>$ 1,148,764</td>
</tr>
<tr>
<td>Employee Benefits</td>
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<td></td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>46,759</td>
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<td>Total</td>
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<td>$ 1,195,523</td>
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</table>

BUREAU OF SENIOR SERVICES
85-Bureau of Senior Services
(WV Code Chapter 29)

Fund 0420 FY 2019 Org 0508

| Transfer to Division of Human Services for Health Care and Title XIX | 53900 | $29,950,955 |

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (fund 0420, appropriation 53900) along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.

The above appropriation is in addition to funding provided in fund 5405 for this program.

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

86-West Virginia Council for Community and Technical College Education – Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2019 Org 0420

| West Virginia Council for Community and Technical Education (R) | 39200 | $730,800 |
| Transit Training Partnership | 78300 | 34,293 |
| Community College Workforce | 87800 | 2,784,901 |
| College Transition Program | 88700 | 278,222 |
| West Virginia Advance Workforce Development (R) | 89300 | 3,118,172 |
| Technical Program | 89400 | 1,800,735 |
| Total | 89400 | $8,747,123 |
Any unexpended balances remaining in the appropriations for West Virginia Council for Community and Technical Education (fund 0596, appropriation 39200), Capital Improvements – Surplus (fund 0596, appropriation 66100), Community College Workforce Development (fund 0596, appropriation 87800), West Virginia Advance Workforce Development (fund 0596, appropriation 89300), and Technical Program Development (fund 0596, appropriation 89400) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

From the above appropriation for the Community College Workforce Development (fund 0596, appropriation 87800), $200,000 shall be expended on the Mine Training Program in Southern West Virginia.

Included in the above appropriation for West Virginia Advance Workforce Development (fund 0596, appropriation 89300) is $200,000 to be used exclusively for advanced manufacturing and energy industry specific training programs.

87-Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2019 Org 0444

1 Mountwest Community and Technical College .................... 48700 $ 5,505,121

88-New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2019 Org 0445

1 New River Community and Technical College .................... 35800 $ 5,452,807
<table>
<thead>
<tr>
<th>Fund</th>
<th>Organization</th>
<th>FY 2019 Organization</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>0597</td>
<td>Pierpont Community and Technical</td>
<td>0446</td>
<td>$7,244,243</td>
</tr>
<tr>
<td>0601</td>
<td>Blue Ridge Community and Technical</td>
<td>0447</td>
<td>$5,099,246</td>
</tr>
<tr>
<td>0351</td>
<td>West Virginia University at</td>
<td>0464</td>
<td>$9,495,037</td>
</tr>
<tr>
<td>0380</td>
<td>Southern West Virginia Community</td>
<td>0487</td>
<td>$7,944,214</td>
</tr>
<tr>
<td>0383</td>
<td>West Virginia Northern Community</td>
<td>0489</td>
<td></td>
</tr>
</tbody>
</table>
1. West Virginia Northern Community and Technical College .......... 44700 $ 6,833,499

*94-Eastern West Virginia Community and Technical College*

(WV Code Chapter 18B)

Fund 0587 FY 2019 Org 0492

1. Eastern West Virginia Community and Technical College .......... 41200 $ 1,812,537

*95-BridgeValley Community and Technical College*

(WV Code Chapter 18B)

Fund 0618 FY 2019 Org 0493

1. BridgeValley Community and Technical College .................. 71700 $ 7,420,648

**HIGHER EDUCATION POLICY COMMISSION**

*96-Higher Education Policy Commission –*

*Administration –*

*Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2019 Org 0441

1. Personal Services and
2. Employee Benefits .................. 00100 $ 2,646,406
3. Current Expenses ...................... 13000 1,114,959
4. Higher Education Grant Program .. 16400 40,619,864
5. Tuition Contract Program (R) ...... 16500 1,224,839
6. Underwood-Smith Scholarship
7. Program-Student Awards .......... 16700 328,349
8. Facilities Planning
9. and Administration .................. 38600 1,760,254
Any unexpended balances remaining in the appropriations for Unclassified – Surplus (fund 0589, appropriation 09700), Tuition Contract Program (fund 0589, appropriation 16500), Capital Improvements – Surplus (fund 0589, appropriation 66100), Capital Outlay and Maintenance (fund 0589, appropriation 75500), and HEAPS Grant Program (fund 0589, appropriation 86700) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

The above appropriation for Facilities Planning and Administration (fund 0589, appropriation 38600) is for operational expenses of the West Virginia Education, Research and Technology Park between construction and full occupancy.

The above appropriation for Higher Education Grant Program (fund 0589, appropriation 16400) shall be transferred to the Higher Education Grant Fund (fund 4933, org 0441) established by W.Va. Code §18C-5-3.

The above appropriation for Underwood-Smith Scholarship Program-Student Awards (fund 0589, appropriation 16700) shall be transferred to the Underwood-Smith Teacher Scholarship and Loan Assistance Fund (fund 4922, org 0441) established by W.Va. Code §18C-4-1.

The above appropriation for PROMISE Scholarship – Transfer (fund 0589, appropriation 80000) shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.
97-Higher Education Policy Commission –

Administration -

*West Virginia Network for Educational Telecomputing (WVNET)*

(WV Code Chapter 18B9)

Fund 0551 FY 2019 Org 0495

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Fund</th>
<th>FY 2019</th>
<th>Org 0495</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>WVNET</td>
<td>0551</td>
<td>$1,681,744</td>
<td></td>
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</tbody>
</table>

98-West Virginia University –

*School of Medicine*

*Medical School Fund*

(WV Code Chapter 18B)

Fund 0343 FY 2019 Org 0463

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Fund</th>
<th>FY 2019</th>
<th>Org 0463</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>WVU School of Health Science –</td>
<td>0343</td>
<td>$2,158,359</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Eastern Division</td>
<td>05600</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>WVU – School of Health Sciences</td>
<td>17400</td>
<td>16,778,145</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>WVU – School of Health Sciences –</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Charleston Division</td>
<td>17500</td>
<td>2,218,598</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Rural Health Outreach Programs...</td>
<td>37700</td>
<td>162,520</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>West Virginia University</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>School of Medicine</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>BRIM Subsidy</td>
<td>46000</td>
<td>1,203,087</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td></td>
<td>$22,520,709</td>
<td></td>
</tr>
</tbody>
</table>

The above appropriation for Rural Health Outreach Programs (fund 0343, appropriation 37700) includes rural health activities and programs; rural residency development and education; and rural outreach activities.

The above appropriation for West Virginia University School of Medicine BRIM Subsidy (fund 0343, appropriation 46000) shall be paid to the Board of Risk and
Insurance Management as a general revenue subsidy against the “Total Premium Billed” to the institution as part of the full cost of their malpractice insurance coverage.

99-West Virginia University –

General Administrative Fund

(WV Code Chapter 18B)

Fund 0344 FY 2019 Org 0463

| 1  | West Virginia University ............... | 45900 | $93,559,659 |
| 2  | Jackson’s Mill .......................... | 46100 | 480,879 |
| 3  | West Virginia University Institute of Technology | 47900 | 7,717,964 |
| 4  | State Priorities – Brownfield Professional Development | 53100 | 316,556 |
| 5  | West Virginia University –  |  |
| 6  | Potomac State .......................... | 99400 | 3,834,937 |
| 7  | Total....................................... | | $105,909,995 |

From the above appropriation for Jackson’s Mill (fund 0344, appropriation 46100) $250,000 shall be used for the West Virginia State Fire Training Academy.

100-Marshall University –

School of Medicine

(WV Code Chapter 18B)

Fund 0347 FY 2019 Org 0471

| 1  | Marshall Medical School .................. | 17300 | $11,774,743 |
| 2  | Rural Health |  |
| 3  | Outreach Programs (R) ........................ | 37700 | 156,022 |
| 4  | Forensic Lab .................................. | 37701 | 226,009 |
| 5  | Center for Rural Health  .................. | 37702 | 153,075 |
| 6  | Marshall University Medical School |  |
| 7  | BRIM Subsidy ............................... | 44900 | 872,612 |
| 8  | Total........................................... | | $13,182,461 |
Any unexpended balance remaining in the appropriation for Rural Health Outreach Program (fund 0347, appropriation 37700) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

The above appropriation for Rural Health Outreach Programs (fund 0347, appropriation 37700) includes rural health activities and programs; rural residency development and education; and rural outreach activities.

The above appropriation for Marshall University Medical School BRIM Subsidy (fund 0347, appropriation 44900) shall be paid to the Board of Risk and Insurance Management as a general revenue subsidy against the “Total Premium Billed” to the institution as part of the full cost of their malpractice insurance coverage.

101-Marshall University – General Administration Fund

(WV Code Chapter 18B)

Fund 0348 FY 2019 Org 0471

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marshall University</td>
<td>44800</td>
<td>$44,273,845</td>
</tr>
<tr>
<td>Luke Lee Listening Language and Learning Lab</td>
<td>44801</td>
<td>96,203</td>
</tr>
<tr>
<td>Vista E-Learning (R)</td>
<td>51900</td>
<td>229,019</td>
</tr>
<tr>
<td>State Priorities – Brownfield Professional</td>
<td>5100</td>
<td>309,606</td>
</tr>
<tr>
<td>Marshall University Graduate</td>
<td>80700</td>
<td>25,412</td>
</tr>
<tr>
<td>WV Autism Training Center (R)</td>
<td>93200</td>
<td>1,742,215</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$46,676,300</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Vista E-Learning (fund 0348, appropriation 51900), State Priorities – Brownfield Professional Development (fund 0348, appropriation
15 53100), Marshall University Graduate College Writing Project (fund 0348, appropriation 80700), and WV Autism Training Center (fund 0348, appropriation 93200) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

102-West Virginia School of Osteopathic Medicine
(WV Code Chapter 18B)

<table>
<thead>
<tr>
<th>Fund 0336 FY 2019 Org 0476</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia School of Osteopathic Medicine .......... 17200 $ 6,683,018</td>
</tr>
<tr>
<td>Rural Health Outreach Programs (R) ..................... 37700 163,299</td>
</tr>
<tr>
<td>West Virginia School of Osteopathic Medicine BRIM Subsidy ....... 40300 153,405</td>
</tr>
<tr>
<td>Rural Health Initiative – Medical Schools Support ......... 58100 391,968</td>
</tr>
<tr>
<td>Total ........................................... $ 7,391,690</td>
</tr>
</tbody>
</table>

10 Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) at the close of fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

15 The above appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) includes rural health activities and programs; rural residency development and education; and rural outreach activities.

19 The above appropriation for West Virginia School of Osteopathic Medicine BRIM Subsidy (fund 0336, appropriation 40300) shall be paid to the Board of Risk and Insurance Management as a general revenue subsidy against the “Total Premium Billed” to the institution as part of the full cost of their malpractice insurance coverage.
103-Bluefield State College
(WV Code Chapter 18B)
Fund 0354 FY 2019 Org 0482

1 Bluefield State College .................. 40800 $ 5,600,993

104-Concord University
(WV Code Chapter 18B)
Fund 0357 FY 2019 Org 0483

1 Concord University ....................... 41000 $ 8,552,843

105-Fairmont State University
(WV Code Chapter 18B)
Fund 0360 FY 2019 Org 0484

1 Fairmont State University .......... 41400 $ 15,111,777

106-Glenville State College
(WV Code Chapter 18B)
Fund 0363 FY 2019 Org 0485

1 Glenville State College ................. 42800 $ 5,885,700

107-Shepherd University
(WV Code Chapter 18B)
Fund 0366 FY 2019 Org 0486

1 Shepherd University ..................... 43200 $ 9,671,542

108-West Liberty University
(WV Code Chapter 18B)
Fund 0370 FY 2019 Org 0488
1 West Liberty University................. 43900 $ 7,823,727

109-West Virginia State University
(WV Code Chapter 18B)

Fund 0373 FY 2019 Org 0490
1 West Virginia State University ...... 44100 $ 9,861,240
2 West Virginia State University
3 Land Grant Match.................... 95600 1,586,340
4 Total......................................... $11,447,580
5 Total TITLE II, Section 1 – General Revenue
6 (Including claims
7 against the state)...................... $4,381,808,884

Sec. 2. Appropriations from state road fund. — From
the state road fund there are hereby appropriated
conditionally upon the fulfillment of the provisions set forth
in Article 2, Chapter 11B of the Code the following
amounts, as itemized, for expenditure during the fiscal year
2019.

DEPARTMENT OF TRANSPORTATION

110-Division of Motor Vehicles
(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2019 Org 0802

<table>
<thead>
<tr>
<th>State Road Fund</th>
<th>Appropriation</th>
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<tbody>
<tr>
<td></td>
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<tr>
<td>1 Personal Services and</td>
<td>00100 $23,378,949</td>
</tr>
<tr>
<td>2 Employee Benefits.................</td>
<td>13000 16,181,042</td>
</tr>
<tr>
<td>3 Current Expenses .......................</td>
<td>06400 144,000</td>
</tr>
<tr>
<td>4 Repairs and Alterations.............</td>
<td>07000 1,080,000</td>
</tr>
<tr>
<td>5 Equipment............................</td>
<td>25800 10,000</td>
</tr>
</tbody>
</table>
Ch. 12] APPROPRIATIONS 149

<table>
<thead>
<tr>
<th></th>
<th>Other Assets</th>
<th></th>
<th>69000</th>
<th>2,600,000</th>
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</thead>
<tbody>
<tr>
<td>8</td>
<td>BRIM Premium</td>
<td></td>
<td>91300</td>
<td>84,738</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
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<td>$43,478,729</td>
</tr>
</tbody>
</table>

111-Division of Highways

(WV Code Chapters 17 and 17C)

<table>
<thead>
<tr>
<th></th>
<th>Debt Service</th>
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<th>04000</th>
<th>$89,000,000</th>
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</thead>
<tbody>
<tr>
<td>2</td>
<td>Maintenance</td>
<td></td>
<td>23700</td>
<td>386,386,000</td>
</tr>
<tr>
<td>3</td>
<td>Nonfederal Improvements</td>
<td></td>
<td>23701</td>
<td>156,500,000</td>
</tr>
<tr>
<td>4</td>
<td>Inventory Revolving</td>
<td></td>
<td>27500</td>
<td>4,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Equipment Revolving</td>
<td></td>
<td>27600</td>
<td>22,500,000</td>
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<tr>
<td>6</td>
<td>General Operations</td>
<td></td>
<td>27700</td>
<td>68,295,000</td>
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<tr>
<td>7</td>
<td>Interstate Construction</td>
<td></td>
<td>27800</td>
<td>95,000,000</td>
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<tr>
<td>8</td>
<td>Other Federal Aid Programs</td>
<td></td>
<td>27900</td>
<td>370,000,000</td>
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<tr>
<td>9</td>
<td>Appalachian Programs</td>
<td></td>
<td>28000</td>
<td>110,000,000</td>
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<tr>
<td>10</td>
<td>Highway Litter Control</td>
<td></td>
<td>28200</td>
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<tr>
<td>11</td>
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<td></td>
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<td>12</td>
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<td></td>
<td></td>
<td>$1,308,400,000</td>
</tr>
</tbody>
</table>

The above appropriations are to be expended in accordance with the provisions of Chapters 17 and 17C of the code.

The Commissioner of Highways shall have the authority to operate revolving funds within the State Road Fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

There is hereby appropriated in addition to the above appropriations, sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with Sections 17 and 18, Article 2, Chapter 14 of the code.
It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the Governor. Further, for the purpose of Appalachian programs, funds appropriated by appropriation may be transferred to other appropriations upon recommendation of the commissioner and approval of the Governor.

112-Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2019 Org 0808

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$1,585,201</td>
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<td>Current Expenses</td>
<td>13000</td>
<td>338,278</td>
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<td>Repairs and Alterations</td>
<td>06400</td>
<td>3,000</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>15,500</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>10,000</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,951,979</strong></td>
</tr>
</tbody>
</table>

Sec. 3. Appropriations from other funds. — From the funds designated there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2019.

LEGISLATIVE

113-Crime Victims Compensation Fund

(WV Code Chapter 14)
Fund 1731 FY 2019 Org 2300

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Other Funds</th>
</tr>
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<tbody>
<tr>
<td>1 Personal Services and Employee Benefits</td>
<td>00100</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>13000</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>06400</td>
</tr>
<tr>
<td>4 Economic Loss Claim</td>
<td></td>
</tr>
<tr>
<td>5 Payment Fund</td>
<td>33400</td>
</tr>
<tr>
<td>6 Other Assets</td>
<td>69000</td>
</tr>
<tr>
<td>7 Total</td>
<td></td>
</tr>
</tbody>
</table>

**JUDICIAL**

114-Supreme Court –

*Family Court Fund*

(WV Code Chapter 51)

Fund 1763 FY 2019 Org 2400

<table>
<thead>
<tr>
<th>Current Expenses</th>
<th>$1,600,000</th>
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<tbody>
<tr>
<td>1 Current Expenses</td>
<td>13000</td>
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</table>

115-Supreme Court –

*Court Advanced Technology Subscription Fund*

(WV Code Chapter 51)

Fund 1704 FY 2019 Org 2400

<table>
<thead>
<tr>
<th>Current Expenses</th>
<th>$500,000</th>
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</thead>
<tbody>
<tr>
<td>1 Current Expenses</td>
<td>13000</td>
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</table>

116-Supreme Court –

*Adult Drug Court Participation Fund*

(WV Code Chapter 62)

Fund 1705 FY 2019 Org 2400
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>13000</td>
<td>$300,000</td>
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<tr>
<td></td>
<td><strong>EXECUTIVE</strong></td>
<td></td>
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</tr>
<tr>
<td>2</td>
<td>Governor’s Office –</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Minority Affairs Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(WV Code Chapter 5)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fund 1058 FY 2019 Org 0100</td>
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</tr>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
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</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
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<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
<td>503,200</td>
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<td>4</td>
<td>Martin Luther King, Jr.</td>
<td></td>
<td></td>
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<tr>
<td>5</td>
<td>Holiday Celebration</td>
<td>03100</td>
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<td>6</td>
<td>Total</td>
<td></td>
<td>$684,926</td>
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<tr>
<td></td>
<td><strong>118-Auditor’s Office –</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Land Operating Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(WV Code Chapters 11A, 12 and 36)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fund 1206 FY 2019 Org 1200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$749,297</td>
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<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>15,139</td>
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<td>4</td>
<td>Current Expenses</td>
<td>13000</td>
<td>715,291</td>
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<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>06400</td>
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<tr>
<td>6</td>
<td>Equipment</td>
<td>07000</td>
<td>426,741</td>
</tr>
<tr>
<td>7</td>
<td>Cost of Delinquent Land Sales</td>
<td>76800</td>
<td>1,341,168</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$3,250,236</td>
</tr>
</tbody>
</table>

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the necessary amount for the expenditure of funds other than Personal Services and Employee Benefits to enable the division to pay the direct expenses relating to land sales as provided in Chapter 11A of the West Virginia Code.
The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

119-Auditor’s Office –

Local Government Purchasing Card Expenditure Fund

(WV Code Chapter 6)

Fund 1224 FY 2019 Org 1200

1 Personal Services and
2 Employee Benefits...................... 00100 $ 588,283
3 Current Expenses......................... 13000 282,030
4 Repairs and Alterations............... 06400 6,000
5 Equipment................................ 07000 10,805
6 Other Assets............................. 69000 50,000
7 Statutory Revenue Distribution .... 74100 2,350,000
8 Total..................................... $ 3,287,118

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer of revenue distribution requirements to provide a proportionate share of rebates back to the general fund of local governments based on utilization of the program in accordance with W.Va. Code §6-9-2b.

120-Auditor’s Office –

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2019 Org 1200

1 Personal Services and
2 Employee Benefits...................... 00100 $ 2,375,836
3 Unclassified.............................. 09900 31,866
4 Current Expenses......................... 13000 1,463,830
5 Repairs and Alterations............... 06400 12,400
6 Equipment................................ 07000 394,700
### 121-Auditor’s Office – Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1233 FY 2019 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>$10,000</td>
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<tr>
<td>Other Assets</td>
<td>$5,000</td>
</tr>
<tr>
<td>Total</td>
<td>$15,000</td>
</tr>
</tbody>
</table>

Fifty percent of the deposits made into this fund shall be transferred to the Treasurer’s Office – Technology Support and Acquisition Fund (fund 1329, org 1300) for expenditure for the purposes described in W.Va. Code §12-3-10c.

### 122-Auditor’s Office – Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2019 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>Current Expenses</td>
<td>$2,303,622</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$5,500</td>
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<td>Equipment</td>
<td>$650,000</td>
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<tr>
<td>Other Assets</td>
<td>$308,886</td>
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<tr>
<td>Statutory Revenue Distribution</td>
<td>$8,000,000</td>
</tr>
<tr>
<td>Total</td>
<td>$13,935,405</td>
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</tbody>
</table>

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer and revenue distribution requirements to the Purchasing Improvement Fund (fund 2264), the Hatfield-McCoy Regional Recreation Authority, and the
14 State Park Operating Fund (fund 3265) per W.Va. Code §12-3-10d.

123-Auditor’s Office –
Chief Inspector’s Fund
(WV Code Chapter 6)
Fund 1235 FY 2019 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$3,405,512</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
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<td>Equipment</td>
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<td>Total</td>
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</table>

124-Auditor’s Office –
Volunteer Fire Department Workers’ Compensation Premium Subsidy Fund
(WV Code Chapters 12 and 33)
Fund 1239 FY 2019 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Volunteer Fire Department</td>
<td>83200</td>
<td>$2,500,000</td>
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125-Treasurer’s Office
College Prepaid Tuition and Savings Program
Administrative Account
(WV Code Chapter 18)
Fund 1301 FY 2019 Org 1300

<table>
<thead>
<tr>
<th>Item</th>
<th>Account</th>
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<tr>
<td>Personal Services and Employee Benefits</td>
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</table>
126-Department of Agriculture –

Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2019 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
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<tr>
<td>Employee Benefits</td>
<td>00100</td>
<td>$2,244,245</td>
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<td>Current Expenses</td>
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<td>Repairs and Alterations</td>
<td>06400</td>
<td>158,500</td>
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<td>Equipment</td>
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<td>10,000</td>
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<tr>
<td>Total</td>
<td></td>
<td>$4,742,563</td>
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</tbody>
</table>

127-Department of Agriculture –

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2019 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>00100</td>
<td>$73,807</td>
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<td>963,404</td>
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<tr>
<td>Total</td>
<td></td>
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</tbody>
</table>

128-Department of Agriculture –

General John McCausland Memorial Farm Fund

(WV Code Chapter 19)

Fund 1409 FY 2019 Org 1400
1 Personal Services and
2 Employee Benefits................. 00100 $ 67,000
3 Unclassified ............................ 09900 2,100
4 Current Expenses ..................... 13000 89,500
5 Repairs and Alterations ............ 06400 36,400
6 Equipment .............................. 07000 15,000
7 Total .................................... $ 210,000

The above appropriations shall be expended in accordance with Article 26, Chapter 19 of the Code.

129-Department of Agriculture –
Farm Operating Fund
(WV Code Chapter 19)

Fund 1412 FY 2019 Org 1400

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and</td>
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<tr>
<td>Employee Benefits</td>
<td>00100</td>
<td>$809,248</td>
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<td>15,173</td>
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<td>Current Expenses</td>
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<td>20,000</td>
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<tr>
<td>Total</td>
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<td>$3,000,000</td>
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</tbody>
</table>

130-Department of Agriculture –
Donated Food Fund
(WV Code Chapter 19)

Fund 1446 FY 2019 Org 1400

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
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<td>Personal Services and</td>
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<td>128,500</td>
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<td></td>
<td>Description</td>
<td>Code</td>
</tr>
<tr>
<td>---</td>
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<td>------</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>07000</td>
</tr>
<tr>
<td>7</td>
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<td>8</td>
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</tbody>
</table>

131-Department of Agriculture –

*Integrated Predation Management Fund*

(WV Code Chapter 7)

Fund 1465 FY 2019 Org 1400

1 Current Expenses .................................. 13000 $ 100,000

132-Department of Agriculture –

*West Virginia Spay Neuter Assistance Fund*

(WV Code Chapter 19)

Fund 1481 FY 2019 Org 1400

1 Current Expenses .................................. 13000 $ 500,000

133-Department of Agriculture –

*Veterans and Warriors to Agriculture Fund*

(WV Code Chapter 19)

Fund 1483 FY 2019 Org 1400

1 Current Expenses .................................. 13000 $ 7,500

134-Department of Agriculture –

*State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Fund 1484 FY 2019 Org 1400

1 Personal Services and
2 Employee Benefits ............................... 00100 $ 1,169,194
### 135-Attorney General –

**Antitrust Enforcement Fund**

(WV Code Chapter 47)

**Fund 1507 FY 2019 Org 1500**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>budget</th>
<th>actual</th>
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</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>1</td>
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<tr>
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<td>2</td>
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<td>Repairs and Alterations</td>
<td>3</td>
<td>$1,000</td>
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</tr>
<tr>
<td>Equipment</td>
<td>4</td>
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</tr>
<tr>
<td>Total</td>
<td>5</td>
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</table>

### 136-Attorney General –

**Preneed Burial Contract Regulation Fund**

(WV Code Chapter 47)

**Fund 1513 FY 2019 Org 1500**

<table>
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<th>Item Description</th>
<th>Code</th>
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<tbody>
<tr>
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<td>Equipment</td>
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<td>$1,000</td>
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<tr>
<td>Total</td>
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<td>$266,841</td>
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</table>
### 137-Attorney General –

**Preneed Funeral Guarantee Fund**

(WV Code Chapter 47)

Fund 1514 FY 2019 Org 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Current Expenses</td>
<td>13000</td>
<td>$ 901,135</td>
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</tbody>
</table>

### 138-Secretary of State –

**Service Fees and Collection Account**

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2019 Org 1600

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>00100</td>
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<td>3 Unclassified</td>
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<tr>
<td>4 Current Expenses</td>
<td>59900</td>
<td>750,000</td>
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<td>5 Total</td>
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<td>$ 1,003,611</td>
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</table>

### 139-Secretary of State –

**General Administrative Fees Account**

(WV Code Chapters 3, 5, and 59)

Fund 1617 FY 2019 Org 1600

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services and</td>
<td>00100</td>
<td>$ 2,769,898</td>
</tr>
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<td>2 Employee Benefits</td>
<td>09900</td>
<td>25,529</td>
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<td>3 Unclassified</td>
<td>13000</td>
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DEPARTMENT OF ADMINISTRATION

140-Department of Administration –
Office of the Secretary –
Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 2041 FY 2019 Org 0201

1 Tobacco Settlement Securitization
2 Trustee Pass Thru .................... 65000 $80,000,000

141-Department of Administration –
Office of the Secretary –
Employee Pension and Health Care Benefit Fund

(WV Code Chapter 18)

Fund 2044 FY 2019 Org 0201

1 Current Expenses ......................... 13000 $35,000,000
2 The above appropriation for Current Expenses (fund
3 2044, appropriation 13000) shall be transferred to the
4 Consolidated Public Retirement Board – Teachers’
5 Accumulation Fund (fund 2600).

142-Department of Administration –
Division of Finance –
Shared Services Section Fund

(WV Code Chapter 5A)

Fund ____ FY 2019 Org 0209
1 Personal Services and
2 Employee Benefits............... 00100 $ 1,500,000
3 Current Expenses .................... 13000 500,000
4 Total.....................................   $ 2,000,000

143-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2019 Org 0210

1 Personal Services and
2 Employee Benefits............... 00100 $21,378,322
3 Unclassified ........................ 09900 382,354
4 Current Expenses .................... 13000 13,378,766
5 Repairs and Alterations ............ 06400 1,000
6 Equipment .............................. 07000 2,050,000
7 Other Assets ............................ 69000 1,045,000
8 Total.....................................   $38,235,442

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Division of Information Services and Communications as provided by law.

144-Division of Purchasing –

Vendor Fee Fund

(WV Code Chapter 5A)

Fund 2263 FY 2019 Org 0213

1 Personal Services and
2 Employee Benefits .................. 00100 $ 655,208
### APPROPRIATIONS 163

<table>
<thead>
<tr>
<th>Item Description</th>
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<td>6 Equipment</td>
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<td>7 Other Assets</td>
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### 145-Division of Purchasing –

**Purchasing Improvement Fund**

(WV Code Chapter 5A)

Fund 2264 FY 2019 Org 0213

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### 146-Travel Management –

**Fleet Management Office Fund**

(WV Code Chapter 5A)

Fund 2301 FY 2019 Org 0215

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### 147-Travel Management –

**Aviation Fund**

(WV Code Chapter 5A)

Fund 2302 FY 2019 Org 0215

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The total amount of these appropriations shall be paid from a special revenue fund out of fees collected by the Division of Personnel.

### 148-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2019 Org 0222

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The total amount of these appropriations shall be paid from a special revenue fund out of fees collected by the Division of Personnel.

### 149-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2019 Org 0228
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<td>5</td>
<td>Repairs and Alterations</td>
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150-Office of Technology –

Chief Technology Officer Administration Fund

(WV Code Chapter 5A)

Fund 2531 FY 2019 Org 0231

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<td>Repairs and Alterations</td>
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<td>$694,976</td>
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</table>

9 From the above fund, the provisions of W.Va. Code §11B-2-18 shall not operate to permit expenditures in excess of the funds authorized for expenditure herein.

DEPARTMENT OF COMMERCE

151-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2019 Org 0305

<table>
<thead>
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<th>Description</th>
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<td>282,202</td>
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### 152-Division of Forestry –

**Timbering Operations Enforcement Fund**

(WV Code Chapter 19)

Fund 3082 FY 2019 Org 0305

<table>
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<tbody>
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<td></td>
<td>00100</td>
<td>13000</td>
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<td></td>
<td>$ 224,433</td>
<td>$ 87,036</td>
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### 153-Division of Forestry –

**Severance Tax Operations**

(WV Code Chapter 11)

Fund 3084 FY 2019 Org 0305

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<td></td>
<td>$ 859,626</td>
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### 154-Geological and Economic Survey –

**Geological and Analytical Services Fund**

(WV Code Chapter 29)

Fund 3100 FY 2019 Org 0306

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The above appropriations shall be used in accordance with W.Va. Code §29-2-4.

155-West Virginia Development Office –
Department of Commerce –
Marketing and Communications Operating Fund
(WV Code Chapter 5B)
Fund 3002 FY 2019 Org 0307

<table>
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156-West Virginia Development Office –
Office of Coalfield Community Development
(WV Code Chapter 5B)
Fund 3162 FY 2019 Org 0307

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157-Division of Labor –
HVAC Fund
### Fund 3186 FY 2019 Org 0308

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#### 158-Division of Labor – Contractor Licensing Board Fund

### Fund 3187 FY 2019 Org 0308

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#### 159-Division of Labor – Elevator Safety Fund

### Fund 3188 FY 2019 Org 0308

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### Ch. 12] APPROPRIATIONS 169

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#### 160-Division of Labor –

**Steam Boiler Fund**

(WV Code Chapter 21)

Fund 3189 FY 2019 Org 0308

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#### 161-Division of Labor –

**Crane Operator Certification Fund**

(WV Code Chapter 21)

Fund 3191 FY 2019 Org 0308

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### 162-Division of Labor – 

Amusement Rides and Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2019 Org 0308

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### 163-Division of Labor – 

State Manufactured Housing Administration Fund

(WV Code Chapter 21)

Fund 3195 FY 2019 Org 0308

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### 164-Division of Labor - 

Weights and Measures Fund

(WV Code Chapter 47)

Fund 3196 FY 2019 Org 0308
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**165-Division of Labor –**

*Bedding and Upholstery Fund*

(WV Code Chapter 21)

Fund 3198 FY 2019 Org 0308

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**166-Division of Labor –**

*Psychophysiological Examiners Fund*

(WV Code Chapter 21)

Fund 3199 FY 2019 Org 0308

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**167-Division of Natural Resources –**

*License Fund – Wildlife Resources*

(WV Code Chapter 20)

Fund 3200 FY 2019 Org 0310
Wildlife Resources .........................  02300  $ 7,064,884
Administration ...............................  15500  1,766,221
Capital Improvements and
Land Purchase (R) ...................  24800  1,766,220
Law Enforcement...........................  80600  $7,064,884
Total........................................... $17,662,209

The total amount of these appropriations shall be paid from a special revenue fund out of fees collected by the Division of Natural Resources.

Any unexpended balance remaining in the appropriation for Capital Improvements and Land Purchase (fund 3200, appropriation 24800) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

168-Division of Natural Resources –

Natural Resources Game Fish and Aquatic Life Fund

(WV Code Chapter 22)

Fund 3202 FY 2019 Org 0310

Current Expenses ...........................  13000  $ 125,000

169-Division of Natural Resources –

Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2019 Org 0310

Personal Services and
Employee Benefits .......................  00100  $ 678,109
Current Expenses .........................  13000  201,930
Equipment .................................  07000  106,615
Total.........................................  $ 986,654
170-Division of Natural Resources –

Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2019 Org 0310

1 Personal Services and Employee Benefits ............... 00100 $ 437,496
2 Current Expenses ........................................ 13000 157,864
3 Repairs and Alterations .................................. 06400 15,016
4 Equipment .................................................. 07000 8,300
5 Buildings ..................................................... 25800 8,300
6 Other Assets ............................................... 69000 2,000,000
7 Land ......................................................... 73000 31,700
8 Total .................................................................. $ 2,658,676

171-Division of Natural Resources –

Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2019 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

172-Division of Natural Resources –

Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2019 Org 0310
174 APPROPRIATIONS [Ch. 12

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**173-Division of Miners’ Health, Safety and Training –**

**Special Health, Safety and Training Fund**

(WV Code Chapter 22A)

Fund 3355 FY 2019 Org 0314

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**174-Department of Commerce –**

**Office of the Secretary –**

Broadband Enhancement Fund

Fund 3013 FY 2019 Org 0327

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**175-Office of Energy –**

**Energy Assistance**

(WV Code Chapter 5B)

Fund 3010 FY 2019 Org 0328

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176-State Board of Education –  
Strategic Staff Development  
(WV Code Chapter 18)  
Fund 3937 FY 2019 Org 0402

1 Personal Services and
2 Employee Benefits.......... 00100 $ 134,000
3 Unclassified .................... 09900 1,000
4 Current Expenses ............... 13000 765,000
5 Total................................ $ 900,000

177-State Board of Education –  
School Construction Fund  
(WV Code Chapters 18 and 18A)  
Fund 3951 FY 2019 Org 0402

1 SBA Construction Grants .......... 24000 $35,845,818
2 Directed Transfer .................. 70000 1,371,182
3 Total................................ $37,217,000

4 The above appropriation for Directed Transfer (fund 3951, appropriation 70000) shall be transferred to the School Building Authority Fund (3959) for the administrative expenses of the School Building Authority.

178-School Building Authority  
(WV Code Chapter 18)  
Fund 3959 FY 2019 Org 0402

1 Personal Services and
2 Employee Benefits.............. 00100 $ 1,085,152
DEPARTMENT OF EDUCATION AND THE ARTS

179-Office of the Secretary –

Lottery Education Fund Interest Earnings –

Control Account

(WV Code Chapter 29)

Fund 3508 FY 2019 Org 0431

Any unexpended balance remaining in the appropriation for Educational Enhancements (fund 3508, appropriation 69500) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

180-Division of Culture and History –

Public Records and Preservation Revenue Account

(WV Code Chapter 5A)

Fund 3542 FY 2019 Org 0432

Personal Services and
Employee Benefits ........................ 00100  $ 211,418
Current Expenses ........................... 13000  862,241
Equipment ................................. 07000  75,000
Buildings ...................................... 25800  1,000
Other Assets ................................. 69000  52,328
Land ........................................... 73000  1,000
Total ........................................... $ 1,202,987
181-State Board of Rehabilitation –
Division of Rehabilitation Services –
West Virginia Rehabilitation Center Special Account

(WV Code Chapter 18)

Fund 8664 FY 2019 Org 0932

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DEPARTMENT OF ENVIRONMENTAL PROTECTION

182-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2019 Org 0312

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183-Division of Environmental Protection –
Hazardous Waste Management Fund

(WV Code Chapter 22)

Fund 3023 FY 2019 Org 0313
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**184-Division of Environmental Protection – Air Pollution Education and Environment Fund**

(WV Code Chapter 22)

Fund 3024 FY 2019 Org 0313

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**185-Division of Environmental Protection – Special Reclamation Fund**

(WV Code Chapter 22)

Fund 3321 FY 2019 Org 0313

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186-Division of Environmental Protection –

*Oil and Gas Reclamation Fund*

(WV Code Chapter 22)

Fund 3322 FY 2019 Org 0313

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187-Division of Environmental Protection –

*Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2019 Org 0313

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188-Division of Environmental Protection –

*Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2019 Org 0313

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**189-Division of Environmental Protection –**

**Underground Storage Tank**

**Administrative Fund**

(WV Code Chapter 22)

Fund 3325 FY 2019 Org 0313

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**190-Division of Environmental Protection –**

**Hazardous Waste Emergency Response Fund**

(WV Code Chapter 22)

Fund 3331 FY 2019 Org 0313

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191-Division of Environmental Protection –

**Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 22)

Fund 3332 FY 2019 Org 0313

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<td>Personal Services and Employee Benefits</td>
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<td>$793,967</td>
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<td>22,900</td>
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<td>25800</td>
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<td>$4,479,604</td>
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</tbody>
</table>

192-Division of Environmental Protection –

**Solid Waste Enforcement Fund**

(WV Code Chapter 22)

Fund 3333 FY 2019 Org 0313

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>FY 2019</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>00100</td>
<td>Personal Services and Employee Benefits</td>
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<td>$4,178,638</td>
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</table>

193-Division of Environmental Protection –

**Air Pollution Control Fund**

(WV Code Chapter 22)
### Fund 3336 FY 2019 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<td><strong>Total</strong></td>
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### 194-Division of Environmental Protection –

**Environmental Laboratory**

**Certification Fund**

(WV Code Chapter 22)

### Fund 3340 FY 2019 Org 0313

<table>
<thead>
<tr>
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</thead>
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<tr>
<td>Personal Services and Employee Benefits</td>
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<td>Repairs and Alterations</td>
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<td>Equipment</td>
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<td>Other Assets</td>
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<td><strong>Total</strong></td>
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<td><strong>$699,352</strong></td>
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### 195-Division of Environmental Protection –

**Stream Restoration Fund**

(WV Code Chapter 22)

### Fund 3349 FY 2019 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$9,298,205</td>
</tr>
</tbody>
</table>
196-Division of Environmental Protection –

Litter Control Fund

(WV Code Chapter 22)

Fund 3486 FY 2019 Org 0313

<table>
<thead>
<tr>
<th>Description</th>
<th>Funds</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$ 60,000</td>
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</tbody>
</table>

197-Division of Environmental Protection –

Recycling Assistance Fund

(WV Code Chapter 22)

Fund 3487 FY 2019 Org 0313

<table>
<thead>
<tr>
<th>Description</th>
<th>Funds</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$ 2,735,112</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>800</td>
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<td>Equipment</td>
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<td>500</td>
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<tr>
<td>Unclassified</td>
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<td>Other Assets</td>
<td>69000</td>
<td>2,500</td>
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<td>Total</td>
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<td>$ 3,385,707</td>
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</table>

198-Division of Environmental Protection –

Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2019 Org 0313

<table>
<thead>
<tr>
<th>Description</th>
<th>Funds</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$ 1,228,345</td>
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<td>Current Expenses</td>
<td>13000</td>
<td>642,934</td>
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<td>Repairs and Alterations</td>
<td>06400</td>
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<td>Equipment</td>
<td>07000</td>
<td>23,500</td>
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<tr>
<td>Unclassified</td>
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<td>Other Assets</td>
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<td>11,520</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 1,937,591</td>
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</tbody>
</table>
### 199-Oil and Gas Conservation Commission –

*Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2019 Org 0315

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services and Employee Benefits</td>
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<td>$157,224</td>
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</tr>
<tr>
<td>2. Current Expenses</td>
<td>13000</td>
<td>$161,225</td>
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<tr>
<td>3. Repairs and Alterations</td>
<td>06400</td>
<td>$1,000</td>
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</tr>
<tr>
<td>4. Equipment</td>
<td>07000</td>
<td>$9,481</td>
<td></td>
</tr>
<tr>
<td>5. Other Assets</td>
<td>69000</td>
<td>$1,500</td>
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</tr>
<tr>
<td>6. Total</td>
<td></td>
<td>$330,430</td>
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</table>

### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

#### 200-Division of Health –

*Ryan Brown Addiction Prevention and Recovery Fund*

(WV Code Chapter 19)

Fund 5111 FY 2019 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Current Expenses</td>
<td>13000</td>
<td>$13,588,654</td>
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</tr>
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</table>

#### 201-Division of Health –

*The Vital Statistics Account*

(WV Code Chapter 16)

Fund 5144 FY 2019 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$876,771</td>
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</tr>
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<td>2. Unclassified</td>
<td>09900</td>
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<td>3. Current Expenses</td>
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<td>4. Total</td>
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<td>$2,150,059</td>
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</table>
**202-Division of Health –**

*Hospital Services Revenue Account*

*Special Fund*

*Capital Improvement, Renovation and Operations*

(WV Code Chapter 16)

Fund 5156 FY 2019 Org 0506

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Institutional Facilities Operations</td>
<td>33500</td>
<td>$35,555,221</td>
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<tr>
<td>2</td>
<td>Medical Services Trust Fund –</td>
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<tr>
<td>3</td>
<td>Transfer</td>
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<td>$27,800,000</td>
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<td>4</td>
<td>Total</td>
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<td>$63,355,221</td>
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</tbody>
</table>

The total amount of these appropriations shall be paid from the Hospital Services Revenue Account Special Fund created by W.Va. Code §16-1-13, and shall be used for operating expenses and for improvements in connection with existing facilities.

Additional funds have been appropriated in fund 0525, fiscal year 2019, organization 0506, for the operation of the institutional facilities. The Secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the appropriation for Institutional Facilities Operations to facilitate cost effective and cost saving services at the community level.

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this fund or in connection with the appropriation designated Institutional Facilities Operations in the Consolidated Medical Service Fund (fund 0525, organization 0506).

From the above appropriation to Institutional Facilities Operations, together with available funds from the Consolidated Medical Services Fund (fund 0525, appropriation 33500) on July 1, 2018, the sum of *$0 shall

*NOTE: The Governor reduced Item 202, line 26, by $160,000 to $0.*
be transferred to the Department of Agriculture – Land Division – Farm Operating Fund (1412) as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

203-Division of Health –
Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2019 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
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</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>18,114</td>
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<td>4</td>
<td>Current Expenses</td>
<td>13000</td>
<td>930,716</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,811,487</td>
</tr>
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</table>

204-Division of Health –
The Health Facility Licensing Account

(WV Code Chapter 16)

Fund 5172 FY 2019 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td>00100</td>
<td>$605,950</td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
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</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>7,113</td>
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<td>4</td>
<td>Current Expenses</td>
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<td>98,247</td>
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<tr>
<td>5</td>
<td>Total</td>
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<td>$711,310</td>
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</table>

205-Division of Health –
Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2019 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
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<td>$9,740</td>
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206-Division of Health –

*Lead Abatement Account*

(WV Code Chapter 16)

Fund 5204 FY 2019 Org 0506

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<th>Amount</th>
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<tr>
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<td><strong>Total</strong></td>
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207-Division of Health –

*West Virginia Birth-to-Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2019 Org 0506

<table>
<thead>
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</table>

208-Division of Health –

*Tobacco Control Special Fund*

(WV Code Chapter 16)

Fund 5218 FY 2019 Org 0506

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Current Expenses</td>
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<td>$7,579</td>
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</table>

209-Division of Health –

*Medical Cannabis Program Fund*

(WV Code Chapter 16A)
### Fund 5420 FY 2019 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<td>1,151,040</td>
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<td>895,000</td>
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<tr>
<td>Total</td>
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<td>$2,555,698</td>
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</table>

The above appropriation is to be expended in accordance with and pursuant to the provisions of W.Va. Code §16-29B and from the special revolving fund designated Health Care Cost Review Fund.

### Fund 5375 FY 2019 Org 0507

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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</tr>
</thead>
<tbody>
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<td>Hospital Assistance</td>
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<td>100</td>
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<td>Current Expenses</td>
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<td>754,645</td>
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<td>Repairs and Alterations</td>
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<td>500</td>
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<td>300</td>
</tr>
<tr>
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<td></td>
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</table>

The above appropriation is to be expended in accordance with and pursuant to the provisions of W.Va. Code §16-29B and from the special revolving fund designated Health Care Cost Review Fund.

### Fund 5377 FY 2019 Org 0507

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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</tr>
<tr>
<td>Total</td>
<td></td>
<td>$1,580,080</td>
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</tbody>
</table>
212-Division of Human Services –

Health Care Provider Tax –

Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2019 Org 0511

1 Medical Services.......................... 18900 $ 198,568,451
2 Medical Services
3 Administrative Costs ............... 78900  231,549
4 Total.........................................   $ 198,800,000

The above appropriation for Medical Services Administrative Costs (fund 5090, appropriation 78900) shall be transferred to a special revenue account in the treasury for use by the Department of Health and Human Resources for administrative purposes. The remainder of all moneys deposited in the fund shall be transferred to the West Virginia Medical Services Fund (fund 5084.)

213-Division of Human Services –

Child Support Enforcement Fund

(WV Code Chapter 48A)

Fund 5094 FY 2019 Org 0511

1 Personal Services and
2 Employee Benefits..................... 00100 $
3 ...........................................24,809,509
4 Unclassified ................................. 09900 380,000
5 Current Expenses ......................... 13000 12,810,491
6 Total.........................................   $38,000,000

214-Division of Human Services –
Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2019 Org 0511

1 Medical Services .................. 18900 $73,477,905
2 Medical Services
3 Administrative Costs ............. 78900 548,723
4 Total ................................  $74,026,628

The above appropriation to Medical Services shall be used to provide state match of Medicaid expenditures as defined and authorized in subsection (c) of W.Va. Code §9-4A-2a. Expenditures from the fund are limited to the following: payment of backlogged billings, funding for services to future federally mandated population groups and payment of the required state match for Medicaid disproportionate share payments. The remainder of all moneys deposited in the fund shall be transferred to the Division of Human Services accounts.

215-Division of Human Services –

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2019 Org 0511

1 Unclassified ......................... 09900 $ 7,000
2 Current Expenses ................... 13000 693,000
3 Total ................................  $ 700,000

216-Division of Human Services –

Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2019 Org 0511

1 Current Expenses ................... 13000 $ 900,000

217-Division of Human Services –
West Virginia Works Separate State College Program Fund

(WV Code Chapter 9)

Fund 5467 FY 2019 Org 0511

1  Current Expenses ......................... 13000 $ 1,000,000

218-Division of Human Services –

West Virginia Works Separate State Two-Parent Program Fund

(WV Code Chapter 9)

Fund 5468 FY 2019 Org 0511

1  Current Expenses ......................... 13000 $ 2,000,000

219-Division of Human Services –

Marriage Education Fund

(WV Code Chapter 9)

Fund 5490 FY 2019 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

220-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 2019 Org 0601
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 2019 Org</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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<td>603</td>
<td>32,000</td>
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<tr>
<td><strong>221-State Armory Board –</strong></td>
<td><strong>General Armory Fund</strong></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>(WV Code Chapter 15)</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Fund 6057</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>From the above appropriations, the Adjutant General may receive and expend funds to conduct operations and activities to include functions of the Military Authority. The Adjutant General may transfer funds between appropriations, except no funds may be transferred to Personal Services and Employee Benefits (fund 6057, appropriation 00100).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Personal Services and Employee Benefits</td>
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<td>770,820</td>
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<td>Other Assets</td>
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<td>8</td>
<td>Land</td>
<td>73000</td>
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<td>9</td>
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<td></td>
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<tbody>
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<td>1</td>
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</table>

**222-Division of Homeland Security and Emergency Management –**

**Statewide Interoperable Radio Network Account**

(WV Code Chapter 15)

Fund 6208 FY 2019 Org 0606
Emergency Management –
West Virginia Interoperable Radio Project
(WV Code Chapter 24)

Fund 6295 FY 2019 Org 0606

1. Current Expenses .......................  13000 $ 2,000,000

Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 6295, appropriation 09600) at the close of fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

224-West Virginia Division of Corrections –
Parolee Supervision Fees
(WV Code Chapter 62)

Fund 6362 FY 2019 Org 0608

1. Personal Services and
   Employee Benefits......................  00100 $ 1,013,793
2. Unclassified ..........................  09900  9,804
3. Current Expenses ......................  13000  758,480
4. Equipment .............................  07000  30,000
5. Other Assets .........................  69000  40,129

Total .................................... $ 1,852,206

225-West Virginia State Police –
Motor Vehicle Inspection Fund
(WV Code Chapter 17C)

Fund 6501 FY 2019 Org 0612

1. Personal Services and
   Employee Benefits......................  00100 $ 1,786,923
2. Current Expenses ......................  13000  1,488,211
The total amount of these appropriations shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

226-West Virginia State Police –

Forensic Laboratory Fund

(WV Code Chapter 15)

Fund 6511 FY 2019 Org 0612

1 Personal Services and
2 Employee Benefits................. 00100 $ 100,000
3 Current Expenses .................. 13000 90,000
4 Repairs and Alterations.......... 06400 5,000
5 Equipment .......................... 07000 45,000
6 Total .................................... $ 240,000

227-West Virginia State Police –

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2019 Org 0612

1 Current Expenses .................. 13000 $ 1,327,000
2 Equipment .......................... 07000 3,491,895
3 BRIM Premium ..................... 91300 154,452
4 Total ................................. $ 4,973,347
The total amount of these appropriations shall be paid from the special revenue fund out of receipts collected pursuant to W.Va. Code §11-15-9a and 16 and paid into a revolving fund account in the State Treasury.

228-West Virginia State Police –

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2019 Org 0612

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<tr>
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<td>BRIM Premium</td>
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<td>Total</td>
<td>$1,101,000</td>
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229-West Virginia State Police –

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2019 Org 0612

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<td>BRIM Premium</td>
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230-West Virginia State Police –

Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2019 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 300,500
6 Other Assets................................ 69000 300,500
7 BRIM Premium.............................. 91300 18,524
8 Total........................................ $ 908,348

231-West Virginia State Police –
Bail Bond Enforcer Account
(WV Code Chapter 15)
Fund 6532 FY 2019 Org 0612

1 Current Expenses.......................... 13000 $ 8,300

232-West Virginia State Police –
State Police Academy Post Exchange
(WV Code Chapter 15)
Fund 6544 FY 2019 Org 0612

1 Current Expenses.......................... 13000 $ 160,000
2 Repairs and Alterations.................... 06400 40,000
3 Total........................................ $ 200,000

233-Regional Jail and Correctional Facility Authority
(WV Code Chapter 31)
Fund 6675 FY 2019 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
### 234-Fire Commission –

**Fire Marshal Fees**

(WV Code Chapter 29)

**Fund 6152 FY 2019 Org 0619**

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<td>5. Equipment</td>
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<td>6. Other Assets</td>
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<td>7. BRIM Premium</td>
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<td><strong>Total</strong></td>
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### 235-Division of Justice and Community Services –

**WV Community Corrections Fund**

(WV Code Chapter 62)

**Fund 6386 FY 2019 Org 0620**

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<td>4. Repairs and Alterations</td>
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### 236-Division of Justice and Community Services –

**Court Security Fund**

(WV Code Chapter 51)
Fund 6804 FY 2019 Org 0620

1  Personal Services and
2  Employee Benefits...............  00100  $ 21,865
3  Current Expenses...............  13000  1,478,135
4  Total.................................  $1,500,000

237-Division of Justice and Community Services –

Second Chance Driver’s License Program Account

(WV Code Chapter 17B)

Fund 6810 FY 2019 Org 0620

1  Current Expenses...............  13000  $ 25,000

DEPARTMENT OF REVENUE

238-Division of Financial Institutions

(WV Code Chapter 31A)

Fund 3041 FY 2019 Org 0303

1  Personal Services and
2  Employee Benefits...............  00100  $ 2,511,101
3  Current Expenses...............  13000  705,875
4  Repairs and Alterations............  06400  100
5  Equipment.........................  07000  12,000
6  Total.................................  $3,229,076

239-Office of the Secretary –

State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2019 Org 0701

1  Directed Transfer...............  70000  $20,000,000
The above appropriation for Directed Transfer shall be transferred to the Consolidated Public Retirement Board – West Virginia Public Employees Retirement System Employers Accumulation Fund (fund 2510).

240-Tax Division –

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2019 Org 0702

<table>
<thead>
<tr>
<th>Description</th>
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<td>Personal Services and</td>
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<tr>
<td>Employee Benefits</td>
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<td>$ 31,176</td>
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241-Tax Division –

Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2019 Org 0702

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<th>Description</th>
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<td>Total</td>
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<tr>
<td></td>
<td>$ 950,000</td>
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242-Tax Division –

Wine Tax Administration Fund

(WV Code Chapter 60)

Fund 7087 FY 2019 Org 0702
<table>
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<th>Fund</th>
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<td>$ 254,162</td>
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<td></td>
<td>5,406</td>
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<td>4</td>
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<td>$ 259,568</td>
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</table>

**243-Tax Division – Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund**

(WV Code Chapter 47)

<table>
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<tr>
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<td>$ 35,000</td>
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<td>Equipment</td>
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**244-Tax Division – Local Sales Tax and Excise Tax Administration Fund**

(WV Code Chapter 11)

<table>
<thead>
<tr>
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<th>Fund</th>
<th>Org</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
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<td>6</td>
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<td>2,309,531</td>
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</table>

**245-State Budget Office – Public Employees Insurance Reserve Fund**

(WV Code Chapter 11B)
Fund 7400 FY 2019 Org 0703

1. Public Employees Insurance
   Reserve Fund – Transfer ............... 90300 $ 6,800,000

The above appropriation for Public Employees Insurance Reserve Fund – Transfer shall be transferred to the Medical Services Trust Fund (fund 5185, org 0511) for expenditure.

246-State Budget Office –

Public Employees Insurance Agency

Financial Stability Fund

(WV Code Chapter 11B)

Fund 7401 FY 2019 Org 0703

1. Retiree Premium Offset ................... 80101 $ 5,000,000
2. PEIA Reserve ............................... 80102 10,000,000
3. Total ........................................ $15,000,000

The above appropriation shall be transferred to special revenue funds to be utilized by the West Virginia Public Employees Insurance Agency for the purposes of permitting the PEIA Finance Board to offset $5 million in retiree premium increases. Additionally, $10 million will be put into a reserve fund to stabilize and preserve the future solvency of PEIA. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

247-Insurance Commissioner –

Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2019 Org 0704
### Appropriations [Ch. 12]

1. Personal Services and Employee Benefits .......... 00100 $ 721,117
2. Current Expenses .................... 13000 1,357,201
3. Repairs and Alterations ............... 06400 3,000
4. Equipment ........................................ 07000 81,374
5. Buildings ........................................ 25800 8,289
6. Other Assets ................................... 69000 11,426
7. Total .........................................   $ 2,182,407

248-Insurance Commissioner –

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2019 Org 0704

1. Personal Services and Employee Benefits .......... 00100 $ 552,228
2. Current Expenses .................... 13000 202,152
3. Repairs and Alterations ............... 06400 5,000
4. Equipment ........................................ 07000 34,225
5. Buildings ........................................ 25800 4,865
6. Other Assets ................................... 69000 19,460
7. Total .........................................   $ 817,930

249-Insurance Commissioner –

Insurance Commission Fund

(WV Code Chapter 33)

Fund 7152 FY 2019 Org 0704

1. Personal Services and Employee Benefits .......... 00100 $23,039,727
2. Current Expenses .................... 13000 8,797,758
3. Repairs and Alterations ............... 06400 68,614
4. Equipment ........................................ 07000 1,728,240
5. Buildings ........................................ 25800 25,000
6. Other Assets ................................... 69000 340,661
250-Insurance Commissioner –

Workers’ Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2019 Org 0704

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<tr>
<th>1</th>
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<td>$250,550,000</td>
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</tbody>
</table>

251-Insurance Commissioner –

Workers’ Compensation Uninsured Employers’ Fund

(WV Code Chapter 23)

Fund 7163 FY 2019 Org 0704

| 1 | Current Expenses                        | 13000 | $15,000,000 |

252-Insurance Commissioner –

Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2019 Org 0704

| 1 | Current Expenses                        | 13000 | $9,000,000 |

253-Insurance Commissioner –

Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2019 Org 0704

| 1 | Current Expenses                        | 13000 | $14,000,000 |
### 254-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2019 Org 0706

<table>
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### 255-Racing Commission – Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2019 Org 0707

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<td>Medical Expenses – Total</td>
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The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.

No expenditures shall be made from this fund except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

### 256-Racing Commission – Administration and Promotion Account

(WV Code Chapter 19)

Fund 7304 FY 2019 Org 0707

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<td>1</td>
<td>Personal Services and Employee Benefits</td>
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### 257-Racing Commission –
**General Administration**

(WV Code Chapter 19)

Fund 7305 FY 2019 Org 0707

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<td>$ 2,894,587</td>
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### 258-Racing Commission –
**Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs**

**to include Spaying and Neutering Account**

(WV Code Chapter 19)

Fund 7307 FY 2019 Org 0707

<table>
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<td>214,406</td>
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<td>Other Assets</td>
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<tr>
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<td>$ 1,278,880</td>
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</table>

### 259-Alcohol Beverage Control Administration –
**Wine License Special Fund**

(WV Code Chapter 60)

Fund 7351 FY 2019 Org 0708

<table>
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<th>Item Description</th>
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<td>$ 122,339</td>
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<td>69,186</td>
</tr>
</tbody>
</table>
### Repairs and Alterations
- **Code**: 06400
- **Budget**: $7,263

### Equipment
- **Code**: 07000
- **Budget**: $10,000

### Buildings
- **Code**: 25800
- **Budget**: $100,000

### Other Assets
- **Code**: 69000
- **Budget**: $100

### Total
- **Budget**: $308,888

To the extent permitted by law, four classified exempt positions shall be provided from Personal Services and Employee Benefits appropriation for field auditors.

#### 260-Alcohol Beverage Control Administration

(WV Code Chapter 60)

**Fund 7352 FY 2019 Org 0708**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>00100</td>
<td>Personal Services and Employee Benefits</td>
<td>$5,413,237</td>
</tr>
<tr>
<td>13000</td>
<td>Current Expenses</td>
<td>$2,890,577</td>
</tr>
<tr>
<td>06400</td>
<td>Repairs and Alterations</td>
<td>$91,000</td>
</tr>
<tr>
<td>07000</td>
<td>Equipment</td>
<td>$108,000</td>
</tr>
<tr>
<td>25800</td>
<td>Buildings</td>
<td>$375,100</td>
</tr>
<tr>
<td>41900</td>
<td>Purchase of Supplies for Resale</td>
<td>$72,500,000</td>
</tr>
<tr>
<td>42500</td>
<td>Transfer Liquor Profits and Taxes</td>
<td>$20,800,000</td>
</tr>
<tr>
<td>69000</td>
<td>Other Assets</td>
<td>$125,100</td>
</tr>
<tr>
<td>73000</td>
<td>Land</td>
<td>$100</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>$102,303,114</strong></td>
</tr>
</tbody>
</table>

The total amount of these appropriations shall be paid from a special revenue fund out of liquor revenues and any other revenues available.

The above appropriations include the salary of the commissioner and the salaries, expenses and equipment of administrative offices, warehouses and inspectors.

The above appropriations include funding for the Tobacco/Alcohol Education Program.

There is hereby appropriated from liquor revenues, in addition to the above appropriations as needed, the
necessary amount for the purchase of liquor as provided by law and the remittance of profits and taxes to the General Revenue Fund.

261-State Athletic Commission Fund

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Fund 7009 FY 2019 Org 0933</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services and</td>
</tr>
<tr>
<td>2  Employee Benefits........ 00100  $  2,900</td>
</tr>
<tr>
<td>3  Current Expenses........... 13000  37,100</td>
</tr>
<tr>
<td>4  Total--------------------- $ 40,000</td>
</tr>
</tbody>
</table>

DEPARTMENT OF TRANSPORTATION

262-Division of Motor Vehicles – Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2019 Org 0802

| 1  Current Expenses........... 13000  $ 189,000 |

263-Division of Motor Vehicles – Motor Vehicle Fees Fund

(WV Code Chapter 17B)

Fund 8223 FY 2019 Org 0802

<p>| 1  Personal Services and     |
| 2  Employee Benefits.......... 00100  $ 3,362,799 |
| 3  Current Expenses........... 13000  4,362,975 |
| 4  Repairs and Alterations.... 06400  16,000 |
| 5  Equipment................... 07000  75,000 |
| 6  Other Assets................. 69000  10,000 |
| 7  BRIM Premium............... 91300  84,737 |</p>
<table>
<thead>
<tr>
<th>264-Division of Highways –</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>A. James Manchin Fund</em></td>
</tr>
<tr>
<td>(WV Code Chapter 22)</td>
</tr>
<tr>
<td>Fund 8319 FY 2019 Org 0803</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>13000</td>
<td>$1,650,000</td>
</tr>
<tr>
<td></td>
<td></td>
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</table>

**DEPARTMENT OF VETERANS’ ASSISTANCE**

<table>
<thead>
<tr>
<th>265-Veterans’ Facilities Support Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>(WV Code Chapter 9A)</td>
</tr>
<tr>
<td>Fund 6703 FY 2019 Org 0613</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td>00100</td>
<td>$94,210</td>
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<td>2</td>
<td>Employee Benefits</td>
<td>0100</td>
<td></td>
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<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
<td>$2,255,997</td>
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<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>10,000</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>07000</td>
<td>10,000</td>
</tr>
<tr>
<td>6</td>
<td>Other Assets</td>
<td>69000</td>
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</tr>
<tr>
<td>7</td>
<td>Total</td>
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<td>$2,380,207</td>
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</table>

**266-Department of Veterans’ Assistance –**

<table>
<thead>
<tr>
<th><em>WV Veterans’ Home –</em></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Special Revenue Operating Fund</em></td>
</tr>
<tr>
<td>(WV Code Chapter 9A)</td>
</tr>
<tr>
<td>Fund 6754 FY 2019 Org 0618</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>13000</td>
<td>$700,000</td>
</tr>
<tr>
<td>2</td>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>50,000</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$750,000</td>
</tr>
</tbody>
</table>
### BUREAU OF SENIOR SERVICES

**267-Bureau of Senior Services –**

*Community Based Service Fund*

(WV Code Chapter 22)

Fund 5409 FY 2019 Org 0508

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 2019 Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$151,290</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>13000</td>
<td>10,348,710</td>
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<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$10,500,000</td>
</tr>
</tbody>
</table>

The total amount of these appropriations are funded from annual table game license fees to enable the aged and disabled citizens of West Virginia to stay in their homes through the provision of home and community-based services.

### HIGHER EDUCATION POLICY COMMISSION

**268-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 2019 Org 0442

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 2019 Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>04000</td>
<td>$27,713,123</td>
</tr>
<tr>
<td>2</td>
<td>General Capital Expenditures</td>
<td>30600</td>
<td>5,000,000</td>
</tr>
<tr>
<td>3</td>
<td>Facilities Planning</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>and Administration</td>
<td>38600</td>
<td>421,082</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$33,134,205</td>
</tr>
</tbody>
</table>
The total amount of these appropriations shall be paid from the Special Capital Improvement Fund created in W.Va. Code §18B-10-8. Projects are to be paid on a cash basis and made available on July 1.

The above appropriations, except for Debt Service, may be transferred to special revenue funds for capital improvement projects at the institutions.

269-Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2019 Org 0442

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 4906, appropriation 51100) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from the unexpended proceeds of revenue bonds previously issued pursuant to W.Va. Code §18-12B-8, which have since been refunded.

270-Community and Technical College – Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2019 Org 0442

Any unexpended balance remaining in the appropriation for Capital Improvements – Total (fund 4908,
appropriation 95800) at the close of fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

The total amount of this appropriation shall be paid from the sale of the Series 2017 Community and Technical College Capital Improvement Refunding Revenue Bonds and anticipated interest earnings.

271-West Virginia University –

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2019 Org 0463

1 Personal Services and Employee Benefits................. 00100 $10,274,340
2 Current Expenses........................................ 13000 4,524,300
3 Repairs and Alterations.............................. 06400 425,000
4 Equipment.................................................. 07000 512,000
5 Buildings.................................................... 25800 150,000
6 Other Assets............................................... 69000 50,000
8 Total...................................................... $15,935,640

MISCELLANEOUS BOARDS AND COMMISSIONS

272-Board of Barbers and Cosmetologists –

Barbers and Beauticians Special Fund

(WV Code Chapters 16 and 30)

Fund 5425 FY 2019 Org 0505

1 Personal Services and
2 Employee Benefits......................... 00100 $ 504,497
3 Current Expenses.............................. 13000 239,969
4 Total.................................................. $ 744,466
The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Board of Barbers and Cosmetologists as provided by law.

273-Hospital Finance Authority –

Hospital Finance Authority Fund

(WV Code Chapter 16)

Fund 5475 FY 2019 Org 0509

1 Personal Services and Employee Benefits.................... 00100 $ 85,981
2 Unclassified ...................................... 09900 1,450
3 Current Expenses .................................. 13000 57,740
4 Total.............................................. $ 145,171

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by Article 29A, Chapter 16 of the Code.

274-WV State Board of Examiners for Licensed Practical Nurses –

Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2019 Org 0906

1 Personal Services and Employee Benefits.................... 00100 $ 455,324
2 Current Expenses .................................. 13000 128,133
3 Total.............................................. $ 583,457

275-WV Board of Examiners for Registered Professional Nurses –

Registered Professional Nurses
### Fund 8520 FY 2019 Org 0907

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$1,226,557</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>312,655</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>3,000</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>25,000</td>
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<tr>
<td>Other Assets</td>
<td>69000</td>
<td>4,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,571,712</strong></td>
</tr>
</tbody>
</table>

#### 276-Public Service Commission

### Fund 8623 FY 2019 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$11,807,314</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>147,643</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>2,572,222</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>55,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>160,000</td>
</tr>
<tr>
<td>PSC Weight Enforcement</td>
<td>34500</td>
<td>4,370,453</td>
</tr>
<tr>
<td>Debt Payment/Capital Outlay</td>
<td>52000</td>
<td>350,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>172,216</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$19,634,848</strong></td>
</tr>
</tbody>
</table>

The total amount of these appropriations shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

The Public Service Commission is authorized to transfer up to $500,000 from this fund to meet the expected deficiencies in the Motor Carrier Division (fund 8625, org 0926) due to the amendment and reenactment of W.Va. Code §24A-3-1 by Enrolled House Bill Number 2715, Regular Session, 1997.
277-Public Service Commission –

Gas Pipeline Division –

Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2019 Org 0926

1 Personal Services and Employee Benefits .................. 00100 $ 284,198
2 Employee Benefits........................................... 00100 284,198
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
8 from a special revenue fund out of receipts collected for or
9 by the Public Service Commission pursuant to and in the
10 exercise of regulatory authority over pipeline companies as
11 provided by law.

278-Public Service Commission –

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2019 Org 0926

1 Personal Services and Employee Benefits .................. 00100 $ 2,243,526
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
9 from a special revenue fund out of receipts collected for or by
10 the Public Service Commission pursuant to and in the exercise
11 of regulatory authority over motor carriers as provided by law.
279-Public Service Commission –  
Consumer Advocate Fund  
(WV Code Chapter 24)  
Fund 8627 FY 2019 Org 0926

1. Personal Services and  
   Employee Benefits ...................  00100 $ 743,372  
2. Current Expenses ......................  13000 276,472  
3. Equipment .............................  07000 9,872  
4. BRIM Premium ..........................  91300 4,660  
5. Total ...................................   $ 1,034,376

The total amount of these appropriations shall be supported by cash from a special revenue fund out of collections made by the Public Service Commission.

280-Real Estate Commission –  
Real Estate License Fund  
(WV Code Chapter 30)  
Fund 8635 FY 2019 Org 0927

1. Personal Services and  
   Employee Benefits ...................  00100 $ 582,413  
2. Current Expenses ......................  13000 285,622  
3. Repairs and Alterations ..............  06400 5,000  
4. Equipment .............................  07000 10,000  
5. Total ...................................   $ 883,035

The total amount of these appropriations shall be paid out of collections of license fees as provided by law.

281-WV Board of Examiners for Speech-Language Pathology and Audiology –  
Speech-Language Pathology and Audiology Operating Fund  
(WV Code Chapter 30)
### Fund 8646 FY 2019 Org 0930

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2019</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$73,190</td>
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<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
<td>$65,623</td>
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<td>4</td>
<td>Total</td>
<td></td>
<td>$138,813</td>
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</tbody>
</table>

282-WV Board of Respiratory Care –

**Board of Respiratory Care Fund**

(WV Code Chapter 30)

### Fund 8676 FY 2019 Org 0935

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2019</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$82,803</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
<td>$50,387</td>
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<td>4</td>
<td>Repairs and Alterations</td>
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<td>$400</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$133,590</td>
</tr>
</tbody>
</table>

283-WV Board of Licensed Dietitians –

**Dietitians Licensure Board Fund**

(WV Code Chapter 30)

### Fund 8680 FY 2019 Org 0936

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2019</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
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</table>

284-Massage Therapy Licensure Board –

**Massage Therapist Board Fund**

(WV Code Chapter 30)

### Fund 8671 FY 2019 Org 0938

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2019</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
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<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
<td>42,648</td>
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<td>Total</td>
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<td>$147,066</td>
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</tbody>
</table>

**285-Board of Medicine –**

**Medical Licensing Board Fund**

(WV Code Chapter 30)

Fund 9070 FY 2019 Org 0945

| 1 | Personal Services and | | |
| 2 | Employee Benefits | 00100 | 1,287,752 |
| 3 | Current Expenses | 13000 | 1,113,789 |
| 4 | Repairs and Alterations | 06400 | 20,000 |
| 5 | Total | | $2,421,541 |

**286-West Virginia Enterprise Resource Planning Board –**

**Enterprise Resource Planning System Fund**

(WV Code Chapter 12)

Fund 9080 FY 2019 Org 0947

| 1 | Personal Services and | | |
| 2 | Employee Benefits | 00100 | 6,713,066 |
| 3 | Unclassified | 09900 | 232,000 |
| 4 | Current Expenses | 13000 | 17,640,134 |
| 5 | Repairs and Alterations | 06400 | 300 |
| 6 | Equipment | 07000 | 213,000 |
| 7 | Buildings | 25800 | 2,000 |
| 8 | Other Assets | 69000 | 199,500 |
| 9 | Total | | $25,000,000 |

**287-Board of Treasury Investments –**

**Board of Treasury Investments Fee Fund**

(WV Code Chapter 12)

Fund 9152 FY 2019 Org 0950
<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<td>$782,889</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>14,850</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>650,714</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>36,547</td>
</tr>
<tr>
<td>Fees of Custodians, Fund Advisors and Fund Managers</td>
<td>93800</td>
<td>3,500,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$4,985,000</strong></td>
</tr>
</tbody>
</table>

There is hereby appropriated from this fund, in addition to the above appropriation if needed, an amount of funds necessary for the Board of Treasury Investments to pay the fees and expenses of custodians, fund advisors and fund managers for the consolidated fund of the State as provided in Article 6C, Chapter 12 of the Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

**Sec. 4. Appropriations from lottery net profits.** — Net profits of the lottery are to be deposited by the Director of the Lottery to the following accounts in the amounts indicated. The Director of the Lottery shall prorate each deposit of net profits in the proportion the appropriation for each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252, Fund 3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the Director of the Lottery shall make available from the remaining net profits of the lottery any amounts needed to pay debt service for which an appropriation is made for Fund 9065, Fund 4297, Fund 3390, and Fund 3514 and is authorized to transfer any such amounts to Fund 9065, Fund 4297, Fund 3390, and Fund 3514 for that purpose. Upon receipt of reimbursement of amounts so transferred, the
Director of the Lottery shall deposit the reimbursement amounts to the following accounts as required by this section.

**288-Education, Arts, Sciences and Tourism –**

*Debt Service Fund*

*(WV Code Chapter 5)*

Fund 2252 FY 2019 Org 0211

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Lottery Funds</th>
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</thead>
<tbody>
<tr>
<td>Debt Service – Total</td>
<td>$10,000,000</td>
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</table>

**289-West Virginia Development Office –**

*West Virginia Tourism Office*

*(WV Code Chapter 5B)*

Fund 3067 FY 2019 Org 0304

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Tourism – Telemarketing Center</td>
<td>$82,080</td>
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<tr>
<td>Tourism – Advertising (R)</td>
<td>2,422,407</td>
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<tr>
<td>Tourism – Operations (R)</td>
<td>4,045,269</td>
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<tr>
<td>Total</td>
<td>$6,549,756</td>
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</table>

Any unexpended balances remaining in the appropriations for Tourism – Advertising (fund 3067, appropriation 61800), and Tourism – Operations (fund 3067, appropriation 66200) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

**290-Division of Natural Resources**

*(WV Code Chapter 20)*

Fund 3267 FY 2019 Org 0310
1 Personal Services and
2 Employee Benefits ...................... 00100 $ 2,196,139
3 Current Expenses ....................... 13000 26,900
4 Pricketts Fort State Park .............. 32400 106,560
5 Non-Game Wildlife (R) .............. 52700 372,124
6 State Parks and Recreation
7 Advertising (R) ....................... 61900 494,578
8 Total ..................................... $ 3,196,301

9 Any unexpended balances remaining in the
10 appropriations for Unclassified (fund 3267, appropriation
11 09900), Capital Outlay – Parks (fund 3267, appropriation
12 28800), Non-Game Wildlife (fund 3267, appropriation
13 52700), and State Parks and Recreation Advertising (fund
14 3267, appropriation 61900) at the close of the fiscal year
15 2018 are hereby reappropriated for expenditure during the
16 fiscal year 2019.

291-State Board of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2019 Org 0402

1 FBI Checks .................................. 37200 $ 111,611
2 Vocational Education
3 Equipment Replacement ............ 39300 800,000
4 Assessment Program (R) ......... 39600 2,969,690
5 21st Century Technology Infrastructure
6 Network Tools and Support (R)..... 93300 14,295,591
7 Total ...................................... $18,176,892

8 Any unexpended balances remaining in the
9 appropriations for Unclassified (fund 3951, appropriation
10 09900), Current Expenses (fund 3951, appropriation
11 13000), Assessment Program (fund 3951, appropriation
12 39600), and 21st Century Technology Infrastructure
13 Network Tools and Support (fund 3951, appropriation
14 93300) at the close of the fiscal year 2018 are hereby
15 reappropriated for expenditure during the fiscal year 2019.
292-State Department of Education – 

School Building Authority – 

Debt Service Fund 

(WV Code Chapter 18)

Fund 3963 FY 2019 Org 0402

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<tr>
<td>1</td>
<td>Debt Service – Total ......................</td>
<td>31000</td>
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<tr>
<td>2</td>
<td>Directed Transfer ...........................</td>
<td>70000</td>
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<td>3</td>
<td>Total.........................................</td>
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</table>

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18.

293-Department of Education and the Arts –

Office of the Secretary – 

Control Account – 

Lottery Education Fund 

(WV Code Chapter 5F)

Fund 3508 FY 2019 Org 0431

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<tbody>
<tr>
<td>1</td>
<td>Unclassified (R) .........................</td>
<td>09900</td>
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<tr>
<td>2</td>
<td>Current Expenses ...........................</td>
<td>13000</td>
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<td>3</td>
<td>Commission for National and Statewide STEM</td>
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<tr>
<td>4</td>
<td>Community Service .......................</td>
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<td>5</td>
<td>21st Century Academy .................</td>
<td>89700</td>
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<td>6</td>
<td>Literacy Project (R) ........................</td>
<td>89900</td>
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<td>7</td>
<td>Total.........................................</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3508, appropriation 09900), Governor’s Honors Academy (fund 3508,
appropriation 47800), Arts Programs (fund 3508, appropriation 50000), and Literacy Project (fund 3508, appropriation 89900) at the close of fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

294-Division of Culture and History –

*Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2019 Org 0432

| 1 | Huntington Symphony ................... | 02700 | $ 59,058 |
| 2 | Preservation WV (R) .................... | 09200 | 491,921 |
| 3 | Fairs and Festivals (R) ................ | 12200 | 1,346,814 |
| 4 | Archeological Curation/Capital Improvements (R) ................ | 24600 | 32,079 |
| 5 | Historic Preservation Grants (R) .... | 31100 | 368,428 |
| 6 | West Virginia Public Theater .......... | 31200 | 120,019 |
| 7 | Greenbrier Valley Theater ............. | 42300 | 99,543 |
| 8 | Theater Arts of West Virginia ...... | 46400 | 90,000 |
| 9 | Marshall Artists Series............... | 51800 | 36,005 |
| 10 | Grants for Competitive Arts Program (R) ................ | 62400 | 726,000 |
| 11 | West Virginia State Fair ............. | 65700 | 31,241 |
| 12 | Save the Music....................... | 68000 | 24,000 |
| 13 | Contemporary American Theater Festival | 81100 | 57,281 |
| 14 | Independence Hall .................... | 81200 | 27,277 |
| 15 | Mountain State Forest Festival ..... | 86400 | 38,187 |
| 16 | WV Symphony .......................... | 90700 | 59,058 |
| 17 | Wheeling Symphony .................... | 90800 | 59,058 |
| 18 | Appalachian Children’s Chorus ...... | 91600 | 54,554 |
| 19 | Total.................................. | | $ 3,720,523 |

From the above appropriation for Preservation West Virginia (fund 3534, appropriation 09200) funding shall be provided to the African-American Heritage Family Tree...
26 Museum (Fayette) $2,673, Aracoma Story (Logan) $29,703, Arts Monongahela (Monongalia) $11,881,
27 Barbour County Arts and Humanities Council $891, Beckley Main Street (Raleigh) $2,970, Buffalo Creek Memorial (Logan) $2,970, Carnegie Hall (Greenbrier) $46,899, Ceredo Historical Society (Wayne) $1,188,
28 Ceredo Kenova Railroad Museum (Wayne) $1,188, Ceredo Museum (Wayne) $720, Children’s Theatre of Charleston (Kanawha) $3,127, Chuck Mathena Center (Mercer) $62,532, Collis P. Huntington Railroad Historical Society (Cabell) $5,941, Country Music Hall of Fame and Museum (Marion) $4,159, First Stage Children’s Theater Company $1,188, Flannigan Murrell House (Summers) $3,781, Fort Ashby Fort (Mineral) $891, Fort New Salem (Harrison) $2,198, Fort Randolph (Mason) $2,970, General Adam Stephen Memorial Foundation (Berkeley) $11,006, Grafton Mother’s Day Shrine Committee (Taylor) $5,049, Hardy County Tour and Crafts Association $11,881, Heartwood in the Hills (Calhoun) $5,040, Heritage Farm Museum & Village (Cabell) $29,703, Historic Fayette Theater (Fayette) $3,267, Historic Middleway Conservancy (Jefferson) $594, Jefferson County Black History Preservation Society $2,970, Jefferson County Historical Landmark Commission $4,753, Maddie Carroll House (Cabell) $4,455, Marshall County Historical Society $5,049, McCoy Theater (Hardy) $11,881, Morgantown Theater Company (Monongalia) $11,881, Mountaineer Boys’ State (Lewis) $5,941, Nicholas Old Main Foundation (Nicholas) $1,188, Norman Dillon Farm Museum (Berkeley) $5,941, Old Opera House Theater Company (Jefferson) $8,911, Parkersburg Arts Center (Wood) $11,881, Pocahontas Historic Opera House $3,564, Raleigh County All Wars Museum $5,941, Rhododendron Girl’s State (Ohio) $5,941, Roane County 4-H and FFA Youth Livestock Program $2,970, Scottish Heritage Society/N. Central WV (Harrison) $2,970, Society for the Preservation of McGrew House (Preston) $2,079, Southern West Virginia Veterans’ Museum $3,393,
Summers County Historic Landmark Commission $2,970, Those Who Served War Museum (Mercer) $2,376, Three Rivers Avian Center (Summers) $5,311, Tug Valley Arts Council (Mingo) $2,970, Tug Valley Chamber of Commerce Coal House (Mingo) $1,188, Tunnelton Historical Society (Preston) $1,188, Veterans Committee for Civic Improvement of Huntington (Wayne) $2,970, West Virginia Museum of Glass (Lewis) $2,970, West Virginia Music Hall of Fame (Kanawha) $20,792, YMCA Camp Horseshoe (Tucker) $59,406, Youth Museum of Southern West Virginia (Raleigh) $7,129, Z.D. Ramsdell House (Wayne) $720.

From the above appropriation for Fairs and Festivals (fund 3534, appropriation 12200) funding shall be provided to A Princeton 4th (Mercer) $1,800, African-American Cultural Heritage Festival (Jefferson) $2,970, Alderson 4th of July Celebration (Greenbrier) $2,970, Allegheny Echo (Pocahontas) $4,456, Alpine Festival/Leaf Peepers Festival (Tucker) $6,683, American Civil War (Grant) $3,127, American Legion Post 8 Veterans Day Parade (McDowell) $1,250, Angus Beef and Cattle Show (Lewis) $891, Annual Birch River Days (Nicholas) $1,296, Annual Don Redman Heritage Concert & Awards (Jefferson) $938, Annual Ruddle Park Jamboree (Pendleton) $4,690, Antique Market Fair (Lewis) $1,188, Apollo Theater-Summer Program (Berkeley) $1,188, Apple Butter Festival (Morgan) $3,564, Arkansaw Homemaker’s Heritage Weekend (Hardy) $2,079, Armed Forces Day-South Charleston (Kanawha) $1,782, Arthurdale Heritage New Deal Festival (Preston) $2,970, Athens Town Fair (Mercer) $1,188, Augusta Fair (Randolph) $2,970, Autumn Harvest Fest (Monroe) $2,448, Barbour County Fair $14,851, Barboursville Octoberfest (Cabell) $2,970, Bass Festival (Pleasants) $1,099, Battelle District Fair (Monongalia) $2,970, Battle of Dry Creek (Greenbrier) $891, Battle of Point Pleasant Memorial Committee (Mason) $2,970, Belle Town Fair (Kanawha) $2,673, Belleville Homecoming (Wood) $11,881, Bergoo Down
103 Home Days (Webster) $1,485, Berkeley County Youth Fair $10,990, Black Bear 4K Mountain Bike Race (Kanawha) $684, Black Heritage Festival (Harrison) $3,564, Black Walnut Festival (Roane) $5,940, Blast from the Past (Upshur) $1,440, Blue-Gray Reunion (Barbour) $2,079, Boone County Fair $5,940, Boone County Labor Day Celebration $2,376, Bradshaw Fall Festival (McDowell) $1,188, Brandonville Heritage Day (Preston) $1,048, Braxton County Fair $6,832, Braxton County Monster Fest / West Virginia Autumn Festival $1,485, Brooke County Fair $2,079, Bruceton Mills Good Neighbor Days (Preston) $1,188, Buckwheat Festival (Preston) $5,050, Buffalo 4th of July Celebration (Putnam) $400, Buffalo October Fest (Putnam) $3,240, Burlington Apple Harvest Festival (Mineral) $17,821, Burlington Pumpkin Harvest Festival (Raleigh) $2,970, Burnsville Harvest Festival (Braxton) $1,407, Cabell County Fair $5,940, Calhoun County Wood Festival $1,188, Campbell’s Creek Community Fair (Kanawha) $1,485, Cape Coalwood Festival Association (McDowell) $1,485, Capon Bridge Founders Day Festival (Hampshire) $1,188, Capon Springs Ruritan 4th of July (Hampshire) $684, Cass Homecoming (Pocahontas) $1,188, Cedarville Town Festival (Gilmer) $684, Celebration in the Park (Wood) $2,376, Celebration of America (Monongalia) $3,564, Ceredo Freedom Festival (Wayne) $700, Chapmanville Apple Butter Festival (Logan) $684, Chapmanville Fire Department 4th of July (Logan) $1,782, Charles Town Christmas Festival (Jefferson) $2,970, Charles Town Heritage Festival (Jefferson) $2,970, Cherry River Festival (Nicholas) $3,861, Chester Fireworks (Hancock) $891, Chester 4th of July Festivities (Hancock) $2,970, Chief Logan State Park-Civil War Celebration (Logan) $4,752, Chilifest West Virginia State Chili Championship (Cabell) $1,563, Christmas In Our Town (Marion) $3,127, Christmas in Shepherdstown (Jefferson) $2,376, Christmas in the Park (Brooke) $2,970, Christmas in the Park (Logan) $14,851, City of Dunbar Critter Dinner (Kanawha) $5,940, City of Logan Polar Express (Logan) $4,456, City of New
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<thead>
<tr>
<th>Event Name</th>
<th>Amount</th>
<th>County</th>
<th>Location</th>
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<tbody>
<tr>
<td>Martinsville Festival of Memories (Wetzel)</td>
<td>$6,534</td>
<td>Clay</td>
<td>Wetzel</td>
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<tr>
<td>County Golden Delicious Apple Festival</td>
<td>$4,158</td>
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<tr>
<td>District Fair (Monongalia)</td>
<td>$1,080</td>
<td>Coal</td>
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<tr>
<td>Field Jamboree (Logan)</td>
<td>$20,792</td>
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<tr>
<td>Country Roads Festival (Fayette)</td>
<td>$1,188</td>
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<td>Cowen Railroad Festival (Webster)</td>
<td>$2,079</td>
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<td>Craigsville Fall Festival (Nicholas)</td>
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<tr>
<td>Cruise into Princeton (Mercer)</td>
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<td>Culturefest World Music &amp; Arts Festival (Mercer)</td>
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<td>Delbarton Homecoming (Mingo)</td>
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<td>County Fair</td>
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<td>Dorcas Ice Cream Social (Grant)</td>
<td>$3,564</td>
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<td>Durbin Days (Pocahontas)</td>
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<td>Elbert/Filbert Reunion Festival</td>
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<td>County 4th of July Car Show (Randolph)</td>
<td>$1,188</td>
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<td>Fairview Mountain Old Time Community Festival (Nicholas)</td>
<td>$2,880</td>
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<td>Festival (Braxton)</td>
<td>$700</td>
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<td>(Taylor) $2,079, Follansbee Community Days</td>
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Hatfield McCoy Matewan Reunion Festival (Mingo) $12,330, Hatfield McCoy Trail National ATV and Dirt Bike Weekend (Wyoming) $2,970, Heat’n the Hills Chilifest (Lincoln) $2,970, Heritage Craft Festival (Monroe) $1,044, Heritage Days Festival (Roane) $891, Hilltop Festival (Cabell) $684, Hilltop Festival of Lights (McDowell) $1,188, Hinton Railroad Days (Summers) $4,347, Holly River Festival (Webster) $891, Hometown Mountain Heritage Festival (Fayette) $2,432, Hundred 4th of July (Wetzel) $4,307, Hundred American Legion Earl Kiger Post Bluegrass Festival (Wetzel) $1,188, Hurricane 4th of July Celebration (Putnam) $2,970, Iaeger Town Fair (McDowell) $891, Irish Heritage Festival of West Virginia (Raleigh) $2,970, Irish Spring Festival (Lewis) $684, Italian Heritage Festival-Clarksburg (Harrison) $17,821, Jackson County Fair $2,970, Jamboree (Pocahontas) $2,970, Jane Lew Arts and Crafts Fair (Lewis) $684, Jefferson County Fair Association $14,851, Jersey Mountain Ruritan Pioneer Days (Hampshire) $684, John Henry Days Festival (Monroe) $4,698, Johnnie Johnson Blues and Jazz Festival (Marion) $2,970, Johnstown Community Fair (Harrison) $1,485, Junior Heifer Preview Show (Lewis) $1,188, Kanawha Coal Riverfest-St. Albans 4th of July Festival (Kanawha) $2,970, Keeper of the Mountains-Kayford (Kanawha) $1,485, Kenova Autumn Festival (Wayne) $4,377, Kermit Fall Festival (Mingo) $1,782, Keystone Reunion Gala (McDowell) $1,563, King Coal Festival (Mingo) $2,970, Kingwood Downtown Street Fair and Heritage Days (Preston) $1,188, L.Z. Rainelle West Virginia Veterans Reunion (Greenbrier) $2,970, Lady of Agriculture (Preston) $684, Larry Joe Harless Center Octoberfest Hatfield McCoy Trail (Mingo) $5,940, Larry Joe Harless Community Center Spring Middle School Event (Mingo) $2,970, Last Blast of
Summer (McDowell) $2,970, Lewis County Fair
Association $2,079, Lewisburg Shanghai (Greenbrier)
$1,188, Lincoln County Fall Festival $4,752, Lincoln
County Winterfest $2,970, Lindside Veterans’ Day Parade
$720, Little Levels Heritage Festival (Pocahontas) $1,188,
Lost Creek Community Festival (Harrison) $4,158, Main
Street Arts Festival (Upshur) $3,127, Main Street
Martinsburg Chocolate Fest and Book Fair (Berkeley)
$2,813, Mannington District Fair (Marion) $3,564, Maple
Syrup Festival (Randolph) $684, Marion County FFA
Farm Fest $1,485, Marmet Labor Day Celebration
(Chinawha) $3,078, Marshall County Antique Power Show
$1,485, Marshall County Fair $4,456, Mason County Fair
$2,970, Mason Dixon Festival (Monongalia) $4,158,
Matewan Massacre Reenactment (Mingo) $5,004,
Matewan-Magnolia Fair (Mingo) $15,932, McARTS-
McDowell County $11,881, McDowell County Fair
$1,485, McGrew House History Day (Preston) $1,188,
McNeill’s Rangers (Mineral) $4,752, Meadow Bridge
Hometown Festival (Fayette) $743, Meadow River Days
Fair (Greenbrier) $1,782, Mercer Bluestone Valley
County Heritage Festival $3,474, Mid Ohio Valley Antique
Engine Festival (Wood) $1,782, Milton Christmas in the
Park (Cabell) $1,485, Milton 4th of July Celebration
(Cabell) $1,485, Mineral County Fair $1,040, Mineral
County Veterans Day Parade $891, Molasses Festival
(Calhoun) $1,188, Monongahfest (Marion) $3,752, Moon
Over Mountwood Fishing Festival (Wood) $1,782,
Morgan County Fair-History Wagon $891, Moundsville
Bass Festival (Marshall) $2,376, Moundsville July 4th
Celebration (Marshall) $2,970, Mount Liberty Fall Festival
Barbour) $1,485, Mountain Fest (Monongalia) $11,881,
Mountain Festival (Mercer) $2,747, Mountain Heritage
Arts and Crafts Festival (Jefferson) $2,970, Mountain
Music Festival (McDowell) $1,485, Mountain State Apple
Harvest Festival (Berkeley) $4,456, Mountain State Arts
& Crafts Fair Cedar Lakes (Jackson) $26,732,
Mountaineer Hot Air Balloon Festival (Monongalia)
$2,376, Mullens Dogwood Festival (Wyoming) $4,158, Multi-Cultural Festival of West Virginia (Kanawha) $11,881, Music and Barbecue - Banks District VFD (Upshur) $1,278, New Cumberland Christmas Parade (Hancock) $1,782, New Cumberland 4th of July (Hancock) $2,970, New River Bridge Day Festival (Fayette) $23,762, Newburg Volunteer Fireman’s Field Day (Preston) $684, Nicholas County Fair $2,970, Nicholas County Potato Festival $2,079, Oak Leaf Festival (Fayette) $6,253, Oceana Heritage Festival (Wyoming) $3,564, Oglebay City Park - Festival of Lights (Ohio) $47,524, Oglebay Festival (Ohio) $5,940, Ohio County Country Fair $5,346, Ohio River Fest (Jackson) $4,320, Ohio Valley Beef Association (Wood) $1,485, Ohio Valley Black Heritage Festival (Ohio) $3,267, Old Central City Fair (Cabell) $2,970, Old Century City Fair (Barbour) $1,250, Old Tyme Christmas (Jefferson) $1,425, Paden City Labor Day Festival (Wetzel) $3,861, Parkersburg Homecoming (Wood) $8,754, Patty Fest (Monongalia) $1,188, Paw Paw District Fair (Marion) $2,079, Pax Reunion Committee (Fayette) $2,970, Pendleton County 4-H Weekend $1,188, Pendleton County Committee for Arts $8,910, Pendleton County Fair $6,253, Pennsboro Country Road Festival (Ritchie) $1,188, Petersburg 4th of July Celebration (Grant) $11,881, Petersburg HS Celebration (Grant) $5,940, Piedmont-Annual Back Street Festival (Mineral) $2,376, Pinch Reunion (Kanawha) $891, Pine Bluff Fall Festival (Harrison) $2,376, Pine Grove 4th of July Festival (Wetzel) $4,158, Pineville Festival (Wyoming) $3,564, Pleasants County Agriculture Youth Fair $2,970, Poca Heritage Days (Putnam) $1,782, Pocahontas County Pioneer Days $4,159, Point Pleasant Stern Wheel Regatta (Mason) $2,970, Pratt Fall Festival (Kanawha) $1,485, Princeton Autumnfest (Mercer) $1,563, Princeton Street Fair (Mercer) $2,970, Putnam County Fair $2,970, Quartets on Parade (Hardy) $2,376, Rainelle Fall Festival (Greenbrier) $3,127, Rand Community Center Festival (Kanawha) $1,485, Randolph County Community Arts Council $1,782, Randolph
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4th of July Firemen Festival (Lewis) $1,188, Wetzel
County Autumnfest $3,267, Wetzel County Town and
Country Days $10,098, Wheeling Celtic Festival (Ohio)
$1,166, Wheeling City of Lights (Ohio) $4,752, Wheeling
Sternwheel Regatta (Ohio) $5,940, Wheeling Vintage
Raceboat Regatta (Ohio) $11,881, Whipple Community
Action (Fayette) $1,485, Wileyville Homecoming
(Wetzel) $2,376, Wine Festival and Mountain Music Event
(Harrison) $2,970, Winter Festival of the Waters
(Berkeley) $2,970, Wirt County Fair $1,485, Wirt County
Pioneer Days $1,188, Wyoming County Civil War Days
$1,296, Youth Stockman Beef Expo (Lewis) $1,188.

Any unexpended balances remaining in the
appropriations for Preservation West Virginia (fund 3534,
appropriation 09200), Fairs and Festivals (fund 3534,
appropriation 12200), Archeological Curation/Capital
Improvements (fund 3534, appropriation 24600), Historic
Preservation Grants (fund 3534, appropriation 31100),
Grants for Competitive Arts Program (fund 3534,
appropriation 62400), and Project ACCESS (fund 3534,
appropriation 86500) at the close of the fiscal year 2018 are
hereby reappropriated for expenditure during the fiscal year
2019.

Any Fairs & Festivals awards shall be funded in
addition to, and not in lieu of, individual grant allocations
derived from the Arts Council and the Cultural Grant
Program allocations.

295-Library Commission –
Lottery Education Fund
(WV Code Chapter 10)

Fund 3559 FY 2019 Org 0433

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Any unexpended balance remaining in the appropriation for Libraries – Special Projects (fund 3559, appropriation 62500) at the close of fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

**296-Bureau of Senior Services –**

**Lottery Senior Citizens Fund**

(WV Code Chapter 29)

Fund 5405 FY 2019 Org 0508

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In-Home Services and Nutrition for Senior Citizens .......... 91700 $4,320,941

Total .......................................................... $39,169,030

Any unexpended balance remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, appropriation 46200) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

Included in the above appropriation for Current Expenses (fund 5405, appropriation 13000), is funding to support an in-home direct care workforce registry.

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (appropriation 53900) along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.

297-Higher Education Policy Commission –

Lottery Education –

Higher Education Policy Commission –

Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2019 Org 0441

1 RHI Program and
2 Site Support (R) ......................... 03600 $1,912,491
3 RHI Program and
4 Site Support –
5 RHEP Program Administration .. 03700 146,653
6 RHI Program and Site Support –
7 Grad Med
8 Ed and Fiscal Oversight (R) .... 03800 87,777
9 Minority Doctoral Fellowship (R) ... 16600 129,604
<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Health Sciences Scholarship (R)</td>
<td>17600</td>
<td>222,417</td>
</tr>
<tr>
<td>11</td>
<td>Vice Chancellor for Health Sciences – Rural Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Residency Program (R)</td>
<td>60100</td>
<td>62,725</td>
</tr>
<tr>
<td>13</td>
<td>WV Engineering, Science, and Technology Scholarship Program</td>
<td>86800</td>
<td>452,831</td>
</tr>
<tr>
<td>14</td>
<td>Total</td>
<td></td>
<td>$3,014,498</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for RHI Program and Site Support (fund 4925, appropriation 03600), RHI Program and Site Support – Grad Med Ed and Fiscal Oversight (fund 4925, appropriation 03800), Minority Doctoral Fellowship (fund 4925, appropriation 16600), Health Sciences Scholarship (fund 4925, appropriation 17600), and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4925, appropriation 60100) at the close of fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

The above appropriation for WV Engineering, Science, and Technology Scholarship Program (appropriation 86800) shall be transferred to the West Virginia Engineering, Science and Technology Scholarship Fund (fund 4928, org 0441) established by W.Va. Code §18C-6-1.

**298-Community and Technical College – Capital Improvement Fund**

(WV Code Chapter 18B)

**Fund 4908 FY 2019 Org 0442**

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service – Total</td>
<td>31000</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>2</td>
<td>Any unexpended balance remaining in the appropriation for Capital Outlay and Improvements – Total (fund 4908, appropriation 84700) at the close of fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 299-Higher Education Policy Commission –

**Lottery Education –**

*West Virginia University – School of Medicine*

(WV Code Chapter 18B)

Fund 4185 FY 2019 Org 0463

<table>
<thead>
<tr>
<th>Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>WVU Health Sciences –</td>
</tr>
<tr>
<td>RHI Program and</td>
</tr>
<tr>
<td>Site Support (R)</td>
</tr>
<tr>
<td>MA Public Health Program and</td>
</tr>
<tr>
<td>Health Science Technology (R)</td>
</tr>
<tr>
<td>Health Sciences Career</td>
</tr>
<tr>
<td>Opportunities Program (R)</td>
</tr>
<tr>
<td>HSTA Program (R)</td>
</tr>
<tr>
<td>Center for Excellence</td>
</tr>
<tr>
<td>in Disabilities (R)</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for WVU Health Sciences – RHI Program and Site Support (fund 4185, appropriation 03500), MA Public Health Program and Health Science Technology (fund 4185, appropriation 62300), Health Sciences Career Opportunities Program (fund 4185, appropriation 86900), HSTA Program (fund 4185, appropriation 87000), and Center for Excellence in Disabilities (fund 4185, appropriation 96700) at the close of fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

### 300-Higher Education Policy Commission –

**Lottery Education –**

*Marshall University – School of Medicine*

(WV Code Chapter 18B)

Fund 4896 FY 2019 Org 0471
Marshall Medical School –
RHI Program and
Site Support (R) .......................... 03300 $ 408,216
Vice Chancellor for Health Sciences –
Rural Health
Residency Program (R).......... 60100 166,770
Total................................................ $ 574,986

Any unexpended balances remaining in the appropriations for Marshall Medical School – RHI Program and Site Support (fund 4896, appropriation 03300) and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4896, appropriation 60100) at the close of fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

Total TITLE II, Section 4 –
Lottery Revenue .............................. $123,308,000

Sec. 5. Appropriations from state excess lottery revenue fund. — In accordance with W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the following appropriations shall be deposited and disbursed by the Director of the Lottery to the following accounts in this section in the amounts indicated.

After first funding the appropriations required by W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the Director of the Lottery shall provide funding from the State Excess Lottery Revenue Fund for the remaining appropriations in this section to the extent that funds are available. In the event that revenues to the State Excess Lottery Revenue Fund are sufficient to meet all the appropriations required made pursuant to this section, then the Director of the Lottery shall then provide the funds available for fund 5365, appropriation 18900.
301- **Lottery Commission – Refundable Credit**

Fund 7207 FY 2019 Org 0705

<table>
<thead>
<tr>
<th>Directed Transfer</th>
<th>Excess Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>70000 $10,000,000</td>
<td></td>
</tr>
</tbody>
</table>

The above appropriation shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under W.Va. Code §11-21-21. The amount of the required transfer shall be determined solely by the State Tax Commissioner and shall be completed by the Director of the Lottery upon the commissioner’s request.

302- **Lottery Commission – General Purpose Account**

Fund 7206 FY 2019 Org 0705

<table>
<thead>
<tr>
<th>General Revenue Fund – Transfer</th>
<th>Excess Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>70011 $65,000,000</td>
<td></td>
</tr>
</tbody>
</table>

The above appropriation shall be transferred to the General Revenue Fund as determined by the Director of the Lottery in accordance with W.Va. Code §29-22-18a.

303- **Higher Education Policy Commission – Education Improvement Fund**

Fund 4295 FY 2019 Org 0441

<table>
<thead>
<tr>
<th>PROMISE Scholarship – Transfer</th>
<th>Excess Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>80000 $29,000,000</td>
<td></td>
</tr>
</tbody>
</table>

The above appropriation shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.
The Legislature has explicitly set a finite amount of available appropriations and directed the administrators of the Program to provide for the award of scholarships within the limits of available appropriations.

304-Economic Development Authority –

Economic Development Project Fund

Fund 9065 FY 2019 Org 0944

1 Debt Service – Total ..................... 31000 $19,000,000

2 Pursuant to W.Va. Code §29-22-18a, subsection (f), excess lottery revenues are authorized to be transferred to the lottery fund as reimbursement of amounts transferred to the economic development project fund pursuant to section four of this title and W.Va. Code §29-22-18, subsection (f).

305-Department of Education –

School Building Authority

Fund 3514 FY 2019 Org 0402

1 Debt Service – Total ..................... 31000 $19,000,000

306-West Virginia Infrastructure Council –

West Virginia Infrastructure Transfer Fund

Fund 3390 FY 2019 Org 0316

1 Directed Transfer ......................... 70000 $46,000,000


307-Higher Education Policy Commission –

Higher Education Improvement Fund
Fund 4297 FY 2019 Org 0441

1 Directed Transfer ......................... 70000 $15,000,000

2 The above appropriation shall be transferred to fund 4903, org 0442 as authorized by Senate Concurrent Resolution No. 41.

308-Division of Natural Resources –

State Park Improvement Fund

Fund 3277 FY 2019 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 100,500
6 Total........................................... $ 5,000,000

7 Any unexpended balances remaining in the above appropriations for Repairs and Alterations (fund 3277, appropriation 06400), Equipment (fund 3277, appropriation 07000), Unclassified – Total (fund 3277, appropriation 09600), Unclassified (fund 3277, appropriation 09900), Current Expenses (fund 3277, appropriation 13000), Buildings (fund 3277, appropriation 25800), and Other Assets (fund 3277, appropriation 69000) at the close of the fiscal year 2018 are hereby reappropriated for expenditure during the fiscal year 2019.

309-Economic Development Authority –

Cacapon and Beech Fork State Parks –

Lottery Revenue Debt Service

Fund 9067 FY 2019 Org 0944
## 310-Racing Commission –

**Fund 7308 FY 2019 Org 0707**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>04000</td>
<td>$ 2,032,000</td>
</tr>
</tbody>
</table>

### 311-Lottery Commission –

**Distributions to Statutory Funds and Purposes**

**Fund 7213 FY 2019 Org 0705**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Parking Garage Fund – Transfer.</td>
<td>70001</td>
<td>$ 500,000</td>
</tr>
<tr>
<td>2 2004 Capitol Complex Parking</td>
<td>70002</td>
<td>216,478</td>
</tr>
<tr>
<td>3 Capitol Dome and Improvements Fund – Transfer</td>
<td>70003</td>
<td>1,796,256</td>
</tr>
<tr>
<td>4 Capitol Renovation and Improvement Fund – Transfer</td>
<td>70004</td>
<td>2,381,252</td>
</tr>
<tr>
<td>5 Development Office Promotion Fund – Transfer</td>
<td>70005</td>
<td>1,298,864</td>
</tr>
<tr>
<td>6 Research Challenge Fund – Transfer</td>
<td>70006</td>
<td>1,731,820</td>
</tr>
<tr>
<td>7 Tourism Promotion Fund – Transfer</td>
<td>70007</td>
<td>4,808,142</td>
</tr>
<tr>
<td>8 Cultural Facilities and Capitol Resources Matching</td>
<td>70008</td>
<td>1,250,535</td>
</tr>
<tr>
<td>9 State Debt Reduction Fund – Transfer</td>
<td>70009</td>
<td>20,000,000</td>
</tr>
<tr>
<td>10 General Revenue Fund – Transfer</td>
<td>70010</td>
<td>1,167,799</td>
</tr>
<tr>
<td>11 West Virginia Racing Commission Racetrack Account</td>
<td>70011</td>
<td>24,010</td>
</tr>
<tr>
<td>12 Historic Resort Hotel Fund</td>
<td>70012</td>
<td>3,463,637</td>
</tr>
<tr>
<td>13 Licensed Racetrack Regular</td>
<td>70013</td>
<td>24,010</td>
</tr>
<tr>
<td>14 Video Lottery Account</td>
<td>70014</td>
<td>3,463,637</td>
</tr>
<tr>
<td>15 Historic Resort Hotel Fund</td>
<td>70015</td>
<td>24,010</td>
</tr>
</tbody>
</table>
26  Purse Fund ............................... 70014  11,383,247
27  Total......................................... $50,022,040

312-Governor’s Office
(WV Code Chapter 5)
Fund 1046 FY 2019 Org 0100
1  Any unexpended balance remaining in the
2  appropriation for Publication of Papers and Transition
3  Expenses – Lottery Surplus (fund 1046, appropriation
4  06600) at the close of the fiscal year 2018 is hereby
5  reappropriated for expenditure during the fiscal year 2019.

313-West Virginia Development Office
(WV Code Chapter 5B)
Fund 3170 FY 2019 Org 0307
1  Any unexpended balances remaining in the
2  appropriations for Unclassified – Total (fund 3170,
3  appropriation 09600), Recreational Grants or Economic
4  Development Loans (fund 3170, appropriation 25300), and
5  Connectivity Research and Development – Lottery Surplus
6  (fund 3170, appropriation 92300) at the close of the fiscal
7  year 2018 are hereby reappropriated for expenditure during
8  the fiscal year 2019.

314-Higher Education Policy Commission –
  Administration –
  Control Account
(WV Code Chapter 18B)
Fund 4932 FY 2019 Org 0441
1  Any unexpended balance remaining in the appropriation
2  for Advanced Technology Centers (fund 4932, appropriation
02800) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

315-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2019 Org 0511

1 Medical Services.......................... 18900 $28,202,960

316-Division of Corrections –

Correctional Units

(WV Code Chapters 25, 28, 49 and 62)

Fund 6283 FY 2019 Org 0608

1 Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 6283, appropriation 75500) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during the fiscal year 2019.

6 Total TITLE II, Section 5 –

7 Excess Lottery Funds............... $290,257,000

Sec. 6. Appropriations of federal funds. — In accordance with Article 11, Chapter 4 of the Code from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2019.

LEGISLATIVE

317-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2019 Org 2300
<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Economic Loss Claim</td>
<td></td>
</tr>
<tr>
<td>2 Payment Fund</td>
<td>33400 $2,360,125</td>
</tr>
</tbody>
</table>

**JUDICIAL**

**318-Supreme Court**

Fund 8867 FY 2019 Org 2400

| Personal Services and | 00100 $2,008,000 |
| Employee Benefits | |
| Current Expenses | 13000 1,992,000 |
| Total | $4,000,000 |

**EXECUTIVE**

**319-Department of Agriculture**

(WV Code Chapter 19)

Fund 8736 FY 2019 Org 1400

| Personal Services and | 00100 $2,563,760 |
| Employee Benefits | |
| Unclassified | 09900 50,534 |
| Current Expenses | 13000 3,828,661 |
| Repairs and Alterations | 06400 650,000 |
| Equipment | 07000 910,500 |
| Buildings | 25800 1,000,000 |
| Other Assets | 69000 50,000 |
| Total | $9,053,455 |

**320-Department of Agriculture – Meat Inspection Fund**

(WV Code Chapter 19)

Fund 8737 FY 2019 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  114,478  
7  Total ................................  $ 875,575  

321-Department of Agriculture –  
State Conservation Committee  
(WV Code Chapter 19)  
Fund 8783 FY 2019 Org 1400  

1  Personal Services and  
2    Employee Benefits............... 00100  $ 97,250  
3  Current Expenses .................... 13000  15,599,974  
4  Total ................................  $15,697,224  

322-Department of Agriculture –  
Land Protection Authority  
Fund 8896 FY 2019 Org 1400  

1  Personal Services and  
2    Employee Benefits............... 00100  $ 46,526  
3  Current Expenses .................... 13000  448,920  
4  Total ................................  $ 500,450  

323-Secretary of State –  
State Election Fund  
(WV Code Chapter 3)  
Fund 8854 FY 2019 Org 1600  

1  Personal Services and  
2    Employee Benefits............... 00100  $ 210,240
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>09900</td>
<td>Unclassified</td>
<td></td>
<td>7,484</td>
<td></td>
</tr>
<tr>
<td>13000</td>
<td>Current Expenses</td>
<td></td>
<td>415,727</td>
<td></td>
</tr>
<tr>
<td>06400</td>
<td>Repairs and Alterations</td>
<td></td>
<td>15,000</td>
<td></td>
</tr>
<tr>
<td>69000</td>
<td>Other Assets</td>
<td></td>
<td>100,000</td>
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</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 748,451</strong></td>
<td></td>
</tr>
</tbody>
</table>

**DEPARTMENT OF COMMERCE**

324-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2019 Org 0305

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>00100</td>
<td>Personal Services and Employee Benefits</td>
<td></td>
<td>$ 1,578,347</td>
<td></td>
</tr>
<tr>
<td>09900</td>
<td>Unclassified</td>
<td></td>
<td>51,050</td>
<td></td>
</tr>
<tr>
<td>13000</td>
<td>Current Expenses</td>
<td></td>
<td>5,232,560</td>
<td></td>
</tr>
<tr>
<td>06400</td>
<td>Repairs and Alterations</td>
<td></td>
<td>155,795</td>
<td></td>
</tr>
<tr>
<td>07000</td>
<td>Equipment</td>
<td></td>
<td>100,000</td>
<td></td>
</tr>
<tr>
<td>69000</td>
<td>Other Assets</td>
<td></td>
<td>1,808,300</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 8,926,052</strong></td>
<td></td>
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</tbody>
</table>

325-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2019 Org 0306

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>00100</td>
<td>Personal Services and Employee Benefits</td>
<td></td>
<td>$ 54,432</td>
<td></td>
</tr>
<tr>
<td>09900</td>
<td>Unclassified</td>
<td></td>
<td>2,803</td>
<td></td>
</tr>
<tr>
<td>13000</td>
<td>Current Expenses</td>
<td></td>
<td>195,639</td>
<td></td>
</tr>
<tr>
<td>06400</td>
<td>Repairs and Alterations</td>
<td></td>
<td>5,000</td>
<td></td>
</tr>
<tr>
<td>07000</td>
<td>Equipment</td>
<td></td>
<td>7,500</td>
<td></td>
</tr>
<tr>
<td>69000</td>
<td>Other Assets</td>
<td></td>
<td>15,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 280,374</strong></td>
<td></td>
</tr>
</tbody>
</table>

326-West Virginia Development Office

(WV Code Chapter 5B)
### Fund 8705 FY 2019 Org 0307

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$745,981</td>
</tr>
<tr>
<td>3. Unclassified</td>
<td>09900</td>
<td>50,000</td>
</tr>
<tr>
<td>4. Current Expenses</td>
<td>13000</td>
<td>4,504,019</td>
</tr>
<tr>
<td>5. Total</td>
<td></td>
<td>$5,300,000</td>
</tr>
</tbody>
</table>

327-West Virginia Development Office –
Office of Economic Opportunity
(WV Code Chapter 5)

### Fund 8901 FY 2019 Org 0307

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$497,289</td>
</tr>
<tr>
<td>2. Repairs and Alterations</td>
<td>06400</td>
<td>250</td>
</tr>
<tr>
<td>4. Equipment</td>
<td>07000</td>
<td>6,000</td>
</tr>
<tr>
<td>5. Unclassified</td>
<td>09900</td>
<td>106,795</td>
</tr>
<tr>
<td>6. Current Expenses</td>
<td>13000</td>
<td>10,069,166</td>
</tr>
<tr>
<td>7. Total</td>
<td></td>
<td>$10,679,500</td>
</tr>
</tbody>
</table>

328-Division of Labor
(WV Code Chapters 21 and 47)

### Fund 8706 FY 2019 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$384,072</td>
</tr>
<tr>
<td>3. Unclassified</td>
<td>09900</td>
<td>5,572</td>
</tr>
<tr>
<td>4. Current Expenses</td>
<td>13000</td>
<td>167,098</td>
</tr>
<tr>
<td>5. Repairs and Alterations</td>
<td>06400</td>
<td>500</td>
</tr>
<tr>
<td>6. Total</td>
<td></td>
<td>$557,242</td>
</tr>
</tbody>
</table>

329-Division of Natural Resources
(WV Code Chapter 20)
### Fund 8707 FY 2019 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Fiscal Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services and</td>
<td></td>
<td>$7,912,218</td>
</tr>
<tr>
<td>2 Employee Benefits</td>
<td>00100</td>
<td>$613,177</td>
</tr>
<tr>
<td>3 Unclassified</td>
<td>09000</td>
<td>107,693</td>
</tr>
<tr>
<td>4 Current Expenses</td>
<td>13000</td>
<td>5,556,594</td>
</tr>
<tr>
<td>5 Repairs and Alterations</td>
<td>06400</td>
<td>289,400</td>
</tr>
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<td>6 Equipment</td>
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<td>69000</td>
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<tr>
<td>9 Land</td>
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<td><strong>Total</strong></td>
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</table>

**330-Division of Miners’ Health,**

*Safety and Training*

(WV Code Chapter 22)

### Fund 8709 FY 2019 Org 0314

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**331-WorkForce West Virginia**

(WV Code Chapter 23)

### Fund 8835 FY 2019 Org 0323

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<td>62200</td>
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Pursuant to the requirements of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the provisions of W.Va. Code §21A-9-9, the above appropriation to Unclassified and Current Expenses shall be used by WorkForce West Virginia for the specific purpose of administration of the state’s unemployment insurance program or job service activities, subject to each and every restriction, limitation or obligation imposed on the use of the funds by those federal and state statutes.

332-Office of Energy
(WV Code Chapter 5B)

Fund 8892 FY 2019 Org 0328

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DEPARTMENT OF EDUCATION

333-State Board of Education –
State Department of Education
(WV Code Chapters 18 and 18A)

Fund 8712 FY 2019 Org 0402

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<td>Equipment</td>
<td>07000</td>
<td>10,000</td>
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<tr>
<td>Other Assets</td>
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<tr>
<td>Total</td>
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<td>$220,026,675</td>
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### 334-State Board of Education –

#### School Lunch Program

(WV Code Chapters 18 and 18A)

Fund **8713 FY 2019 Org 0402**

<table>
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<td>2 Employee Benefits</td>
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### 335-State Board of Education –

#### Vocational Division

(WV Code Chapters 18 and 18A)

Fund **8714 FY 2019 Org 0402**

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<tr>
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<td>2 Employee Benefits</td>
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<td>4 Current Expenses</td>
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<td>5 Repairs and Alterations</td>
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<td>10,000</td>
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### 336-State Board of Education –

#### Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund **8715 FY 2019 Org 0402**
|     |                           |       |                  |             |                  |
|-----|---------------------------|-------|-----------------|-------------|
| 1   | Personal Services and     |       |                  |             |
| 2   | Employee Benefits         | 00100 | $ 3,344,940      |             |
| 3   | Unclassified              | 09900 | 1,000,000        |             |
| 4   | Current Expenses          | 13000 | 108,346,390      |             |
| 5   | Repairs and Alterations   | 06400 | 10,000           |             |
| 6   | Equipment                 | 07000 | 10,000           |             |
| 7   | Other Assets              | 69000 | 10,000           |             |
| 8   | Total                     |       |                  | $ 112,721,330|

**DEPARTMENT OF EDUCATION AND THE ARTS**

*337-Department of Education and the Arts –*

*Office of the Secretary*

*(WV Code Chapter 5F)*

Fund **8841 FY 2019 Org 0431**

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*338-Division of Culture and History*

*(WV Code Chapter 29)*

Fund **8718 FY 2019 Org 0432**

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<tr>
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<tbody>
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<td>1</td>
<td>Personal Services and</td>
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<td>2</td>
<td>Employee Benefits</td>
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<td>5</td>
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<tr>
<td>6</td>
<td>Buildings</td>
<td>25800</td>
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<tr>
<td>7</td>
<td>Other Assets</td>
<td>69000</td>
<td>1,000</td>
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</tr>
<tr>
<td>8</td>
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### 339-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2019 Org 0433

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### 340-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2019 Org 0439

<table>
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<tr>
<th>Item</th>
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<th>Amount</th>
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<tbody>
<tr>
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### 341-State Board of Rehabilitation – Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2019 Org 0932

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<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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### 342-State Board of Rehabilitation – Division of Rehabilitation Services – Disability Determination Services

(WV Code Chapter 18)
### DEPARTMENT OF ENVIRONMENTAL PROTECTION

**343-Division of Environmental Protection**

(WV Code Chapter 22)

Fund 8708 FY 2019 Org 0313

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<td>100,000</td>
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### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

**344-Consolidated Medical Service Fund**

(WV Code Chapter 16)

Fund 8723 FY 2019 Org 0506

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<tbody>
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</table>
345-Division of Health –
   Central Office
   (WV Code Chapter 16)

Fund 8802 FY 2019 Org 0506

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<td>6</td>
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<td>25800</td>
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346-Division of Health –
   West Virginia Safe Drinking Water Treatment
   (WV Code Chapter 16)

Fund 8824 FY 2019 Org 0506

<table>
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347-Human Rights Commission
   (WV Code Chapter 5)

Fund 8725 FY 2019 Org 0510

<table>
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<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
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**348-Division of Human Services**  
(WV Code Chapters 9, 48, and 49)  

**Fund 8722 FY 2019 Org 0511**

<table>
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<tbody>
<tr>
<td>1</td>
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**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

**349-Office of the Secretary**  
(WV Code Chapter 5F)

**Fund 8876 FY 2019 Org 0601**

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<td>Repairs and Alterations</td>
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**350-Adjutant General –**  

**State Militia**  
(WV Code Chapter 15)

**Fund 8726 FY 2019 Org 0603**

<table>
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<th>Amount</th>
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<tr>
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<td>Mountaineer ChalleNGe Academy</td>
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</table>
The Adjutant General shall have the authority to transfer between appropriations.

351-Adjutant General –

West Virginia National Guard Counterdrug Forfeiture Fund

(WV Code Chapter 15)

Fund 8785 FY 2019 Org 0603

1  Personal Services and
2   Employee Benefits...................... 00100  $ 1,350,000
3   Current Expenses ....................... 13000  300,000
4   Equipment................................ 07000  350,000
5   Total....................................  $ 2,000,000

352-Division of Homeland Security and

Emergency Management

(WV Code Chapter 15)

Fund 8727 FY 2019 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  100,000
6   Total.................................... $21,255,931

353-Division of Corrections

(WV Code Chapters 25, 28, 49 and 62)

Fund 8836 FY 2019 Org 0608
### 354-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2019 Org 0612

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### 355-Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2019 Org 0619

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### 356-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 8803 FY 2019 Org 0620

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### DEPARTMENT OF REVENUE

#### 357-Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2019 Org 0704

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### DEPARTMENT OF TRANSPORTATION

#### 358-Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2019 Org 0802

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#### 359-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2019 Org 0805

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### DEPARTMENT OF VETERANS’ ASSISTANCE

#### 360-Department of Veterans’ Assistance

(WV Code Chapter 9A)
Ch. 12] APPROPRIATIONS 259

Fund 8858 FY 2019 Org 0613

1. Personal Services and
2. Employee Benefits.................. 00100 $ 2,751,100
3. Current Expenses.................... 13000 $ 3,925,900
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 100,000
9. Total.................................. $ 7,727,000

361-Department of Veterans’ Assistance –
Veterans’ Home
(WV Code Chapter 9A)

Fund 8728 FY 2019 Org 0618

1. Personal Services and
2. Employee Benefits.................. 00100 $ 877,915
3. Current Expenses.................... 13000 844,092
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 10,000
9. Total.................................. $ 2,466,007

BUREAU OF SENIOR SERVICES
362-Bureau of Senior Services
(WV Code Chapter 29)

Fund 8724 FY 2019 Org 0508

1. Personal Services and
2. Employee Benefits.................. 00100 $ 721,393
3. Current Expenses.................... 13000 13,811,853
4 Repairs and Alterations................. 06400 3,000
5 Total........................................ $14,536,246

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*363-Public Service Commission –*

*Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2019 Org 0926

1 Personal Services and
2 Employee Benefits................... 00100 $ 1,286,913
3 Current Expenses ..................... 13000 368,953
4 Repairs and Alterations............. 06400 40,000
5 Total...................................... $ 1,695,866

*364-Public Service Commission –*

*Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2019 Org 0926

1 Personal Services and
2 Employee Benefits................... 00100 $ 596,600
3 Current Expenses ..................... 13000 124,628
4 Equipment............................... 07000 3,000
5 Unclassified.............................. 09900 4,072
6 Total...................................... $ 728,300

*365-National Coal Heritage Area Authority*

(WV Code Chapter 29)

Fund 8869 FY 2019 Org 0941

1 Personal Services and
2 Employee Benefits................... 00100 $ 159,235


Sec. 7. Appropriations from federal block grants. — The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2019.

366-West Virginia Development Office – Community Development

Fund 8746 FY 2019 Org 0307

1 Personal Services and
2 Employee Benefits ................. 00100 $10,648,117
3 Unclassified ....................... 09900 $2,375,000
4 Current Expenses ................... 13000 $224,476,883
5 Total .................................. $237,500,000

367-Department of Commerce

West Virginia Development Office – Office of Economic Opportunity – Community Services

Fund 8902 FY 2019 Org 0307

1 Personal Services and
2 Employee Benefits ................. 00100 $362,389
3 Unclassified ....................... 09900 $125,000
4 Current Expenses ................... 13000 $12,002,111
5 Repairs and Alterations ............ 06400 $1,500
6 Equipment ........................... 07000 $9,000
7 Total .................................. $12,500,000
368-WorkForce West Virginia –

Workforce Investment Act

Fund 8749 FY 2019 Org 0323

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<td>3 Current Expenses</td>
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<td>4 Repairs and Alterations</td>
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<td>5 Equipment</td>
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<tr>
<td>6 Buildings</td>
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369-Division of Health –

Maternal and Child Health

Fund 8750 FY 2019 Org 0506

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<tr>
<th>Item Description</th>
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370-Division of Health –

Preventive Health

Fund 8753 FY 2019 Org 0506

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</table>
### 371-Division of Health –
#### Substance Abuse Prevention and Treatment

**Fund 8793 FY 2019 Org 0506**

<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
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<td>Employee Benefits</td>
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<td>$936,557</td>
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<td>Unclassified</td>
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### 372-Division of Health –
#### Community Mental Health Services

**Fund 8794 FY 2019 Org 0506**

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<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
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### 373-Division of Human Services –
#### Energy Assistance

**Fund 8755 FY 2019 Org 0511**

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<td>Employee Benefits</td>
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### 374-Division of Human Services –
#### Social Services

**Fund 8757 FY 2019 Org 0511**

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<td>4</td>
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### 375-Division of Human Services –

Temporary Assistance for Needy Families

Fund 8816 FY 2019 Org 0511

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### 376-Division of Human Services –

Child Care and Development

Fund 8817 FY 2019 Org 0511

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<td>Federal Block Grants</td>
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</table>

### Sec. 8. Awards for claims against the state.
— There are hereby appropriated for fiscal year 2018, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $1,753,740 special revenue funds in the amount of $226,619 and state road funds in the amount of $408,830 for payment of claims against the state.

### Sec. 9. Appropriations from general revenue surplus accrued.
— The following item is hereby appropriated
from the state fund, general revenue, and is to be available for expenditure during the fiscal year 2019 out of surplus funds only, accrued from the fiscal year ending June 30, 2018, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus as of July 31, 2018 from the fiscal year ending June 30, 2018, only after first meeting requirements of W.Va. Code §11B-2-20(b).

In the event that surplus revenues available on July 31, 2018, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available as of the date mandated to meet the appropriation in this section and shall be allocated first to provide the necessary funds to meet the first appropriation of this section and each subsequent appropriation in the order listed in this section.

377-Division of Health –
Central Office
(WV Code Chapter 16)
Fund 0407 FY 2019 Org 0506

1 Office of Drug Control
2 Policy - Surplus ....................... ###### $ 5,000,000

378-Division of Homeland Security and Emergency Management
(WV Code Chapter 15)
Fund 0443 FY 2019 Org 0606

1 West Virginia Water Gaging
2 Council - Surplus ....................... ###### $ 765,000
379-West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 0246 FY 2019 Org 0304

1. Tourism – Marketing – Surplus .......... ###### $ 2,500,000

380-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2019 Org 0307

1. Sales and Marketing Enhancement –
2. Surplus.................................. ###### $ 2,500,000

381-Auditor’s Office

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2019 Org 1200

1. VFD Workers’ Compensation Subsidy –
2. Surplus................................. ###### $ 2,000,000

382-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2019 Org 0806

1. Port Authority – Surplus.............. 44399 $ 1,000,000

2. The above appropriation to Port Authority - Surplus (fund 0581, appropriation 44399) shall serve as reimbursement for expenses incurred by the State Road Fund related construction and operation of the Heartland Intermodal Gateway in Wayne County.

7. Total TITLE II, Section 9 – General Revenue
8. Surplus Accrued....................... $13,765,000
Sec. 10. Appropriations from lottery net profits surplus accrued. — The following item is hereby appropriated from the lottery net profits, and is to be available for expenditure during the fiscal year 2019 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2018, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2018.

In the event that surplus revenues available from the fiscal year ending June 30, 2018, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

383-Bureau of Senior Services – 
Lottery Senior Citizens Fund 
(WV Code Chapter 29)
Fund 5405 FY 2019 Org 0508

Senior Services Medicaid Transfer – 
Lottery Surplus ......................... 68199 $ 6,000,000
Total TITLE II, Section 10 – 
Surplus Accrued ......................... $ 6,000,000

Sec. 11. Appropriations from state excess lottery revenue surplus accrued. — The following item is hereby appropriated from the state excess lottery revenue fund, and is to be available for expenditure during the fiscal year 2019 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2018, subject to the terms and conditions set forth in this section.
It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2018.

In the event that surplus revenues available from the fiscal year ending June 30, 2018, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

384-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2019 Org 0511

Medical Services –
Lottery Surplus ......................... 68100 $ 8,000,000
Total TITLE II, Section 11 –
Surplus Accrued ......................... $ 8,000,000

Sec. 12. Special revenue appropriations. — There are hereby appropriated for expenditure during the fiscal year 2019 appropriations made by general law from special revenues which are not paid into the state fund as general revenue under the provisions of W.Va. Code §12-2-2: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with the provisions of W.Va. Code §12-2 and 3, and W.Va. Code §11B-2, unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund; and

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

Sec. 13. State improvement fund appropriations. — Bequests or donations of nonpublic funds, received by the
Governor on behalf of the state during the fiscal year 2019, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year 2019 to be expended as authorized by the Governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 14. Specific funds and collection accounts. — A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of Article 3, Chapter 12 of the Code.

Sec. 15. Appropriations for refunding erroneous payment. — Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the Auditor for the refunding of the proper amount. The Auditor shall issue his or her warrant to the Treasurer and the Treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 16. Sinking fund deficiencies. — There is hereby appropriated to the Governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance
bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by W.Va. Code §31-18-20b, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the Governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the Governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 17. Appropriations for local governments. — There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.

Sec. 18. Total appropriations. — Where only a total sum is appropriated to a spending unit, the total sum shall include personal services and employee benefits, annual increment, current expenses, repairs and alterations, buildings, equipment, other assets, land, and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I – GENERAL PROVISIONS, Sec. 3.
Sec. 19. General school fund. — The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with W.Va. Code §18-9A-16.

TITLE III – ADMINISTRATION

TITLE III - ADMINISTRATION
§1. Appropriations conditional
§2. Constitutionality

Sec. 1. Appropriations conditional. — The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of Article 2, Chapter 11B of the Code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that appropriations and reappropriations shall be to the succeeding or later spending unit created, unless otherwise indicated.

Sec. 2. Constitutionality. — If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.
CHAPTER 13

(S. B. 379 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed February 16, 2018; in effect from passage.]
[Approved by the Governor on February 27, 2018.]

AN ACT making a supplementary appropriation from the balance of moneys remaining as an unappropriated balance in the State Fund, State Excess Lottery Revenue Fund, to the Department of Health and Human Resources, Division of Human Services, fund 5365, fiscal year 2018, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2018, which included a statement of the State Excess Lottery Revenue Fund setting forth therein the unappropriated cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less regular appropriations for fiscal year 2018; 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, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 5365, fiscal year 2018, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:
TITLE II – Appropriations.

Sec. 5. Appropriations from state excess lottery revenue fund.

310 – Division of Human Services
(WV Code Chapters 9, 48, and 49)
Fund 5365 FY 2018 Org 0511

Excess Lottery Funds

1 Medical Services.................... 18900 $9,900,000

CHAPTER 14
(S. B. 382 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed February 16, 2018; in effect from passage.]
[Approved by the Governor on February 27, 2018.]

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 2018, organization 0508, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2018, which included a statement of the Lottery Fund setting forth therein the unappropriated cash balance as of July 1, 2017, and further
included the estimate of revenues for the fiscal year 2018, less regular appropriations for fiscal year 2018; and

Whereas, It appears from the Governor’s statement of the Lottery Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore

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

That the total appropriation for the fiscal year ending June 30, 2018, to fund 5405, fiscal year 2018, organization 0508, be supplemented and amended by increasing an existing item of appropriation as follows:

1. **TITLE II – APPROPRIATIONS.**
2. **Section 4. Appropriations from lottery net profits.**
3. **292 – Bureau of Senior Services –**
4. **Lottery Senior Citizens Fund**
5. **(WV Code Chapter 29)**
6. **Fund 5405 FY 2018 Org 0508**
7. **Approp-**
8. **riation**
9. **Lottery**
10. **Funds**
11. **Transfer to Division of**
12. **Human Services for Health Care**
13. **and Title XIX Waiver**
14. **for Senior Citizens...............53900 $ 4,300,000**
AN ACT supplementing and amending by decreasing and increasing existing appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2018, organization 0511, to the Department of Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2018, organization 0506, to the Bureau of Senior Services, fund 0420, fiscal year 2018, organization 0508, and to the Department of Health and Human Resources – Division of Health – Central Office, fund 0407, fiscal year 2018, organization 0506, by supplementing, amending, increasing, and decreasing the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 2018, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net appropriation balances forwarded and regular appropriations for the fiscal year 2018; and

Whereas, There are available cash balances in the Medical Services Program Fund and the Lottery and Excess Lottery funds that can be utilized in order to decrease the appropriations from 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 will remain an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 0403, fiscal year 2018, organization 0511, be supplemented and amended by decreasing existing items of appropriation as follows:

<table>
<thead>
<tr>
<th>Title II – APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>DEPARTMENT OF HEALTH AND HUMAN RESOURCES</td>
</tr>
<tr>
<td>60 – Division of Human Services</td>
</tr>
<tr>
<td>(WV Code Chapters 9, 48, and 49)</td>
</tr>
<tr>
<td>Fund 0403 FY 2018 Org 0511</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Child Care Development ..........</td>
<td>14400 $ 5,000,000</td>
</tr>
<tr>
<td>8 Medical Services..................</td>
<td>18900 30,327,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0420, fiscal year 2018, organization 0508, be supplemented and amended by decreasing an existing item of appropriation as follows:

<table>
<thead>
<tr>
<th>Title II – APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>BUREAU OF SENIOR SERVICES</td>
</tr>
</tbody>
</table>
83 – Bureau of Senior Services
(WV Code Chapter 29)
Fund 0420 FY 2018 Org 0508

General Appropriation Revenue Fund

1 Transfer to Division of Human Services
2 for Health Care
3 And Title XIX Waiver
4 for Senior Citizens
5 3900 $ 4,300,000

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0407, fiscal year 2018, 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
56 - Division of Health –
Central Office
(WV Code Chapter 16)
Fund 0407 FY 2018 Org 0506

General Appropriation Revenue Fund

25 Health Right Free Clinics
72700 $ 500,000

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0525, fiscal year 2018, 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

57 – Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2018 Org 0506

General Appropriation:

General Revenue Fund

6 Institutional Facilities
Operations (R) .........................  33500 $34,127,000

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0403, fiscal year 2018, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

60 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2018 Org 0511

General Appropriation:

General Revenue Fund

9 Social Services .........................  19500 $ 5,000,000
AN ACT supplementing and amending by decreasing existing appropriations and adding new appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2018, organization 0511, to the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2018, organization 0608, and to the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2018, organization 0621, by supplementing, amending, adding, and decreasing the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 2018, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net appropriation balances forwarded and regular appropriations for the fiscal year 2018; and

Whereas, There are available cash balances in the Medical Services Program Fund that can be utilized in order to decrease the appropriations from 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 will remain an unappropriated balance in the State Treasury
which is available for appropriation during the fiscal year ending June 30, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 0403, fiscal year 2018, organization 0511, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

60 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2018 Org 0511

<table>
<thead>
<tr>
<th>General Revenue Fund</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Services</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>18900</td>
</tr>
<tr>
<td></td>
<td>$23,000,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0450, fiscal year 2018, 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

67 – Division of Corrections –

Correctional Units
(WV Code Chapters 25, 28, 49, and 62)

Fund 0450 FY 2018 Org 0608

<table>
<thead>
<tr>
<th>General Revenue Fund</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

21a Roof Repairs and Mechanical System Upgrades (R).............. 75502 $20,000,000

Any unexpended balance remaining in the appropriation for Roof Repairs and Mechanical System Upgrades (fund 0450, appropriation 75502) at the close of the fiscal year 2018 is hereby reappropriated for expenditures during the fiscal year 2019.

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0570, fiscal year 2018, organization 0621, 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

71 – Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2018 Org 0621

<table>
<thead>
<tr>
<th>General Revenue Fund</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6a Roof Repairs and Mechanical System Upgrades (R).............. 75502 $3,000,000
Any unexpended balance remaining in the appropriation for Roof Repairs and Mechanical System Upgrades (fund 0570, appropriation 75502) at the close of the fiscal year 2018 is hereby reappropriated for expenditures during the fiscal year 2019.

CHAPTER 17

(Com. Sub. for S. B. 386 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed February 16, 2018; in effect from passage.]
[Approved by the Governor on February 27, 2018.]

AN ACT supplementing and amending by decreasing and increasing existing appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Higher Education Policy Commission, Marshall University – School of Medicine, fund 0347, fiscal year 2018, organization 0471, and to the Higher Education Policy Commission, Marshall University – General Administration Fund, fund 0348, fiscal year 2018, organization 0471, by supplementing, amending, increasing, and decreasing the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted to the Legislature the Executive Budget document, dated January 10, 2018, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net appropriation balances forwarded and regular appropriations for the fiscal year 2018; and
Whereas, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and this legislation, there will remain an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore

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

That the total appropriation for the fiscal year ending June 30, 2018, to fund 0347, fiscal year 2018, organization 0471, be supplemented and amended by decreasing an existing item of appropriation as follows:

1. **TITLE II – APPROPRIATIONS.**

2. **Section 1. Appropriations from general revenue.**

3. **HIGHER EDUCATION POLICY COMMISSION**

4. 98 – *Marshall University – School of Medicine*

5. (WV Code Chapter 18B)

6. Fund 0347 FY 2018 Org 0471

7. Marshall Medical School........ 17300 $ 597,993

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0348, fiscal year 2018, organization 0471, be supplemented and amended by increasing an existing item of appropriation as follows:

1. **TITLE II – APPROPRIATIONS.**

2. **Section 1. Appropriations from general revenue.**

3. **HIGHER EDUCATION POLICY COMMISSION**
AN ACT supplementing and amending by decreasing and increasing existing appropriations and adding a new appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2018, organization 0511, to the Department of Administration, Division of Finance, fund 0203, fiscal year 2018, organization 0209, and to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2018, organization 0221, by supplementing, amending, decreasing, and increasing existing appropriations and adding a new appropriation for the fiscal year ending June 30, 2018.
Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 2018, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net appropriation balances forwarded and regular appropriations for the fiscal year 2018; and

Whereas, There are available cash balances in the Medical Services Program Fund that can be utilized in order to decrease the appropriations from 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 will remain an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 0403, fiscal year 2018, organization 0511, be supplemented and amended by decreasing an existing item of appropriation as follows:

<table>
<thead>
<tr>
<th>Title II – Appropriations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>Department of Health and Human Resources</td>
</tr>
<tr>
<td>60 – Division of Human Services</td>
</tr>
<tr>
<td>(WV Code Chapters 9, 48, and 49)</td>
</tr>
<tr>
<td>Fund 0403 FY 2018 Org 0511</td>
</tr>
<tr>
<td>General Appropriation Fund</td>
</tr>
<tr>
<td>Medical Services............</td>
</tr>
</tbody>
</table>
And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0203, fiscal year 2018, organization 0209, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

20 – Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2018 Org 0209

General

Appropriation

Revenue Fund

2a Enterprise Resource Planning System ...................... 08701 $ 1,133,000

The above appropriation for Enterprise Resource Planning System (fund 0203, appropriation 08701) shall be transferred to the Enterprise Resource Planning System Fund (fund 9080).

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0226, fiscal year 2018, 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)
<table>
<thead>
<tr>
<th></th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>0226</td>
<td>2018</td>
<td>0221</td>
<td></td>
</tr>
</tbody>
</table>

### CHAPTER 19

(S. B. 633 - By Senators Blair, Arvon, Boley, Boso, Drennan, Facemire, Ferns, Gaunch, Mann, Maroney, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo and Unger)

[Passed March 10, 2018; in effect from passage.]
[Approved by the Governor on March 15, 2018.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2018, in the amount of $1,620,000 from the Department of Revenue, Insurance Commissioner - Insurance Commission Fund, fund 7152, fiscal year 2018, organization 0704, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health – Consolidated Medical Services Fund, fund 0525, fiscal year 2018, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 2018, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net...
appropriation balances forwarded and regular appropriations for the fiscal year 2018, 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, 2018; 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, 2018, in the Department of Revenue Insurance Commissioner - Insurance Commission Fund, fund 7152, fiscal year 2018, organization 0704, be decreased by expiring the amount of $1,620,000, to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2018.

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0525, fiscal year 2018, organization 0506, be supplemented and amended by increasing an existing item of appropriation and by adding a new item of appropriation as follows:

<table>
<thead>
<tr>
<th>Title II – Appropriations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>Department of Health and Human Resources</td>
</tr>
<tr>
<td>57 – Consolidated Medical Services Fund</td>
</tr>
<tr>
<td>(WV Code Chapter 16)</td>
</tr>
<tr>
<td>Fund 0525 FY 2018 Org 0506</td>
</tr>
<tr>
<td>General Appropriation Fund</td>
</tr>
<tr>
<td>Behavioral Health Program – Surplus (R)</td>
</tr>
</tbody>
</table>
CHAPTER 20

(S. B. 634 - By Senators Blair, Arvon, Boley, Boso, Drennan, Facemire, Ferns, Gaunch, Mann, Maroney, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo and Unger)

[Passed March 10, 2018; in effect from passage.]
[Approved by the Governor on March 10, 2018.]

AN ACT supplementing and amending by adding, increasing, and decreasing the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2018, organization 0511, and to the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2018, organization 0506, by supplementing, amending, adding, increasing, and decreasing the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 2018, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less net
appropriation balances forwarded and regular appropriations for the fiscal year 2018; and

Whereas, There are available cash balances in the Medical Services Program Fund that can be utilized in order to decrease the appropriations from 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 will remain an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 0403, fiscal year 2018, organization 0511, be supplemented and amended by decreasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 60 – Division of Human Services

5 (WV Code Chapters 9, 48, and 49)

6 Fund 0403 FY 2018 Org 0511

7 General

8 Appropriation

9 Revenue

10 Fund

11 Medical Services....................... 18900 $10,000,000

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 0407, fiscal year 2018, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:
TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

56 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2018 Org 0506

General

Appropriation

Revenue

Fund

11a Office of Drug Control Policy (R) ................. 35401 $10,000,000

Any unexpended balance remaining in the appropriation for Office of Drug Control Policy (fund 0407, appropriation 35401) at the close of the fiscal year 2018 is hereby reappropriated for expenditure during fiscal year 2019.

CHAPTER 21

(H. B. 4376 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)

[By Request of the Executive]

[Passed March 8, 2018; in effect from passage.]
[Approved by the Governor on March 15, 2018.]

AN ACT expiring funds to the balance of the Department of Health and Human Resources, Division of Health – Medical Cannabis Program Fund, fund 5420, fiscal year 2018,

Whereas, The Governor finds that the account balance in the Department of Health and Human Resources, Division of Health – The Vital Statistics Account, fund 5144, fiscal year 2018, organization 0506, exceeds that which is necessary for the purpose for which the account was established; and

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – The Vital Statistics Account, fund 5144, fiscal year 2018, organization 0506, in the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2018, organization 0506, and in the Department of Health and Human Resources, Division of Human Services - Health Care Provider Tax, Medicaid State Share Fund, fund 5090, fiscal year 2017, organization 0511, that is available for expenditure during the fiscal year ending June 30, 2018 which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

*Note: The Governor reduced line 4 in the title of the bill by $2,953,990 to $0.
Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2018, to the Department of Health and Human Resources, Division of Health – The Vital Statistics Account, fund 5144, fiscal year 2018, organization 0506, be decreased by expiring the amount of $0 to the Department of Health and Human Resources, Division of Health – Medical Cannabis Program Fund, fund 5420, fiscal year 2018, organization 0506, to be available for expenditure during the fiscal year ending June 30, 2018.

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 5144, fiscal year 2018, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 198 – Division of Health –

5 The Vital Statistics Account

6 (WV Code Chapter 16)

7 Fund 5144 FY 2018 Org 0506

8 Appropriation Other Funds

9

10 1 Personal Services and

11 2 Employee Benefits ............ 00100 $ 50,000

12 And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 5163, fiscal year 2018, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

*NOTE: The Governor reduced line 5 of the above paragraph following the enacting clause, by $2,953,330 to $0.
TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

200 – Division of Health –

Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2018 Org 0506

<table>
<thead>
<tr>
<th>Appropriation Funds</th>
<th>Appropriation Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>13000 $ 100,000</td>
</tr>
</tbody>
</table>

And, chapter one, Acts of the Legislature, 1st extraordinary session, 2017, known as the budget bill, be supplemented and amended by adding to Title II, section three thereof, the following:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

205a – Division of Health –

Medical Cannabis Program Fund

(WV Code Chapter 16A)

Fund 5420 FY 2018 Org 0506

<table>
<thead>
<tr>
<th>Appropriation Funds</th>
<th>Appropriation Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100 $ 303,395</td>
</tr>
</tbody>
</table>
And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 5090, fiscal year 2018, 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 2018 Org 0511

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Services</td>
<td>$36,900,000</td>
</tr>
</tbody>
</table>
CHAPTER 22

(H. B. 4379 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed March 8, 2018; in effect from passage.]
[Approved by the Governor on March 15, 2018.]

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 2018, organization 0803, for the fiscal year ending June 30, 2018.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 2018, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2017, and further included the estimate of revenues for the fiscal year 2018, less regular appropriations for the fiscal year 2018; 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, 2018; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2018, to fund 9017, fiscal year 2018, organization 0803, be supplemented and amended by decreasing existing items of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 2. Appropriations from state road fund.
And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 9017, fiscal year 2018, organization 0803, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

109 – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2018 Org 0803

<table>
<thead>
<tr>
<th>State Appropriation</th>
<th>Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance..........</td>
<td>23700</td>
</tr>
<tr>
<td>$40,000,000</td>
<td></td>
</tr>
<tr>
<td>Appalachian Programs.</td>
<td>28000</td>
</tr>
<tr>
<td>20,000,000</td>
<td></td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 9017, fiscal year 2018, organization 0803, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

109 – Division of Highways –

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2018 Org 0803

<table>
<thead>
<tr>
<th>State Appropriation</th>
<th>Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service........</td>
<td>04000</td>
</tr>
<tr>
<td>$5,000,000</td>
<td></td>
</tr>
<tr>
<td>Interstate Construction.</td>
<td>27800</td>
</tr>
<tr>
<td>20,000,000</td>
<td></td>
</tr>
<tr>
<td>Other Federal Aid Programs...</td>
<td>27900</td>
</tr>
<tr>
<td>53,000,000</td>
<td></td>
</tr>
</tbody>
</table>
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, 2018, to the Department of Agriculture, Fund 8736, fiscal year 2018, Organization 1400, and to the Department of Agriculture – State Conservation Committee, Fund 8783, fiscal year 2018, Organization 1400, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2018 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, 2018, to Fund 8736, fiscal year 2018, Organization 1400, be supplemented and amended by increasing an existing item and adding a new item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 EXECUTIVE
And, That the total appropriation for the fiscal year ending June 30, 2018, to Fund 8783, fiscal year 2018, 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

317 – Department of Agriculture – State Conservation Committee

Fund 8783 FY 2018 Org 1400

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Current Expenses .................. 13000 $ 1,500,000</td>
<td></td>
</tr>
</tbody>
</table>
AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2018, to the Department of Education, State Board of Education – School Lunch Program, fund 8713, fiscal year 2018, organization 0402, and to the Department of Education, State Board of Education – Vocational Division, fund 8714, fiscal year 2018, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2018 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, 2018, to fund 8713, fiscal year 2018, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.
And, That the total appropriation for the fiscal year ending June 30, 2018, to fund 8714, fiscal year 2018, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

1  TITLE II – APPROPRIATIONS.

2  Sec. 6. Appropriations of federal funds.

3  DEPARTMENT OF EDUCATION

4  331 – State Board of Education –

5  Vocational Division

6  (WV Code Chapters 18 and 18A)

7  Fund 8714 FY 2018 Org 0402

8

9

10 1 Personal Services and

11 2 Employee Benefits .......... 00100 $ 300,000
AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2018, to the Department of Transportation, Division of Public Transit, fund 8745, fiscal year 2018, organization 0805, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

WHEREAS, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2018 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, 2018, to fund 8745, fiscal year 2018, organization 0805, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF TRANSPORTATION

4 356 – Division of Public Transit

5 (WV Code Chapter 17)
AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2018, to the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2018, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2018 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, 2018, to fund 8722, fiscal year 2018, organization 0511, be
supplemented and amended by increasing existing items of appropriation as follows:

1 TITIIE II – APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES

4 345 – Division of Human Services

5 (WV Code Chapters 9, 48 and 49)

6 Fund 8722 FY 2018 Org 0511

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>13000  $40,000,000</td>
</tr>
<tr>
<td>Medical Services</td>
<td>18900  $70,000,000</td>
</tr>
</tbody>
</table>

CHAPTER 27

(H. B. 4386 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed February 20, 2018; in effect from passage.]
[Approved by the Governor on March 2, 2018.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2018, to the Department of Health and Human Resources, Division of Health – Community Mental Health Services, fund 8794, fiscal year 2018, organization 0506, by
supplementing and amending the appropriations for the fiscal year ending June 30, 2018.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2018 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, 2018, to fund 8794, fiscal year 2018, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

<table>
<thead>
<tr>
<th>TITLE II – APPROPRIATIONS.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 7. Appropriations from federal block grants.</td>
<td></td>
</tr>
<tr>
<td>DEPARTMENT OF HEALTH AND HUMAN RESOURCES</td>
<td></td>
</tr>
<tr>
<td>370 – Division of Health –</td>
<td></td>
</tr>
<tr>
<td>Community Mental Health Services</td>
<td></td>
</tr>
<tr>
<td>Fund 8794 FY 2018 Org 0506</td>
<td></td>
</tr>
<tr>
<td>Appropriation</td>
<td>Federal Funds</td>
</tr>
<tr>
<td>Current Expenses...............</td>
<td>13000 $700,000</td>
</tr>
</tbody>
</table>
AN ACT expiring funds to the balance of the West Virginia Enterprise Resource Planning Board - Enterprise Resource Planning System Fund, fund 9080, fiscal year 2018, organization 0947, in the amount of $2,266,000 and to the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund, fund ****, fiscal year 2018, organization 0804 in the amount of $1,500,000; from the Auditor’s Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, and from the Treasurer’s Office, Banking Services Expense Fund, fund 1322, fiscal year 2018, organization 1300, by supplementing and amending chapter one, Acts of the Legislature, 1st extraordinary session, 2017, known as the budget bill.

WHEREAS, The Governor finds that the account balances in the Auditor’s Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, and in the Treasurer’s Office, Banking Services Expense Fund, fund 1322, fiscal year 2018, organization 1300 exceed that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2018, to the Auditor’s Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, be decreased by expiring the amount of
$1,133,000, and to the Treasurer’s Office, Banking Services Expense Fund, fund 1322, fiscal year 2018, organization 1300 be decreased by expiring the amount of $1,133,000 to the West Virginia Enterprise Resource Planning Board - Enterprise Resource Planning System Fund, fund 9080, fiscal year 2018, organization 0947, and the balance of funds available for expenditure in the fiscal year ending June 30, 2018, to the Auditor’s Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, be decreased by expiring the amount of $1,500,000 to the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund, fund ****, fiscal year 2018, organization 0804 to be available for expenditure during the fiscal year ending June 30, 2018.

And, chapter one, Acts of the Legislature, 1st extraordinary session, 2017, known as the budget bill, be supplemented and amended by adding to Title II, section three thereof, the following:

1 TITLE II – APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF TRANSPORTATION.

4 259a – State Rail Authority

5 West Virginia Commuter Rail Access Fund

6 (WV Code Chapter 29)

7 Fund **** FY 2018 Org 0804

8 Appropriation Other Funds

9

10 1 Current Expenses............ 13000 $ 1,500,000
AN ACT to amend and reenact §61-12-10 of the Code West Virginia, 1931, as amended, relating to permitting a designated representative of a hospital or an attending physician to obtain a patient’s autopsy report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. POSTMORTEM EXAMINATIONS.

*§61-12-10. When autopsies made and by whom performed; records of date investigated; copies of records and information; reporting requirements.

(a) If in the opinion of the chief medical examiner, or of the county medical examiner of the county in which the death in question occurred, it is advisable and in the public interest that an autopsy be made, or if an autopsy is requested by either the prosecuting attorney or the judge of the circuit court or other court of record having criminal jurisdiction in that county, an autopsy shall be conducted by the chief medical examiner or his or her designee, by a member of his or her staff, or by a competent pathologist designated and employed by the chief medical examiner under the provisions of this article. For this purpose, the chief medical examiner may employ any county medical examiner who is a pathologist who holds board certification or board eligibility in forensic pathology or has completed

*NOTE: This section was also amended by H. B. 4020 (Chapter 37), which passed prior to this act.
an American Board of Pathology fellowship in forensic pathology to make the autopsies, and the fees to be paid for autopsies under this section shall be in addition to the fee provided for investigations pursuant to §61-12-8. A full record and report of the findings developed by the autopsy shall be filed with the office of the chief medical examiner by the person making the autopsy.

(b) Within the discretion of the chief medical examiner, or of the person making the autopsy, or if requested by the prosecuting attorney of the county, or of the county where any injury contributing to or causing the death was sustained, a copy of the report of the autopsy shall be furnished to the prosecuting attorney.

(c) The office of the chief medical examiner shall keep full, complete and properly indexed records of all deaths investigated, containing all relevant information concerning the death and the autopsy report if an autopsy report is made. Any prosecuting attorney or law-enforcement officer may secure copies of these records or information necessary for the performance of his or her official duties.

(d) Copies of these records or information shall be furnished, upon request, to any court of law, or to the parties therein to whom the cause of death is a material issue, except where the court determines that interests in a civil matter conflict with the interests in a criminal proceeding, in which case the interests in the criminal proceeding shall take precedence. The office of chief medical examiner shall be reimbursed a reasonable rate by the requesting party for costs incurred in the production of records under this subsection, and subsection (c), (f) and (g) of this section.

(e) The chief medical examiner is authorized to release investigation records and autopsy reports to the multidisciplinary team authorized by §49-4-402 and as authorized in subsection (j) of this section. At the direction of the Secretary of the Department of Health and Human Resources the chief medical examiner may release records
and information to other state agencies when considered to be in the public interest.

(f) The chief medical examiner is authorized to release a copy of the autopsy and toxicology reports upon the request from a designated representative of a hospital as defined in §16-2D-2 of this code, to said facility who has reported a death under the provisions of §61-12-8 for purposes of quality review and medical record completion.

(g) The chief medical examiner is authorized to release a copy of the autopsy and toxicology reports upon the request of an attending physician as defined in §16-30C-3 of this code, to said physician whose patient has died for purposes of quality review and medical record completion.

(h) Any person performing an autopsy under this section may keep and retain, for and on behalf of the chief medical examiner, any tissue from the body upon which the autopsy was performed which may be necessary for further study or consideration.

(i) In cases of the death of any infant in the State of West Virginia where sudden infant death syndrome is the suspected cause of death and the chief medical examiner or the medical examiner of the county in which the death in question occurred considers it advisable to perform an autopsy, it is the duty of the chief medical examiner or the medical examiner of the county in which the death occurred to notify the sudden infant death syndrome program within the division of maternal and child health and to inform the program of all information to be given to the infant’s parents.

(j) If the chief medical officer determines that a drug overdose is the cause of death of a person, the chief medical examiner shall provide notice of the death to the West Virginia Controlled Substances Monitoring Program Database Review Committee established pursuant to §60A-9-5(b) and shall include in the notice any information relating to the cause of the fatal overdose.
AN ACT to amend and reenact §31A-4-20 of the Code of West Virginia, 1931, as amended, relating to the delivery of financial statements to bank shareholders at or prior to the annual meeting of shareholders.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-20. Stockholders’ annual meeting; financial statement; appointment, duties and report of outside auditing firm.

(a) The stockholders of each state banking institution shall meet annually. The banking institution shall prepare and submit to the stockholders a copy of the institution’s most recent fiscal year audited financial statements. The audited financial statement may be consolidated or combined statements of the banking institution, its holding company and any subsidiaries, that include a balance sheet as of the end of the fiscal year, an income statement for that year and a statement of changes in shareholders’ equity for the year. The submission is sufficient if, within 120 days of the close of the fiscal year, the banking institution delivers a physical or digital copy of the requisite statement through traditional mail or courier.
service, electronic mail or any other means of delivery or
provides shareholders with notice of access to a digital
copy of the statements published to a website or any other
digital media platform or portal.

(b) The board of directors of the banking institution or,
if such banking institution is controlled by a bank holding
company, the bank holding company shall appoint an
outside auditing firm on an annual basis to serve as the
banking institution’s auditor for the year.

(c) At such time or times as it may be directed to do so
by the written request of the board of directors, or the
Commissioner of Financial Institutions, such outside
independent auditing firm shall immediately proceed to
examine the condition of the bank, and upon completion of
such examination, shall file its report in writing with the
board of directors. Such report shall set forth in detail all
items included in the assets of the bank which the firm has
reason to believe are not of the value at which they appear
on the books and records of the bank, and shall give the
value of each of such items according to its judgment. The
board of directors shall cause such report to be retained as a
part of the records of the bank.

(d) The workpapers of any audit, including any
materials associated with an audit of the bank’s electronic
data procedures, shall be made available to the
commissioner or to the examiners of the Division of
Financial Institutions upon request, and will be accorded
confidentiality in conformity with §31A-2-4 of this code.
AN ACT to repeal §31G-1-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31G-2-1 of said code, all relating to broadband enhancement and expansion policies generally; repealing language relating to pilot project for cooperative associations by political subdivisions; and providing that a political subdivision of this state may be a qualified person for the purposes of forming a cooperative association.

Be it enacted by the Legislature of West Virginia:

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-10. Pilot Project for cooperatives by political subdivisions.

1 [Repealed].

ARTICLE 2. COOPERATIVE ASSOCIATIONS.

§31G-2-1. Definitions.

1 As used in this article:

2 (1) “Cooperative association” or “association” means any corporation organized under this article. Each
association shall also comply with the requisite business corporation provisions of chapter thirty-one-d or thirty-one-f of this code, or the nonprofit corporation provisions of chapter thirty-one-e of this code.

(2) “Internet services” means providing access to, and presence on, the internet and other services. Data may be transmitted using several technologies, including dial-up, DSL, cable modem, wireless, or dedicated high-speed interconnects.

(3) “Member” means a member of an association without capital stock and a holder of common stock in an association organized with capital stock.

(4) “Qualified person” means a person who is engaged in the use of internet services, either in an individual capacity, as a political subdivision of this state, or as a business.

(5) “Qualified activity” means using internet services.

CHAPTER 32

(H. B. 4422 - By Delegates Frich, Walters, Westfall, Upson, Householder, Statler, Ambler, A. Evans, C. Miller and Anderson)

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §35-5-4 of the Code of West Virginia, 1931, relating to permitting permanent endowment funds of cemeteries to invest their principal in government bonds, and corporate bonds that have been rated A or above.

Be it enacted by the Legislature of West Virginia:
ARTICLE 5. CEMETERIES.

§35-5-4. Same — How invested; report of trustee; disposition of income.

The principal of such permanent endowment fund shall be invested in some safe securities, including government bonds, and corporate bonds that have been rated A or above to be approved by the board of directors of such cemetery association, or its successors, in the name of a trustee appointed as hereinafter provided. Such trustee shall make an annual report to the board of directors of such cemetery association showing the amount of the permanent endowment fund at the beginning of each year, the names of the donors, if any, and the amounts contributed by each during the year in which the report is made, the income derived from such fund during the year, and the amount on hand at the end of the year; and a copy of such report shall be filed with the clerk of the county court of the county in which such cemetery association is located. The trustee during the year, or at the end thereof, shall turn over to such cemetery association, or its successor, all income derived from such permanent endowment fund during the year, which shall be expended in accordance with this article.

CHAPTER 33

(S. B. 47 - By Senators Romano and Ojeda)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §49-2-802 of the Code of West Virginia, 1931, as amended, relating to requiring Department of Defense family advocacy groups to be notified about any abuse or neglect of a child of a military person.
Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-802. Establishment of child protective services; general duties and powers; administrative procedure; immunity from civil liability; cooperation of other state agencies.

(a) The department shall establish or designate in every county a local child protective services office to perform the duties and functions set forth in this article.

(b) The local child protective services office shall investigate all reports of child abuse or neglect. Under no circumstances may investigating personnel be relatives of the accused, the child or the families involved. In accordance with the local plan for child protective services, it shall provide protective services to prevent further abuse or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services necessary to ensure the safety of children. The local child protective services office shall be organized to maximize the continuity of responsibility, care, and service of individual workers for individual children and families. Under no circumstances may the secretary or his or her designee promulgate rules or establish any policy which restricts the scope or types of alleged abuse or neglect of minor children which are to be investigated or the provision of appropriate and available services.

(c) Each local child protective services office shall:

(1) Receive or arrange for the receipt of all reports of children known or suspected to be abused or neglected on a 24-hour, seven-day-a-week basis and cross-file all reports under the names of the children, the family, and any person substantiated as being an abuser or neglecter by investigation of the Department of Health and Human Resources, with use of cross-filing of the person’s name limited to the internal use of the department: Provided, That local child protective services offices shall disclose the
names of alleged abusers pursuant to §49-2-802(c)(4) of this code;

(2) Provide or arrange for emergency children’s services to be available at all times;

(3) Upon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child’s environment. As a part of this response, within 14 days there shall be a face-to-face interview with the child or children and the development of a protection plan, if necessary, for the safety or health of the child, which may involve law-enforcement officers or the court;

(4) Make efforts as soon as practicable to determine the military status of parents whose children are subject to abuse or neglect allegations. If the office determines that a parent or guardian is in the military, the department shall notify a Department of Defense family advocacy program that there is an allegation of abuse and neglect that is screened in and open for investigation that relates to that military parent or guardian;

(5) Respond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse. As a part of this response, within 72 hours there shall be a face-to-face interview with the child or children and the development of a protection plan, which may involve law-enforcement officers or the court; and

(6) In addition to any other requirements imposed by this section, when any matter regarding child custody is pending, the circuit court or family court may refer allegations of child abuse and neglect to the local child protective services office for investigation of the allegations as defined by this chapter and require the local child protective services office to submit a written report of the investigation to the referring circuit court or family court within the time frames set forth by the circuit court or family court.
(d) In those cases in which the local child protective services office determines that the best interests of the child require court action, the local child protective services office shall initiate the appropriate legal proceeding.

(e) The local child protective services office shall be responsible for providing, directing, or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child’s family and those responsible for the child’s care.

(f) To carry out the purposes of this article, all departments, boards, bureaus, and other agencies of the state or any of its political subdivisions and all agencies providing services under the local child protective services plan shall, upon request, provide to the local child protective services office any assistance and information as will enable it to fulfill its responsibilities.

(g)(1) In order to obtain information regarding the location of a child who is the subject of an allegation of abuse or neglect, the Secretary of the Department of Health and Human Resources may serve, by certified mail or personal service, an administrative subpoena on any corporation, partnership, business, or organization for the production of information leading to determining the location of the child.

(2) In case of disobedience to the subpoena, in compelling the production of documents, the secretary may invoke the aid of:

(A) The circuit court with jurisdiction over the served party if the person served is a resident; or

(B) The circuit court of the county in which the local child protective services office conducting the investigation is located if the person served is a nonresident.
(3) A circuit court shall not enforce an administrative subpoena unless it finds that:

(A) The investigation is one the Division of Child Protective Services is authorized to make and is being conducted pursuant to a legitimate purpose;

(B) The inquiry is relevant to that purpose;

(C) The inquiry is not too broad or indefinite;

(D) The information sought is not already in the possession of the Division of Child Protective Services; and

(E) Any administrative steps required by law have been followed.

(4) If circumstances arise where the secretary, or his or her designee, determines it necessary to compel an individual to provide information regarding the location of a child who is the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a subpoena from the circuit court with jurisdiction over the individual from whom the information is sought.

(h) No child protective services caseworker may be held personally liable for any professional decision or action taken pursuant to that decision in the performance of his or her official duties as set forth in this section or agency rules promulgated thereupon. However, nothing in this subsection protects any child protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton misconduct, or intentional misconduct.
CHAPTER 34
(S. B. 407 - By Senators Takubo, Maroney, Stollings and Plymale)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §49-1-203 and §49-1-206 of the Code of West Virginia, 1931, as amended, all relating to modifying definitions related to licensing and approval of child care programs; modifying definitions related to child advocacy, care, residential, and treatment programs eliminating ability for family child care homes, informal family child care homes, or relative family child care homes to self-certify compliance with legislative rules; eliminating statutory caps on the number of children under 24 months of age in family child care facilities and family child care homes; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

PART II – DEFINITIONS.

§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 the meanings ascribed to them that relate to, but are not limited to, licensing and approval of programs, except in those instances where a different meaning is provided or the context in which the word used clearly indicates that a different meaning is intended.
“Approval” means a finding by the Secretary of the Department of Health and Human Resources that a facility operated by the state has met the requirements of legislative rules promulgated for operation of that facility and that a certificate of approval or a certificate of operation has been issued.

“Certification of approval” or “certificate of operation” means a statement issued by the Secretary of the Department of Health and Human Resources that a facility meets all of the necessary requirements for operation.

“Certificate of license” means a statement issued by the Secretary of the Department of Health and Human Resources authorizing an individual, corporation, partnership, voluntary association, municipality, or county, or any agency thereof, to provide specified services for a limited period of time in accordance with the terms of the certificate.

“Certificate of registration” means a statement issued by the Secretary of the Department of Health and Human Resources to a family child care home, informal family child care home, or relative family child care home to provide specified services for a limited period in accordance with the terms of the certificate.

“License” means the grant of official permission to a facility to engage in an activity which would otherwise be prohibited.

“Registration” means the grant of official permission to a family child care home, informal family child care home, or a relative family child care home determined to be in compliance with the legislative rules promulgated pursuant to this chapter.

“Rule” means legislative rules promulgated by the Secretary of the Department of Health and Human Resources or a statement issued by the Secretary of the
41 Department of Health and Human Resources of the standards to be applied in the various areas of child care.

42 “Variance” means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

46 “Waiver” means a declaration that a certain legislative rule is inapplicable in a particular circumstance.

§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 the meanings ascribed to them that relate to, but are not limited to, child advocacy, care, residential, and treatment programs, except in those instances where a different meaning is provided or the context in which the word used clearly indicates that a different meaning is intended.

8 “Child Advocacy Center (CAC)” means a community-based organization that is a member in good standing with the West Virginia Child Abuse Network, Inc., as set forth in §49-3-101 of this code.

12 “Child care” means responsibilities assumed and services performed in relation to a child’s physical, emotional, psychological, social, and personal needs and the consideration of the child’s rights and entitlements, but does not include secure detention or incarceration under the jurisdiction of the Division of Juvenile Services pursuant to §49-2-901 et seq. of this code. It includes the provision of child care services or residential services.

20 “Child care center” means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private for the care of 13 or more children for child care services in any setting, if the facility is open for more than 30 days per year per child.
“Child care services” means direct care and protection of children during a portion of a 24-hour day outside of the child’s own home which provides experiences to children that foster their healthy development and education.

“Child placing agency” means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are 16 or 17 years old and living in unlicensed residences.

“Child welfare agency” means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes or any facility that provides care for unmarried mothers and their children. A child welfare agency does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the Division of Juvenile Services, pursuant to §49-2-901 et seq. of this code, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

“Community based” means a facility, program, or service located near the child’s home or family and involving community participation in planning, operation, and evaluation and which may include, but is not limited to, medical, educational, vocational, social, and psychological guidance, training, special education, counseling, substance abuse, and any other treatment or rehabilitation services.

“Community-based juvenile probation sanctions” means any of a continuum of nonresidential accountability
measures, programs, and sanctions in response to a technical violation of probation, as part of a system of community-based juvenile probation sanctions and incentives, that may include, but are not limited to:

(A) Electronic monitoring;
(B) Drug and alcohol screening, testing, or monitoring;
(C) Youth reporting centers;
(D) Reporting and supervision requirements;
(E) Community service; and
(F) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment.

“Community services” means nonresidential prevention or intervention services or programs that are intended to reduce delinquency and future court involvement.

“Evidence-based practices” means policies, procedures, programs, and practices demonstrated by research to reliably produce reductions in the likelihood of reoffending.

“Facility” means a place or residence, including personnel, structures, grounds, and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose. Facility does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services for the secure housing or holding of juveniles committed to its custody.

“Family child care facility” means any facility which is used to provide nonresidential child care services for compensation for seven to 12 children, including children who are living in the household, who are under six years of age.
age. A facility may be in a provider’s residence or a separate building.

“Family child care home” means a facility which is used to provide nonresidential child care services for compensation in a provider’s residence. The provider may care for four to six children at one time, including children who are living in the household, who are under six years of age.

“Family resource network” means:

(A) A local community organization charged with service coordination, needs and resource assessment, planning, community mobilization, and evaluation, and which has met the following criteria:

(i) Agreeing to a single governing entity;

(ii) Agreeing to engage in activities to improve service systems for children and families within the community;

(iii) Addressing a geographic area of a county or two or more contiguous counties;

(iv) Having nonproviders, which include family representatives and other members who are not employees of publicly funded agencies, as the majority of the members of the governing body, and having family representatives as the majority of the nonproviders;

(v) Having representatives of local service agencies, including, but not limited to, the public health department, the behavioral health center, the local health and human resources agency, and the county school district, on the governing body; and

(vi) Accepting principles consistent with the cabinet’s mission as part of its philosophy.
(B) A family resource network may not provide direct services, which means to provide programs or services directly to children and families.

“Family support”, for the purposes of §49-2-601 et seq. of this code, means goods and services needed by families to care for their family members with developmental disabilities and to enjoy a quality of life comparable to other community members.

“Family support program” means a coordinated system of family support services administered by the Department of Health and Human Resources through contracts with behavioral health agencies throughout the state.

“Foster family home” means a private residence which is used for the care on a residential basis of no more than five children who are unrelated by blood, marriage, or adoption to any adult member of the household.

“Health care and treatment” means:

(A) Developmental screening;

(B) Mental health screening;

(C) Mental health treatment;

(D) Ordinary and necessary medical and dental examination and treatment;

(E) Preventive care including ordinary immunizations, tuberculin testing, and well-child care; and

(F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and treatment does not include an abortion.

“Home-based family preservation services” means services dispensed by the Department of Health and Human Resources or by another person, association, or group who has contracted with that division to dispense services when
those services are intended to stabilize and maintain the natural or surrogate family in order to prevent the placement of children in substitute care. There are two types of home-based family preservation services and they are as follows:

(A) Intensive, short-term intervention of four to six weeks; and

(B) Home-based, longer-term after care following intensive intervention.

“Informal family child care” means a home that is used to provide nonresidential child care services for compensation for three or fewer children, including children who are living in the household who are under six years of age. Care is given in the provider’s own home to at least one child who is not related to the caregiver.

“Nonsecure facility” means any public or private residential facility not characterized by construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody in that facility and which provides its residents access to the surrounding community with supervision.

“Nonviolent misdemeanor offense” means a misdemeanor offense that does not include any of the following:

(A) An act resulting in bodily injury or death;

(B) The use of a weapon in the commission of the offense;

(C) A domestic abuse offense involving a significant or likely risk of harm to a family member or household member;

(D) A criminal sexual conduct offense; or
(E) Any offense for driving under the influence of alcohol or drugs.

“Out-of-home placement” means a post-adjudication placement in a foster family home, group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment facility, staff secure facility, hardware secure facility, detention facility, or other residential placement other than placement in the home of a parent, custodian, or guardian.

“Out-of-school time” means a child care service which offers activities to children before and after school, on school holidays, when school is closed due to emergencies, and on school calendar days set aside for teacher activities.

“Placement” means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home, or other facility or residence.

“Pre-adjudicatory community supervision” means supervision provided to a youth prior to adjudication, for a period of supervision up to one year for an alleged status or delinquency offense.

“Regional family support council” means the council established by the regional family support agency to carry out the responsibilities specified in §49-2-601 et seq. of this code.

“Relative family child care” means a home that provides nonresidential child care services only to children related to the caregiver. The caregiver is a grandparent, great grandparent, aunt, uncle, great-aunt, great-uncle, or adult sibling of the child or children receiving care. Care is given in the provider’s home.

“Residential services” means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians, or other persons or entities on a continuing or
temporary basis. It may include care or treatment, or both, for transitioning adults. Residential services does not include or apply to any juvenile detention facility or juvenile correctional facility operated by the Division of Juvenile Services, created pursuant to this chapter, for the secure housing or holding of juveniles committed to its custody.

“Risk and needs assessment” means a validated, standardized actuarial tool which identifies specific risk factors that increase the likelihood of reoffending and the factors that, when properly addressed, can reduce the likelihood of reoffending.

“Secure facility” means any public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility.

“Staff secure facility” means any public or private residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility, and which limits its residents’ access to the surrounding community, but is not characterized by construction fixtures designed to physically restrict the movements and activities of residents.

“Standardized screener” means a brief, validated nondiagnostic inventory or questionnaire designed to identify juveniles in need of further assessment for medical, substance abuse, emotional, psychological, behavioral, or educational issues, or other conditions.

“State family support council” means the council established by the Department of Health and Human Resources pursuant to §49-2-601 et seq. of this code to carry out the responsibilities specified in §49-2-1 et seq. of this code.

“Time-limited reunification services” means individual, group, and family counseling, inpatient, residential, or
outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care, and therapeutic services for families, including crisis nurseries and transportation to or from those services, provided during 15 of the most recent 22 months a child or juvenile has been in foster care, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is 60 days after the child or juvenile is removed from home.

“Technical violation” means an act that violates the terms or conditions of probation or a court order that does not constitute a new delinquent offense.

“Truancy diversion specialist” means a school-based probation officer or truancy social worker within a school or schools who, among other responsibilities, identifies truants and the causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior to court involvement.

CHAPTER 35

(Com. Sub. for S. B. 443 - By Senators Arvon, Azinger, Cline, Gaunch, Maynard, Rucker and Smith)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §49-4-605 of the Code of West Virginia, 1931, as amended, relating to requiring the department to file a petition to terminate parental rights when parents voluntarily fail to have contact or attempt to have
contact with the child for a period of 18 consecutive months; and creating exceptions thereto.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-605. When department efforts to terminate parental rights are required.

(a) Except as provided in §49-4-605(b) of this code, the department shall file or join in a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights:

1. If a child has been in foster care for 15 of the most recent 22 months as determined by the earlier of the date of the first judicial finding that the child is subjected to abuse or neglect or the date which is 60 days after the child is removed from the home;

2. If a court has determined the child is abandoned, tortured, sexually abused, or chronically abused;

3. If a court has determined the parent has committed murder or voluntary manslaughter of another of his or her children, another child in the household, or the other parent of his or her children; has attempted or conspired to commit murder or voluntary manslaughter or has been an accessory before or after the fact of either crime; has committed unlawful or malicious wounding resulting in serious bodily injury to the child or to another of his or her children, another child in the household or to the other parent of his or her children; has committed sexual assault or sexual abuse of the child, the child’s other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent; or the parental rights of the parent to another child have been terminated involuntarily; or

4. If a parent whose child has been removed from the parent’s care, custody, and control by an order of removal
voluntarily fails to have contact or attempt to have contact with the child for a period of 18 consecutive months:

Provided, That failure to have, or attempt to have, contact due to being incarcerated, being in a medical or drug treatment or recovery facility, or being on active military duty shall not be considered voluntary behavior.

(b) The department may determine not to file a petition to terminate parental rights when:

(1) At the option of the department, the child has been placed permanently with a relative by court order;

(2) The department has documented in the case plan made available for court review a compelling reason, including, but not limited to, the child’s age and preference regarding termination or the child’s placement in custody of the department based on any proceedings initiated under part seven of this article, that filing the petition would not be in the best interests of the child; or

(3) The department has not provided, when reasonable efforts to return a child to the family are required, the services to the child’s family as the department deems necessary for the safe return of the child to the home.

CHAPTER 36

(Com. Sub. for S. B. 465 - By Senators Trump, Boso, Ferns, Baldwin and Cline)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §49-2-803 of the Code of West Virginia, 1931, as amended, relating generally to mandated
reporting of child abuse and neglect; clarifying that sexual abuse and sexual assault constitute abuse of a child for reporting purposes; reducing the time period in which a mandated reporter is required to report suspected abuse or neglect; requiring mandated reporters to directly report known or suspected abuse or neglect; eliminating certain broad reporting requirements applicable to any person over the age of 18; clarifying that minors are not mandated reporters; eliminating certain exceptions to the reporting time limit; eliminating particularized reporting requirements for education employees; and eliminating provisions pertaining to conduct involving students or students and school personnel.

Be it enacted by the Legislature of West Virginia:

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, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Health and Human Resources. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report to
the State Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person required to report under this article who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility, or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility, or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made: Provided, That notifying a person in charge, supervisor, or superior does not exempt a person from his or her mandate to report suspected abuse or neglect.

(b) County boards of education and private school administrators shall provide all employees with a written statement setting forth the requirements contained in this section and shall obtain and preserve a signed acknowledgment from school employees that they have received and understand the reporting requirement.

(c) Nothing in this article is intended to prevent individuals from reporting suspected abuse or neglect on their own behalf. In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if that person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

(d) The provisions of this section are not applicable to persons under the age of 18.
CHAPTER 37

(Com. Sub. for H. B. 4020 - By Delegates Hanshaw and Foster)
[By Request of the West Virginia Supreme Court of Appeals]

[Passed February 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on February 20, 2018.]

AN ACT to amend and reenact §7-4-4 and §7-4-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-7-2 of said code; to amend and reenact §7-10-2 of said code; to amend and reenact §15-11-2 of said code; to amend and reenact §15-2-15 of said code; to amend and reenact §15-2C-1 of said code; to amend and reenact §15-9-3 of said code; to amend and reenact §15-11-2 of said code; to amend and reenact §16-2F-2 of said code; to amend and reenact §16-3C-1 of said code; to amend and reenact §16-9A-3 of said code; to amend and reenact §16-47-5 of said code; to amend and reenact §17C-5-6a of said code; to amend and reenact §18-5-15c of said code; to amend and reenact §18-8-6a of said code; to amend and reenact §18A-5-1d of said code; to amend and reenact §28-1-2 of said code; to amend and reenact §31-20-2 of said code; to amend and reenact §33-4-20 of said code; to amend and reenact §48-9-205 and §48-9-301a of said code; to amend and reenact §48-22-301 of said code; to amend and reenact §48-26-701 and §48-26-1002 of said code; to amend and reenact §48-27-403 of said code; to amend and reenact §49-1-201 of said code; to amend and reenact §51-2A-2 of said code; to amend and reenact §51-7-8 of said code; to amend and reenact §61-2-14h of said code; to amend and reenact §61-5-12b of said code; to amend and reenact §61-6-25 of said code; to amend and reenact §61-7-8 of said code; to amend and reenact §61-8-12 of said code; to amend and reenact §61-8B-11a of said code;
to amend and reenact §61-8C-3b of said code; to amend and reenact §61-8D-9 of said code; to amend and reenact §61-11-23 of said code; to amend and reenact §61-12-10 of said code; and to amend and reenact §62-6B-5, all relating to clarifying and making technical corrections in the code when referencing chapter 49 of this code due to 2015 revisions to chapter 49 of said code; and defining terms.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-4. Prosecutor’s advisory council; victim advocates; participation in multidisciplinary planning process.

The prosecutor’s advisory council composed of elected prosecuting attorneys of each county of the state or a designated member of their staff is continued. The prosecutor’s advisory council shall meet not less than one time each year. Annually, the council shall elect from among its membership a chairman of the council who shall set the agenda for the council’s meetings and shall appoint necessary committees and direct the work of the council in carrying out its duties under the provisions of this section.

The council shall provide advice, assistance, training, and leadership to the offices of the various county prosecuting attorneys of this state in criminal and civil cases which involve child abuse or neglect or sexual assault or sexual abuse of children. The council shall also provide advice and assistance to the secretary of the Department of Health and Human Resources in the implementation of a multidisciplinary planning process as set forth in §49-4-401 through §49-4-413 of this code.

The council may seek funds and programs to provide each prosecuting attorney’s office with a staff person to assist children who are crime victims to obtain services and
assistance from other agencies and programs in the community. Prosecuting attorneys shall be reimbursed by their respective county commissions for necessary expenses actually incurred when attending meetings of the council.

The council may apply for and receive funds from any grant program of any agency or institution in the United States, public or private, to be used for carrying out the purposes of this section.

§7-4-5. Multidisciplinary investigative teams.

The prosecuting attorney of each county in the state shall maintain a multidisciplinary investigative team, in accordance with the provisions of §49-4-402 of this code.

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-2. Establishment of county in-service training programs; further additional duties for prosecuting attorney in any county in excess of 200,000.

(a) There are hereby established county in-service training programs as hereinafter set forth.

(b) The Attorney General may establish any in-service training programs that will do most to assist the prosecuting attorneys in the performance of their duties. The Attorney General is authorized to accept any federal aid which may be made available or any financial assistance which may be available from any private nonprofit organization for the purposes of this section. The prosecuting attorney in any county having a population in excess of 200,000 shall also discharge the additional duties imposed upon him or her by the provisions of §49-4-503 of this code.

(c) The State Auditor may establish any in-service training programs for county commissioners, county clerks, sheriffs, and their assistants and employees that will do most to modernize and improve the services of their respective
offices. The State Auditor in conjunction with the West Virginia Supreme Court of Appeals shall establish in-service training programs for circuit clerks and their assistants and employees. The State Tax Commissioner is authorized and directed to establish such in-service training programs for assessors and their assistants and employees. The State Tax Commissioner, State Auditor, and the West Virginia Supreme Court of Appeals are authorized to accept any federal aid which may be made available or any financial assistance which may be available from any private nonprofit organization for the purpose of this article.

(d) Each of the county officials mentioned in this section, and, at his or her option, one or more of his or her assistants, deputies, and employees, shall participate in the programs established under this section.

(e) The county commission shall reimburse officials and employees for the actual amount expended by them for food, lodging, and registration while in attendance at authorized training for the purpose of this section.

ARTICLE 10. HUMANE OFFICERS.

§7-10-2. Duty of humane officers; reporting requirement when abuse or neglect of individuals suspected; prohibition against interference with humane officers; penalties.

(a) Humane officers shall prevent the perpetration or continuance of any act of cruelty upon any animal and investigate and, upon probable cause, cause the arrest and assist in the prosecution of any person engaging in such cruel and forbidden practices. Upon reasonable cause, and, as provided by law, such officers have the right to access and inspect records and property reasonably necessary to any investigation.

(b) Whenever a humane officer, pursuant to an investigation of animal cruelty, forms a reasonable suspicion that a minor child, or incapacitated or elderly
person, is the victim of abuse or neglect or has a suspicion of domestic violence, he or she shall report the suspicion and the grounds for the suspicion. In the event of suspected child abuse or neglect, the humane officer shall report to the local child protective services agency of the Department of Health and Human Resources in accordance with the provisions of §49-2-809 of this code. In the event of suspected abuse or neglect of an incapacitated or elderly person, he or she shall report to the department’s local adult protective services agency in accordance with the provisions of §9-6-11 of this code. In the event of suspected domestic violence, he or she shall report to the State Police in accordance with the provisions of §48-27-101 et seq. of this code.

(c) Any person who interferes with, obstructs or resists any humane officer in the discharge of his or her duty is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 or confined in jail not more than 30 days, or both fined and confined. Any penalties imposed for a violation of this subsection shall be imposed in addition to any penalties the person incurs for cruel or inhumane treatment of any animal.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE II. THE CHILD PROTECTION ACT OF 2006.

§15-11-2. Legislative findings.

(a) The purpose of “The Child Protection Act of 2006” is to put in place a series of programs, criminal law revisions, and other reforms to provide and promote the ability of the children of this state to live their lives without being exposed and subjected to neglect and physical and sexual abuse. The targeted increases in terms of incarceration, enhanced treatment, post-release supervision, and new approaches toward the state’s child protection system will, in the aggregate, strengthen government’s ability to address this most serious problem. The Legislature
finds that the broad reaching measures encompassed in this Act will provide for greater intervention among and punishment and monitoring of individuals who create a risk to our children’s safety and well-being.

(b) The Legislature further finds that the following reforms implemented as part of this Act will provide protections to the children of this state and are all important to eliminate risks to children and are essential elements of “The Child Protection Act of 2006”:

(1) Creating a special unit in the State Police specializing in the investigation of child abuse and neglect — §15-2-15 of this code;

(2) Modifying the Sex Offender Registration Act to ensure more effective registration, identification, and monitoring of persons convicted of sexual offenses — §15-12-1 et seq. of this code;

(3) Establishing the Child Abuse and Neglect Registry, requiring the registry to disclose information to certain state and local officials — §15-13-1 et seq. of this code;

(4) Providing for coded driver’s licenses and nondriver identification cards to more easily identify sexually violent predators — §17B-2-3 of this code;

(5) Prohibiting contractors and service providers convicted of certain offenses from accessing school grounds and providing for the release of criminal history information by the central abuse registry to county school boards — §18-5-15c of this code;

(6) Establishing a task force to study the feasibility of constructing separate correctional facilities for the incarceration and treatment of sex offenders — §25-1-22 of this code;

(7) Requiring the State Police and the Department of Health and Human Resources to maintain statewide child
abuse and neglect statistical indices of all convictions and allegations, respectively — §15-2-15 and §49-2-813 of this code;

(8) Providing for increased terms of incarceration for first degree sexual assault and first degree sexual abuse committed against children under the age of 12 — §61-8B-3 and §61-8B-7 of this code;

(9) Eliminating eligibility of certain sex offenders for probation, home incarceration, and alternative sentences and providing for enhanced terms of incarceration for certain subsequent sex offenses committed by recidivist sex offenders — §61-8B-9a and §61-8B-9b of this code;

(10) Providing for polygraph examinations for certain sex offenders on probation, parole, or supervised release — §62-11D-1 et seq. of this code;

(11) Providing for electronic monitoring of certain sex offenders on probation, parole, and supervised release — §62-11D-1 et seq. of this code;

(12) Establishing a task force to develop measures aimed at managing sexually violent predators released from confinement — §62-11E-1 et seq. of this code;

(13) Making psychiatric evaluations a condition of probation eligibility for certain sex offenders (- §62-12-2 of this code;

(14) Authorizing the Department of Health and Human Resources to establish qualifications for sex offender treatment programs and counselors — §62-12-2 and §62-12-26 of this code;

(15) Providing for extended supervision of certain offenders and supervised release requirements for sexually violent offenders — §62-12-26 of this code; and
(16) Providing for prerelease risk assessments of certain sex offenders — §62-12-27 of this code.

(c) In addition, the Legislature finds that those enhanced terms of incarceration and post-conviction measures provided for in this Act which impact certain offenders convicted of sexual offenses against adults are necessary and appropriate to protect children from neglect and physical and sexual abuse given that: (1) Clinical research indicates that a substantial percentage of sexual offenders “cross over” among age groups in selecting their victims; (2) many of the risk factors prevalent among sex offenders that “cross over” (e.g., substance abuse, lack of empathy toward victim, inability to control inappropriate impulses, childhood abuse) also are prevalent among perpetrators of child abuse and neglect; and (3) enhanced terms of incarceration, post-conviction supervision, monitoring, and treatment measures will enable the criminal justice system to identify and address those “cross over” offenders before they can victimize additional children.

ARTICLE 2. WEST VIRGINIA STATE POLICE.


(a) The superintendent shall maintain a special unit of the State Police called the Child Abuse and Neglect Investigations Unit. The purpose of the unit is to focus on identifying, investigating, and prosecuting criminal child abuse and neglect cases, in coordination with Child Protective Services, established pursuant to §49-2-802 of this code. The unit shall assist other State Police members with child abuse or neglect investigations as well as the Division of Child Protective Services. The unit may provide training, technical expertise, and coordination of services for other law-enforcement agencies, Child Protective Services caseworkers, prosecuting attorneys, and multidisciplinary teams established pursuant to the provisions of §49-4-402 of this code, to identify,
investigate, report, and prosecute criminal child abuse and criminal child neglect cases. However, nothing in this section may be construed to mean that the unit will assume the duties or investigations of other State Police members or other law-enforcement officers.

(b) The unit shall consist, at a minimum, six members of the State Police. The superintendent shall assign a unit director and five regional members, to be dedicated and trained to assist county Child Protective Services Offices and caseworkers in investigating and coordinating with other law-enforcement personnel, cases of suspected child abuse or neglect. Cases to be investigated include allegations received pursuant to §49-2-803 of this code, and any other credible child abuse or neglect allegations.

(c) The unit director’s duties include:

(1) Overseeing State Police members assigned to the unit;

(2) Coordinating activities of the unit with Child Protection Services;

(3) Assisting Child Protective Services in developing and refining protocols for improving identification and prosecution of suspected criminal acts of child abuse or neglect; and

(4) Assuring that all other directives and responsibilities of the unit are fulfilled.

(d) The unit shall maintain a statewide statistical index on child abuse and neglect convictions resulting from convictions for violations of §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-4 and §61-8D-4a of this code, to monitor the timely and proper investigation and disposition of child abuse or neglect cases. The statistical data index maintained by the unit shall not contain information of a specific nature that would identify individual cases or persons.
(e) On or before December 31, of each year, the unit director shall submit an annual report to the Joint Committee on Government and Finance. The annual report is to include the statistical index required under the provisions of subsection (d) of this section, and may include recommendations for statutory or program reforms that will assist the unit and further promote the goals of the unit. The report may not contain information of a specific nature that would identify individual cases or persons.

(f) Every state law-enforcement agency of this state shall periodically provide statistical information regarding child abuse and neglect cases investigated and prosecuted by that law-enforcement agency to the unit.

(g) The superintendent may propose rules for legislative approval or procedural rules as necessary to effectuate the provisions of this section in accordance with the provisions of §29A-3-1 et seq. of this code. The superintendent shall provide forms to law-enforcement agencies, circuit clerks, and parole officers to facilitate submission of appropriate information necessary to prepare the statistical reports required by this section.

(h) There is continued a special account in the state Treasury, into which shall be deposited any gifts, grants or donations made to the unit, and any other funds directed to be deposited into the account by appropriation of the Legislature, and to be expended for the purposes of this section pursuant to appropriation of the Legislature.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

The following terms when used in this article have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:
(a) “Central abuse registry” or “registry” means the registry created by this article which contains the names of individuals who have been convicted of a felony or a misdemeanor offense constituting abuse, neglect, or misappropriation of the property of a child or an incapacitated adult or an adult receiving behavioral health services.

(b) “Child abuse and neglect” or “child abuse or neglect” means those terms as defined in §49-1-201 of this code, and shall include any act with respect to a child which is a crime against the person pursuant to §61-2-1 et seq. of this code, any act which is unlawful pursuant to §61-8D-1 et seq. of this code and any offense with respect to a child which is enumerated in §15-2C-3 of this code.

(c) “Abuse or neglect of an incapacitated adult” means “abuse,” “neglect,” and “incapacitated adult” as those terms are defined in §9-6-1 of this code, and shall include any act with respect to an incapacitated adult which is a crime against the person pursuant to §61-2-1 et seq. of this code, and any offense with respect to an incapacitated adult which is enumerated in §15-2C-3 of this code.

(d) “Adult receiving behavioral health services” means a person over the age of 18 years who is receiving any behavioral health service from a licensed behavioral health provider or any behavioral health provider whose services are paid for, in whole or in part, by Medicaid or Medicare.

(e) “Conviction” of a felony or a misdemeanor means an adjudication of guilt by a court or jury following a hearing on the merits, or entry of a plea of guilty or nolo contendere.

(f) “Residential care facility” means any facility where a child or an incapacitated adult or an adult receiving behavioral health services resides which is subject to registration, licensure, or certification by the Department of Health and Human Resources, and includes nursing homes,
personal care homes, residential board and care homes, adult family care homes, group homes, legally unlicensed service providers, residential child care facilities, family based foster care homes, specialized family care homes, and intermediate care facilities for the mentally retarded.

(g) “Misappropriation of property” means any act which is a crime against property under §61-3-1 et seq. of this code with respect to a child in a residential care facility or an incapacitated adult or an adult receiving behavioral health services in a residential care facility or a child or an incapacitated adult or an adult receiving behavioral health services who is a recipient of home care services.

(h) “Home care” or “home care services” means services provided to children or incapacitated adults or adults receiving behavioral health services in the home through a hospice provider, a community care provider, a home health agency, through the Medicaid waiver program, or through any person when that service is reimbursable under the state Medicaid program.

(i) “Requester” means the West Virginia Department of Education, any residential care facility, any state licensed day care center, any qualified entity as defined in this section, or any provider of home care services or an adult receiving behavioral health services, providing to the Central Abuse Registry the name of an individual and other information necessary to identify that individual, and either: (1) Certifying that the individual is being considered for employment or service as a volunteer by the requester or for a contractual relationship with the requester where the individual will provide services to a child or an incapacitated adult or an adult receiving behavioral health services for compensation; or contractors and vendors who have or may have unsupervised access to the child, disabled, or elderly person for whom the qualified entity provides care; or (2) certifying that an allegation of abuse, neglect, or misappropriation of property has been made against the individual.
(j) “Qualified entity” means any business, agency, or organization that provides care, treatment, education, training, instruction, supervision, or recreation for children, the elderly, or individuals with disabilities and is a public, private, or not-for-profit entity within the State of West Virginia and meets the definition of qualified entity under the federal National Child Protection Act of 1993; P.L. 103-209 as amended by the Volunteers for Children Act; P.L. 105-251.

ARTICLE 9. GOVERNOR’S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.

§15-9-3. Ascertaining compliance with applicable standards in juvenile detention and correctional facilities.

The Governor’s Committee on Crime, Delinquency and Correction or its designee shall ascertain the compliance of juvenile detention and juvenile correctional facilities operated by or under contract with the Division of Juvenile Services, created pursuant to §49-2-902 of this code, with standards for the structure, physical plant, operation, and maintenance of the facilities, promulgated by the juvenile facility standards commission, pursuant to §31-20-9a of this code: Provided, That the review shall not include educational programs in the facilities.

ARTICLE 11. PAYMENT OF FUNERAL EXPENSES.

§15-11-2. Payment of funeral expenses of law-enforcement, safety, and emergency workers killed in the line of duty.

(a) The Secretary of Military Affairs and Public Safety shall, upon written request, direct payment from the fund in the form of a draft as provided in this article up to and including an amount not exceeding $8,000 for the reasonable funeral expenses, including burial expenses, of a law-enforcement, safety, or emergency worker killed on or after January 1, 1999, while carrying out official duties: Provided, That funds shall not be expended for any funeral expense that is otherwise payable pursuant to the provisions
of §23-4-1 et seq. of this code, as amended, or other benefit programs established by a provision of this code which does not involve employee participation: Provided, however, That where other funds for funeral expenses are provided pursuant to the laws of this state, from whatever source, which amount to less than $8,000, funds provided by the provisions of this section shall be expended so as to ensure that at least $8,000 is available for reasonable funeral expenses. The secretary shall direct payment of the funeral expenses upon written request of an employer or head of a volunteer organization, as is appropriate pursuant to this article, certifying that the individual for whom funeral expenses are requested was killed while performing official duties.

(b) The secretary shall supply the draft in the name of the person contracting for the funeral services and, if known, the service provider to the employer or agency head making the request who shall tender the draft to the person who contracted for the services.

(c) For the purposes of this section, “law-enforcement, safety, or emergency worker” means:

(1) Any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or municipality of the state, other than parking ordinances, and including those persons employed as security officers at municipal, county, regional, or state offices, authorities or institutions, although their employers may not be public law-enforcement agencies, employed by the Hatfield-McCoY Regional Recreation Authority, and members of the West Virginia National Guard while engaged in active duty service: Provided, That this section does not apply to those persons employed by private security firms or agencies;

(2) Any state, regional, county, or municipal correctional employee;
(3) Any firefighter employed by the state or any political subdivision of the state and any volunteer firefighter performing as a member of a volunteer fire department;

(4) Any “emergency medical services personnel”, as defined in §16-4C-3 of this code, employed by or volunteering for any state agency or institution or political subdivision of the state; or

(5) Any probation officer appointed under the provisions of either §62-12-5 or §49-4-719 of this code.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.

§16-2F-2. Definitions.

For purposes of this article, unless the context in which used clearly requires otherwise:

As used in this article:

(1) “Abortion” means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a female known to be pregnant and with intent to cause the expulsion of a fetus other than by live birth. This article does not prevent the prescription, sale, or transfer of intrauterine contraceptive devices, other contraceptive devices, or other generally medically accepted contraceptive devices, instruments, medicines or drugs for a female who is not known to be pregnant and for whom the contraceptive devices, instruments, medicines or drugs were prescribed by a physician solely for contraceptive purposes and not for the purpose of inducing or causing the termination of a known pregnancy.

(2) “Medical emergency” means the same as that term is defined in §16-2M-2 of this code.
(3) “Secretary” means the Secretary of the West Virginia Department of Health and Human Resources.

(4) “Unemancipated minor” means any person less than 18 years of age who is not, or has not been, married, who is under the care, custody, and control of the person’s parent or parents, guardian, or court of competent jurisdiction pursuant to applicable federal law or as provided in §49-4-115 of this code.

ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.

§16-3C-1. Definitions.

When used in this article:

(a) “AIDS” means acquired immunodeficiency syndrome.

(b) “Bureau” means the Bureau for Public Health.

(c) “Commissioner” means the commissioner of the Bureau for Public Health.

(d) “Convicted” includes pleas of guilty and pleas of nolo contendere accepted by the court having jurisdiction of the criminal prosecution, a finding of guilty following a jury trial, or a trial to a court and an adjudicated juvenile offender as defined in §49-1-202 of this code.

(e) “Department” means the State Department of Health and Human Resources.

(f) “Funeral director” has the same meaning ascribed to that term in §30-6-3 of this code.

(g) “Funeral establishment” has the same meaning ascribed to that term in §30-6-3 of this code.

(h) “HIV” means the human immunodeficiency virus identified as the causative agent of AIDS.
(i) “HIV-related test” means a test for the HIV antibody or antigen or any future valid test approved by the bureau, the federal drug administration, or the Centers for Disease Control and Prevention.

(j) “Health facility” means a hospital, nursing home, physician’s office, clinic, blood bank, blood center, sperm bank, laboratory, or other health care institution.

(k) “Health care provider” means any physician, dentist, nurse, paramedic, psychologist, or other person providing medical, dental, nursing, psychological, or other health care services of any kind.

(l) “Health Information Exchange” means the electronic movement of health-related information in accord with law and nationally recognized standards.

(m) “High risk behavior” means behavior by a person including, but not limited to: (i) Unprotected sex with a person who is living with HIV; (ii) unprotected sex in exchange for money or drugs; (iii) unprotected sex with multiple partners; (iv) anonymous unprotected sex; (v) or needle sharing; (vi) diagnosis of a sexually transmitted disease; or (vii) unprotected sex or sharing injecting equipment in a high HIV prevalence setting or with a person who is living with HIV.

(n) “Medical or emergency responders” means paid or volunteer firefighters, law-enforcement officers, emergency medical technicians, paramedics, or other emergency service personnel, providers, or entities acting within the usual course of their duties; good samaritans and other nonmedical and nonemergency personnel providing assistance in emergencies; funeral directors; health care providers; the commissioner of the Bureau for Public Health; and all of their employees and volunteers.

(o) “Patient” or “test subject” or “subject of the test” means the person upon whom an HIV test is performed, or
the person who has legal authority to make health care decisions for the test subject.

(p) “Permitted purpose” is a disclosure permitted by the Health Insurance Portability and Accountability Act of 1996 as amended, or a disclosure consented to or authorized by a patient or test subject.

(q) “Person” includes any natural person, partnership, association, joint venture, trust, public or private corporation, or health facility.

(r) “Release of test results” means a permitted or authorized disclosure of HIV-related test results.

(s) “Significant exposure” means:

(1) Exposure to blood or body fluids through needlestick, instruments, sharps, surgery, or traumatic events;

(2) Exposure of mucous membranes to visible blood or body fluids, to which universal precautions apply according to the national Centers for Disease Control and Prevention, and laboratory specimens that contain HIV (e.g. suspensions of concentrated virus); or

(3) Exposure of skin to visible blood or body fluids, when the exposed skin is chapped, abraded, or afflicted with dermatitis or the contact is prolonged or involving an extensive area.

(t) “Source patient” means any person whose body fluids have been the source of a significant exposure to a medical or emergency responder.

(u) “Targeted testing” means performing an HIV-related test for sub-populations at higher risk, typically defined on the basis of behavior, clinical, or demographic characteristics.
“(v) “Victim” means the person or persons to whom transmission of bodily fluids from the perpetrator of the crimes of sexual abuse, sexual assault, incest, or sexual molestation occurred or was likely to have occurred in the commission of such crimes.

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-3. Use or possession of tobacco or tobacco products, alternative nicotine products or vapor products by persons under the age of 18 years; penalties.

A person under the age of 18 years shall not have on or about his or her person or premises or use any cigarette, or cigarette paper, or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; any pipe, snuff, chewing tobacco, tobacco product, or tobacco-derived product: Provided, That minors participating in the inspection of locations where tobacco products or tobacco-derived products are sold or distributed pursuant to §16-9A-7 of this code is not considered to violate the provisions of this section. Any person violating the provisions of this section shall for the first violation be fined $50 and be required to serve eight hours of community service; for a second violation, the person shall be fined $100 and be required to serve 16 hours of community service; and for a third and each subsequent violation, the person shall be fined $200 and be required to serve 24 hours of community service. Notwithstanding the provisions of §49-4-701 of this code, the magistrate court has concurrent jurisdiction.

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-3. Definitions.

For the purposes of this article:

(a) “Actual knowledge” means the possession of information of the person’s wishes communicated to the
health care provider orally or in writing by the person, the
person’s medical power of attorney representative, the
person’s health care surrogate, or other individuals resulting
in the health care provider’s personal cognizance of these
wishes. Constructive notice and other forms of imputed
knowledge are not actual knowledge.

(b) “Adult” means a person who is 18 years of age or
older, an emancipated minor who has been established as
such pursuant to the provisions of §49-4-115 of this code,
or a mature minor.

(c) “Advanced nurse practitioner” means a registered
nurse with substantial theoretical knowledge in a
specialized area of nursing practice and proficient clinical
utilization of the knowledge in implementing the nursing
process, and who has met the further requirements of the
West Virginia Board of Examiners for registered
professional nurses rule, advanced practice registered
nurse,19CSR 7, who has a mutually agreed upon association
in writing with a physician, and has been selected by or
assigned to the person and has primary responsibility for
treatment and care of the person.

(d) “Attending physician” means the physician selected
by or assigned to the person who has primary responsibility
for treatment and care of the person and who is a licensed
physician. If more than one physician shares that
responsibility, any of those physicians may act as the
attending physician under this article.

(e) “Capable adult” means an adult who is physically
and mentally capable of making health care decisions and
who is not considered a protected person pursuant to the
provisions of chapter 44A of this code.

(f) “Close friend” means any adult who has exhibited
significant care and concern for an incapacitated person
who is willing and able to become involved in the
incapacitated person’s health care and who has maintained
regular contact with the incapacitated person so as to be familiar with his or her activities, health, and religious and moral beliefs.

(g) “Death” means a finding made in accordance with accepted medical standards of either: (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible cessation of all functions of the entire brain, including the brain stem.

(h) “Guardian” means a person appointed by a court pursuant to the provisions of chapter 44A of this code who is responsible for the personal affairs of a protected person and includes a limited guardian or a temporary guardian.

(i) “Health care decision” means a decision to give, withhold, or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a nursing home or other facility, home health care, and organ or tissue donation.

(j) “Health care facility” means a facility commonly known by a wide variety of titles, including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care facility, physicians’ office and clinic, extended care facility operated in connection with a hospital, nursing home, a hospital extended care facility operated in connection with a rehabilitation center, hospice, home health care, and other facility established to administer health care in its ordinary course of business or practice.

(k) “Health care provider” means any licensed physician, dentist, nurse, physician’s assistant, paramedic, psychologist, or other person providing medical, dental, nursing, psychological or other health care services of any kind.
(l) “Incapacity” means the inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner.

(m) “Life-prolonging intervention” means any medical procedure or intervention that, when applied to a person, would serve to artificially prolong the dying process or to maintain the person in a persistent vegetative state. Life-prolonging intervention includes, among other things, nutrition and hydration administered intravenously or through a feeding tube. The term “life-prolonging intervention” does not include the administration of medication or the performance of any other medical procedure considered necessary to provide comfort or to alleviate pain.

(n) “Living will” means a written, witnessed advance directive governing the withholding or withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with the requirements of §16-30-4 of this code.

(o) “Mature minor” means a person, less than 18 years of age, who has been determined by a qualified physician, a qualified psychologist, or an advanced nurse practitioner to have the capacity to make health care decisions.

(p) “Medical information” or “medical records” means and includes without restriction any information recorded in any form of medium that is created or received by a health care provider, health care facility, health plan, public health authority, employer, life insurer, school, or university or health care clearinghouse that relates to the past, present or future physical or mental health of the person, the provision of health care to the person, or the past, present, or future payment for the provision of health care to the person.

(q) “Medical power of attorney representative” or “representative” means a person, 18 years of age or older,
appointed by another person to make health care decisions pursuant to the provisions of §16-30-6 of this code or similar act of another state and recognized as valid under the laws of this state.

(r) “Parent” means a person who is another person’s natural or adoptive mother or father or who has been granted parental rights by valid court order and whose parental rights have not been terminated by a court of law.

(s) “Persistent vegetative state” means an irreversible state as diagnosed by the attending physician or a qualified physician in which the person has intact brain stem function but no higher cortical function and has neither self-awareness or awareness of the surroundings in a learned manner.

(t) “Person” means an individual, a corporation, a business trust, a trust, a partnership, an association, a government, a governmental subdivision or agency, or any other legal entity.

(u) “Physician orders for scope of treatment (POST) form” means a standardized form containing orders by a qualified physician that details a person’s life-sustaining wishes as provided by §16-30-25 of this code.

(v) “Principal” means a person who has executed a living will or medical power of attorney.

(w) “Protected person” means an adult who, pursuant to the provisions of chapter 44A of this code, has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to an extent that the individual lacks the capacity to: (1) Meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (2) manage property or financial affairs to provide for his or her support or for the support of legal
dependents without the assistance or protection of a conservator.

(x) “Qualified physician” means a physician licensed to practice medicine who has personally examined the person.

(y) “Qualified psychologist” means a psychologist licensed to practice psychology who has personally examined the person.

(z) “Surrogate decisionmaker” or “surrogate” means an individual 18 years of age or older who is reasonably available, is willing to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions, and is identified or selected by the attending physician or advanced nurse practitioner in accordance with the provisions of this article as the person who is to make those decisions in accordance with the provisions of this article.

(aa) “Terminal condition” means an incurable or irreversible condition as diagnosed by the attending physician or a qualified physician for which the administration of life-prolonging intervention will serve only to prolong the dying process.

ARTICLE 47. ALCOHOL AND DRUG OVERDOSE PREVENTION AND CLEMENCY ACT.

§16-47-5. Immunity, alternative sentencing and clemency options for a person for whom emergency medical assistance was sought.

(a) The immunity provisions in §16-47-4(a) of this code extend to the person for whom emergency medical assistance was sought if, after receiving emergency medical assistance, the person participates in, complies with, and completes a substance abuse treatment or recovery program approved by the court. Alternatively, a court may consider the following alternative sentencing and clemency options:
(1) Deferred prosecution under §60-6-26 or §60A-4-407 of this code;

(2) Pretrial diversion under §61-11-22 of this code;

(3) Adjudication in drug court under §62-15-1 et seq. of this code or §49-4-703 of this code; or

(4) Any other appropriate form of alternative sentencing or rehabilitation permitted by this code, including, but not limited to:

(A) Probation;

(B) Conditional discharge under §60-6-26 of this code; or

(C) The weekend jail program, the work program or the community service program under §62-11A-1a of this code.

(b) Notwithstanding any other provision of this section to the contrary, a person who may seek immunity or clemency pursuant to subsection (a) of this section and is charged with an offense not exempted by §16-47-4(a) of this code may enter a plea of guilty to an offense exempted by §16-47-4(a) of this code if the person, after consultation with his or her attorney, so desires.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

(a) A preliminary breath analysis may be administered to a child whenever a law-enforcement official has reasonable cause to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood for the purpose of determining the child’s blood alcohol content. The breath analysis must be administered as soon
as possible after the law-enforcement officer arrives at a reasonable belief that the child has been driving a motor vehicle with any amount of alcohol in his or her blood. Any preliminary breath analysis administered pursuant to this subsection must be administered with a device and in a manner approved by the division of health for that purpose. If a preliminary breath analysis is administered, the results shall be used solely for the purpose of guiding the officer in deciding whether the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .0002 of one percent or more, by weight, and should, therefore, be taken into custody to administer a secondary test in accordance with the provisions of this section.

(b) A child may be taken into custody by a law-enforcement official without a warrant or court order if the official has reasonable grounds to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is administered and the results of the analysis indicate that the child has an alcohol concentration in his or her blood of less than .0002 of one percent, by weight, the child may not be taken into custody unless other grounds exist under §49-4-705(b) of this code. Upon taking a child into custody pursuant to the provisions of this section, the official shall take all reasonable steps to cause notification to be made to the child’s parent or custodian or, if the parent or custodian cannot be located, to a close relative.

(c) Upon taking a child into custody pursuant to this section, the official shall take the child to a facility where a secondary test of the child’s blood or urine may be administered at the direction of the official or a test of the child’s breath may be administered by the official. The law-enforcement agency by which such law-enforcement official is employed shall designate whether the secondary test is a test of either blood, breath, or urine: Provided, That if the test is a blood test and the child refuses to submit to the blood test, then the law-enforcement official taking the child into custody shall designate in lieu thereof a breath test
to be administered. Notwithstanding the provisions of §17C-5-7 of this code, a refusal to submit to a blood test only shall not result in the revocation of the child’s license to operate a motor vehicle in this state. Any child taken into custody pursuant to this section shall be given a written statement advising him or her that a refusal to submit to a secondary test of either blood, breath, or urine, as finally designated by the law-enforcement agency or official in accordance with this subsection, will result in the suspension of his or her license to operate a motor vehicle in this state for a period of at least 30 days or a revocation of the license for a period up to life.

(d) If the law-enforcement official taking the child into custody is employed by a law-enforcement agency which does not have available the testing equipment or facilities necessary to conduct any secondary breath test which may be administered pursuant to the provisions of this section, then the official who took the child into custody may request another qualified person to administer a secondary breath test: Provided, That the breath test shall be administered in the presence of the official who took the child into custody. The results of the breath test may be used in evidence to the same extent and in the same manner as if the test had been conducted by the law-enforcement official who took the child into custody. The qualified person administering the breath test must be a member of the West Virginia state police, the sheriff of the county where the child was taken into custody, or any deputy of the sheriff or a law-enforcement official of another municipality within the county wherein the child was taken into custody. Only the person actually administering the secondary breath test is competent to testify as to the results and the veracity of the test. If the secondary test is a blood test, the test shall be conducted in accordance with the provisions of §17C-5-6 of this code.

(e) After taking the child into custody, if the law-enforcement official has reasonable cause to believe that the
act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of §17C-5-2 of this code if the child were an adult, then the official shall proceed to treat the child in the same manner as any other child taken into custody without a warrant or court order, in accordance with the provisions of §17C-5-8 of this code.

(f) If the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .0008 of one percent or less, by weight, and if the law-enforcement official does not have reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of §17C-5-2 of this code if the child were an adult, then the official shall release the child: Provided, That if the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .0002 of one percent or more, by weight, the child shall only be released to a parent or custodian, or to some other responsible adult.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.

(a) In recognition of the findings of the Legislature as set forth in §49-2-401 of this code, the Legislature further finds that public schools are able to provide a special environment for the training of children, parents, and school personnel in the prevention of child abuse and neglect and child assault and that child abuse and neglect prevention and child assault prevention programs in the public schools are an effective and cost-efficient method of reducing the
incidents of child abuse and neglect, promoting a healthy family environment, and reducing the general vulnerability of children.

(b) County boards of education shall, to the extent funds are provided, establish programs for the prevention of child abuse and neglect and child assault. The programs shall be provided to students, parents and school personnel as considered appropriate. The programs comply with rules developed by the state Board of Education with the advice and assistance of the state Department of Health and Human Resources and the West Virginia State Police: Provided, That any programs which substantially comply with the rules adopted by the board and were in effect prior to the adoption of the rules may be continued.

(c) Funds for implementing the child abuse and neglect prevention and child assault prevention programs may be allocated to the county boards of education from the children’s trust fund established pursuant to the provisions of §49-2-401 of this code or appropriated for such purpose by the Legislature.

(d) County boards of education shall request from the state Criminal Identification Bureau the record of any and all criminal convictions relating to child abuse, sex-related offenses, or possession of controlled substances with intent to deliver the controlled substances or all of its future employees. This request shall be made immediately after the effective date of this section, and thereafter as warranted.

(e) Contractors or service providers or their employees may not make direct, unaccompanied contact with students or access school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or employees have not previously been convicted of a qualifying offense, as defined in §15-12-2 of this code. For the purposes of this section, contractor and service provider shall be limited to any vendor, individual, or entity under contract with a county school board. County school
boards may require contractors and service providers to verify the criminal records of their employees before granting contact or access. Where prior written consent is obtained, county school boards may obtain information from the Central Abuse Registry regarding contractors, service providers, and their employees for the purposes of this subsection. Where a contractor or service provider gives his or her prior written consent, the county school board also may share information provided by the Central Abuse Registry with other county school boards for the purposes of satisfying the requirements of this subsection.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-6a. Incentive for county board participation in circuit court juvenile probation truancy programs.

A county board that enters into a truancy program agreement with the circuit court of the county that (1) provides for the referral of truant juveniles for supervision by the court’s probation office pursuant to §49-4-711 of this code and (2) requires the county board to pay for the costs of the probation officer or officers assigned to supervise truant juveniles, shall be reimbursed for one half of the costs of the probation officer or officers, subject to appropriation of the Legislature for this purpose to the West Virginia Department of Education. For any year in which the funds appropriated are insufficient to cover the reimbursement costs, the county’s costs shall be reimbursed pro rata.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1d. Return to school through Juvenile Drug Court for certain students.

(a) When a student is expelled from school pursuant to §18A-5-1a of this code, the county board, county superintendent, or principal for the school from which the student was expelled or the parent, guardian, or custodian
may refer the student to a Juvenile Drug Court, operated pursuant to §49-4-703 of this code. Upon referral, the judge assigned to Juvenile Drug Court shall determine whether the student is an appropriate candidate for Juvenile Drug Court.

(b) If the judge determines the student is an appropriate candidate for Juvenile Drug Court, then the court has jurisdiction over the student in the same manner as it has jurisdiction over all other persons in Juvenile Drug Court. Jurisdiction over students includes the ability to issue any of the various sanctions available to the Juvenile Drug Court, including temporary detention.

(c)(1) Successful completion of Juvenile Drug Court or certification by the Juvenile Drug Court judge that the student is making satisfactory progress toward successful completion of Juvenile Drug Court warrants consideration for reduction of the expulsion period, pursuant to §18A-5-1a of this code.

(2) The Juvenile Drug Court shall notify the county superintendent of the completion or certification. The county superintendent shall arrange a meeting with the Juvenile Drug Court treatment team, the court, and the student assistance team of the school from which the student was expelled to discuss the student’s history, progress, and potential for improvement.

(3) The student assistance team shall evaluate and recommend whether the student’s expulsion period should be reduced, and the student reinstated in school.

(4) The student assistance team’s recommendation shall be presented to the superintendent, who shall make the final determination. The superintendent shall prepare a statement detailing reasons for or against school reinstatement and submit the statement to the county board. If the superintendent determines to reduce the expulsion period, he or she shall submit the statement required by §18A-5-
(5) A student to be reinstated shall be permitted to return to school no later than the 10th regular school day following notice by the court to the superintendent regarding the student’s successful completion or satisfactory progress toward successful completion of Juvenile Drug Court.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.

§28-1-2. Commitment; age limits; physical, educational and psychological examinations; admission; transfer and placement.

(a) Any male youth between the ages of 10 and 18 years may be committed to the custody of the Commissioner of Corrections by a circuit court of this state in the manner prescribed in §49-4-701 through §49-4-725 of this code; and further, any male youth who has been adjudged delinquent pursuant to §49-1-202 of this code, who, as a result thereof, was placed on probation and has been found, in a proceeding pursuant to the procedural requirements of §49-4-701 through §49-4-725 of this code, to have violated a term of probation, prior to the attainment of his or her 20th birthday, which constitutes a criminal offense, may be committed to the custody of the Commissioner of Corrections as a youthful offender.

(b) Every youth committed under this article shall, following the dispositional proceeding, be transferred to the place or places designated by the Commissioner of Corrections for complete physical, educational, and psychological examinations, including all appropriate tests, to be completed as soon as possible, the completion of the physical examinations to be within 20 days. The youth shall be housed in a manner so as to prevent the spread of
infectious disease. Following disposition and prior to transfer to the custody of the Commissioner of Corrections, each youth shall be allowed to visit with his or her relatives, without being committed to jail for a period of not less than one hour. The cost of the examinations in this subsection shall be borne by the committing county. The youth shall be provided all treatment and rehabilitation indicated by the examinations.

In lieu of the physical examinations and tests provided for in this subsection, the court may, in the absence of objection, have the county health officer or other local health care facility perform physical and mental examinations and tests, so long as the examinations and tests are performed prior to the dispositional proceeding. Except as otherwise provided by law, a child shall not be committed to a jail following a dispositional proceeding solely to await a physical, educational, or mental examination or the results of the exam.

(c) All examinations shall be private. A youth who is mentally ill or significantly intellectually disabled shall not be committed to, or retained by, the Commissioner of Corrections, but shall be returned to the committing court for further disposition. A youth who has a serious infectious disease shall not be retained in the custody of the Commissioner of Corrections, but shall be transferred to an appropriate treatment facility. Detailed medical records shall be kept of every youth.

(d) The results of any physical, educational, and psychological examinations, together with a copy of the petition, the adjudicatory order, and the dispositional order shall accompany every youth committed to the Commissioner of Corrections, without which the youth shall not be accepted. The commissioner, or his or her designated representative, shall review the records of each youth committed to assure that a youth is not illegally detained in an inappropriate facility or custodial situation.
(e) The Commissioner of Corrections may transfer and place such youth in any of the established centers or homes or halfway programs and in less restrictive settings, whether under his or her jurisdiction or private nonprofit residential facilities, as he or she may determine appropriate to promote the rehabilitation of the youth. To the extent possible, a youth under the age of 15 shall not be in regular contact with youths between the ages of 16 and 18.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.

(a) The agency shall establish, and periodically review and update financial guidelines for determining eligibility for legal representation made available under the provisions of this article. The agency shall adopt a financial affidavit form for use by persons seeking legal representation made available under the provisions of this article.

(b) All persons seeking legal representation made available under the provisions of this article shall complete the agency’s financial affidavit form, which shall be considered as an application for the provision of publicly funded legal representation.

(c) Any juvenile shall have the right to be effectively represented by counsel at all stages of proceedings brought under the provisions of §49-4-701 through §49-4-725 of this code. If the child advises the court of his or her inability to pay for counsel, the court shall require the child’s parent or custodian to execute a financial affidavit. If the financial affidavit demonstrates that neither of the child’s parents, or, if applicable, the child’s custodian, has sufficient assets to pay for counsel, the court shall appoint counsel for the child.
If the financial affidavit demonstrates that either of the child’s parents, or, if applicable, the child’s custodian, does have sufficient assets to pay for counsel, the court shall order the parent, or, if applicable, the custodian, to provide, by paying for, legal representation for the child in the proceedings.

The court may disregard the assets of the child’s parents or custodian and appoint counsel for the child, as provided in this section, if the court concludes, as a matter of law, that the child and the parent or custodian have a conflict of interest that would adversely affect the child’s right to effective representation of counsel, or concludes, as a matter of law, that requiring the child’s parent or custodian to provide legal representation for the child would otherwise jeopardize the best interests of the child.

(d) In circuits in which no public defender office is in operation, circuit judges shall make all determinations of eligibility. In circuits in which a public defender office is in operation, all determinations of indigency shall be made by a public defender office employee designated by the executive director. The determinations shall be made after a careful review of the financial affidavit submitted by the person seeking representation. The review of the affidavit shall be conducted in accord with the financial eligibility guidelines established by the agency pursuant to subsection (a) of this section. In addition to the financial eligibility guidelines, the person determining eligibility shall consider other relevant factors, including, but not limited to, those set forth in subdivisions (1) through (9) of subsection (e) of this section. If there is substantial reason to doubt the accuracy of information in the financial affidavit, the person determining eligibility may make any inquiries necessary to determine whether the affiant has truthfully and completely disclosed the required financial information.

After reviewing all pertinent matters, the person determining eligibility may find the affiant eligible to have the total cost of legal representation provided by the state,
or may find that the total cost of providing representation shall be apportioned between the state and the eligible person. A person whose annual income exceeds the maximum annual income level allowed for eligibility may receive all or part of the necessary legal representation, or a person whose income falls below the maximum annual income level for eligibility may be denied all or part of the necessary legal representation if the person determining eligibility finds the person’s particular circumstances require that eligibility be allowed or disallowed, as the case may be, on the basis of one or more of the nine factors set forth in subsection (e) of this section. If legal representation is made available to a person whose income exceeds the maximum annual income level for eligibility, or if legal representation is denied to a person whose income falls below the maximum annual income level for eligibility, the person determining eligibility shall make a written statement of the reasons for the action and shall specifically relate those reasons to one or more of the factors set forth in subsection (e) of this section.

(e) The following factors shall be considered in determining eligibility for legal representation made available under the provisions of this article:

1. Current income prospects, taking into account, seasonal variations in income;

2. Liquid assets, assets which may provide collateral to obtain funds to employ private counsel, and other assets which may be liquidated to provide funds to employ private counsel;

3. Fixed debts and obligations, including federal, state and local taxes, and medical expenses;

4. Child care, transportation, and other expenses necessary for employment;
(5) Age or physical infirmity of resident family members;

(6) Whether the person seeking publicly funded legal representation has made reasonable and diligent efforts to obtain private legal representation, and the results of those efforts;

(7) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;

(8) Whether the person seeking publicly funded legal representation has posted a cash bond for bail or has obtained release on bond for bail through the services of a professional bondsman for compensation and the amount and source of the money provided for the bond;

(9) The consequences for the individual if legal assistance is denied.

(f) Legal representation requested by the affiant may not be denied in whole or part unless the affiant can obtain legal representation without undue financial hardship. A person determined to be ineligible by public defender personnel may have the initial determination reviewed by a local circuit judge who may amend, modify or rewrite the initial determination. At any stage of the proceedings a circuit court may determine a prior finding of eligibility was incorrect or has become incorrect as the result of the affiant’s changed financial circumstances, and may revoke any prior order providing legal representation. In that event, any attorney previously appointed shall be entitled to compensation under the provisions of law applicable to the appointment for services already rendered.

(g) In the circumstances and manner set forth below, circuit judges may order repayment to the state, through the office of the clerk of the circuit court having jurisdiction
over the proceedings, of the costs of representation provided
under this article:

(1) In every case in which services are provided to an
indigent person and an adverse judgment has been rendered
against such person, the court may require that person, and
in juvenile cases, may require the juvenile’s parents or
custodian, to pay as costs the compensation of appointed
counsel, the expenses of the defense, and any other fees and
costs authorized by statute.

(2) The court shall not order a person to pay costs unless
the person is able to pay without undue hardship. In
determining the amount and method of repayment of costs,
the court shall take account of the financial resources of the
person, the person’s ability to pay, and the nature of the
burden that payment of costs will impose. The fact that the
court initially determines, at the time of a case’s conclusion,
that it is not proper to order the repayment of costs does not
preclude the court from subsequently ordering repayment if
the person’s financial circumstances change.

(3) When a person is ordered to repay costs, the court
may order payment to be made immediately or within a
specified period of time or in specified installments. If a
person is sentenced to a term of imprisonment, an order for
repayment of costs is not enforceable during the period of
imprisonment unless the court expressly finds, at the time
of sentencing, that the person has sufficient assets to pay the
amounts ordered to be paid or finds there is a reasonable
likelihood the person will acquire the necessary assets in the
foreseeable future.

(4) A person who has been ordered to repay costs, and
who is not in contumacious default in the payment thereof,
may at any time petition the sentencing court for
modification of the repayment order. If it appears to the
satisfaction of the court that continued payment of the
amount ordered will impose undue hardship on the person
or the person’s dependents, the court may modify the method or amount of payment.

(5) When a person ordered to pay costs is also placed on probation or imposition or execution of sentence is suspended, the court may make the repayment of costs a condition of probation or suspension of sentence.

(h) Circuit clerks shall keep a record of repaid counsel fees and defense expenses collected pursuant to this section and shall, quarterly, pay the moneys to the State Auditor who shall deposit the funds in the General Revenue Fund of the state.

(i) The making of an affidavit subject to inquiry under this section does not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered and the recovery of the value of services, if any, provided pursuant to this article. A person who has made an affidavit knowing the contents of the affidavit to be false may be prosecuted for false swearing as provided by law.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-2. Definitions.

Unless the context indicates clearly otherwise, as used in this article:

(a) “Adjacent regional juvenile detention facility” means a facility constructed or maintained on property owned or controlled by the Regional Jail Authority and designed (1) for the short term preadjudicatory detention of juveniles, for the confinement of juveniles who are awaiting transportation to or placement at another juvenile detention facility or juvenile correctional facility, or who are awaiting
trial as an adult pursuant to §49-4-710 of this code; or (2)
for the court-ordered, short term placement of juveniles in a
facility that is characterized by programmatic intervention
and by staff restrictions of the movements and activities of
juveniles placed there, that limits the juveniles’ access to the
surrounding community and that is not characterized by
construction fixtures designed to physically restrict the
movements and activities of juveniles.

(b) “Authority” or “West Virginia Regional Jail
Authority” means the West Virginia Regional Jail and
Correctional Facility Authority created by this article.

(c) “Board” means the governing body of the authority.

(d) “Bonds” means bonds of the authority issued under
this article.

(e) “Cost of construction or renovation of a local jail
facility, regional jail facility or juvenile facility” means the
cost of all lands, water areas, property rights, and easements,
financing charges, interest prior to and during construction
and for a period not exceeding six months following the
completion of construction, equipment, engineering and
legal services, plans, specifications, and surveys, estimates
of costs and other expenses necessary or incidental to
determining the feasibility or practicability of any project,
together with any other expenses necessary or incidental to
the financing and the construction or renovation of the
facilities and the placing of the facilities in operation.

(f) “County” means any county of this state.

(g) “Federal agency” means the United States of
America and any department, corporation, agency, or
instrumentality created, designated, or established by the
United States of America.

(h) “Fund” or “funds” means a Regional Jail and
Correctional Facility Authority fund provided in §31-20-10
of this code, including those accounts that may be
established by the authority for accurate accounting of the expenditure of public funds by that agency.

(i) “Government” means state and federal government, and any political subdivision, agency or instrumentality of the state or federal government, corporate or otherwise.

(j) “Inmate” means any adult person properly committed to a local or regional jail facility or a correctional facility.

(k) “Local jail facility” means any county facility for the confinement, custody, supervision, or control of adult persons convicted of misdemeanors, awaiting trial, or awaiting transportation to a state correctional facility.

(l) “Municipality” means any city, town, or village in this state.

(m) “Notes” means any notes as defined in §46-3-104 of this code issued under this article by the authority.

(n) “Correctional facility” means any correctional facility, penitentiary, or other correctional institution operated by the Division of Corrections for the incarceration of adults.

(o) “Regional jail facility” or “regional jail” means any facility operated by the authority and used jointly by two or more counties for the confinement, custody, supervision, or control of adult persons convicted of misdemeanors or awaiting trial or awaiting transportation to a state correctional facility.

(p) “Revenues” means all fees, charges, moneys, profits, payments of principal of, or interest on, loans and other investments, grants, contributions, and all other income received by the authority.

(q) “Security interest” means an interest in the loan portfolio of the authority which is secured by an underlying
loan or loans and is evidenced by a note issued by the authority.

(r) “Work farm” has the same meaning as that term is used in §7-8-12 of this code authorizing work farms for individual counties.

(s) “Juvenile detention facility” or “juvenile detention center” means a facility operated by the Division of Juvenile Services (1) for the short term preadjudicatory detention of juveniles, for the confinement of juveniles who are awaiting transportation to or placement at another juvenile detention facility or juvenile correctional facility, or who are awaiting trial as an adult pursuant to §49-4-710 of this code; or (2) for the court-ordered, short term placement of juveniles in a facility that is characterized by programmatic intervention and by staff restrictions of the movements and activities of juveniles placed there, that limits the juveniles’ access to the surrounding community and that is not characterized by construction fixtures designed to physically restrict the movements and activities of juveniles.

(t) “Juvenile correctional facility” means a facility operated by the Division of Juvenile Services (1) for the postdispositional confinement of juveniles adjudicated of offenses that would be criminal offenses if committed by an adult; or (2) for the court-ordered placement of juveniles in a facility that is characterized by programmatic intervention and by staff restrictions of the movements and activities of juveniles placed there, that limits the juveniles’ access to the surrounding community, and that is not characterized by construction fixtures designed to physically restrict the movements and activities of juveniles.

(u) “Juvenile facility” means an adjacent regional juvenile detention facility, a juvenile detention facility, a juvenile detention center, or a juvenile correctional facility.
ARTICLE 4. GENERAL PROVISIONS.

§33-4-20. Cancellation, nonrenewal or limitation of coverage of life or sickness and accident insurance.

(a) For purposes of this section, the following definitions shall apply:

(1) “Abuse,” as used in this section, means the occurrence of one or more of the following acts between family or household members:

(A) Attempting to cause or intentionally, knowingly, or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(B) Placing another in reasonable apprehension of physical harm;

(C) Creating fear of physical harm by harassment, psychological abuse, or threatening acts;

(D) Committing either sexual assault or sexual abuse as those terms are defined in §61-8B-1 et seq. and §61-8D-1 et seq. of this code;

(E) Holding, confining, detaining, or abducting another person against that person’s will;

(F) Intentionally or recklessly damaging, destroying, or taking the tangible property of another individual;

(G) Insulting, taunting, or challenging another individual or engaging in a course of alarming or distressing conduct in a manner which is likely to provoke a violent or disorderly response or which is likely to cause humiliation, degradation, or fear in another individual;

(H) Trespassing on or in the property of another individual, or on or in property from which the trespasser has been excluded by court order;
(I) Child abuse or neglect, as defined in §49-1-201 of this code;

(J) Kidnapping, concealment, or removal of a minor child from his or her custodian or from a person entitled to visitation, as set forth in §61-2-14 through §61-2-14e of this code.

(2) “Family or household member” means current or former spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, current or former sexual or intimate partners, other persons related by blood or marriage, persons who are presently or in the past have resided or cohabited together, or a person with whom the victim has a child in common.

(3) “Victim of abuse,” as used in this section, means an individual who has been or is subject to abuse, including, but not limited to, an individual who seeks, has sought, or should have sought medical or psychological treatment for abuse, protection from abuse or shelter from abuse.

(b) For all policies issued or renewed after the effective date of this section, a person or entity engaged in the business of providing life or health insurance, or both, in this state may not:

(1) Deny, refuse to issue, refuse to renew, refuse to reissue, cancel, or otherwise terminate an insurance policy or restrict coverage on any individual because that individual is, has been, or may be the victim of abuse;

(2) Add any surcharge or rating factor to a premium of an insurance policy because an individual has been or may be the victim of abuse;

(3) Exclude or limit coverage for losses or deny a claim incurred because an individual has been or may be the victim of abuse; or

(4) Require as part of the application process any information regarding whether that individual has been or may be the victim of abuse.
(c) Nothing in this section may be construed to prohibit a person from declining to issue an insurance policy insuring the life of an individual who is or has been the victim of abuse if the perpetrator of abuse is the applicant or would be the owner of the insurance policy.

(d) Nothing in this section may be construed to prohibit a person from underwriting or rating a risk on the basis of a preexisting physical or mental condition, even if the condition had been caused by abuse: Provided, That:

(1) The person routinely underwrites or rates the condition in the same manner with respect to an insured or an applicant who is not a victim of abuse;

(2) The fact that an individual is, has been, or may be the victim of abuse may not be considered a physical or mental condition; and

(3) The underwriting or rating is not used to evade the intent of this law or any other provision of law. A person may not be held civilly or criminally liable for any cause of action which may be brought because of compliance with this section.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

*§48-9-205. Permanent parenting plan.

(a) A party seeking a judicial allocation of custodial responsibility or decision-making responsibility under this article shall file a proposed parenting plan with the court. Parties may file a joint plan. A proposed plan shall be

*NOTE: This section was also amended by S. B. 51 (Chapter 65), which passed subsequent to this act.
verified and shall state, to the extent known or reasonably discoverable by the filing party or parties:

(1) The name, address, and length of residence of any adults with whom the child has lived for one year or more, or in the case of a child less than one year old, any adults with whom the child has lived since the child’s birth;

(2) The name and address of each of the child’s parents and any other individuals with standing to participate in the action under §48-9-103 of this code;

(3) A description of the allocation of care taking and other parenting responsibilities performed by each person named in subdivisions (1) and (2) of this subsection during the twenty-four months preceding the filing of an action under this article;

(4) A description of the work and child-care schedules of any person seeking an allocation of custodial responsibility, and any expected changes to these schedules in the near future;

(5) A description of the child’s school and extracurricular activities;

(6) A description of any of the limiting factors as described in §48-9-209 of this code that are present, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction;

(7) Required financial information; and

(8) A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

The court shall maintain the confidentiality of any information required to be filed under this section when the person giving that information has a reasonable fear of
domestic abuse and disclosure of the information would increase that fear.

(b) The court shall develop a process to identify cases in which there is credible information that child abuse or neglect, as defined in §49-1-201 of this code, or domestic violence as defined in §48-27-202 of this code has occurred. The process shall include assistance for possible victims of domestic abuse in complying with subdivision (6), subsection (a) of this section, and referral to appropriate resources for safe shelter, counseling, safety planning, information regarding the potential impact of domestic abuse on children, and information regarding civil and criminal remedies for domestic abuse. The process shall also include a system for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible information that child abuse or domestic abuse has occurred receive the court review that is mandated by §48-9-201(b) of this code.

(c) Upon motion of a party and after consideration of the evidence, the court shall order a parenting plan consistent with the provisions of §48-9-206, §48-9-207, §48-9-208 and §48-9-209 of this code, containing:

(1) A provision for the child’s living arrangements and each parent’s custodial responsibility, which shall include either:

(A) A custodial schedule that designates in which parent’s home each minor child will reside on given days of the year; or

(B) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(2) An allocation of decision-making responsibility as to significant matters reasonably likely to arise with respect to the child;
(3) A provision consistent with §48-9-202 of this code for resolution of disputes that arise under the plan, and remedies for violations of the plan; and

(4) A plan for the custody of the child should one or both of the parents as a member of the National Guard, a reserve component, or an active duty component be mobilized, deployed, or called to active duty.

(d) A parenting plan may, at the court’s discretion, contain provisions that address matters that are expected to arise in the event of a party’s relocation, or provide for future modifications in the parenting plan if specified contingencies occur.

PART III - FACT FINDING.


(a) If allegations of child abuse are made during a child custody proceeding and the court has concerns regarding the child’s safety, the court may take any reasonable, temporary steps as the court, in its discretion, considers appropriate under the circumstances to protect the child’s safety until an investigation can be completed. Nothing in this subsection shall affect the applicability of §49-2-802 and §49-2-803 of this code.

(b) If allegations of child abuse are made during a child custody proceeding, the court may request that the local child protective service conduct an investigation of the allegations pursuant to §49-2-801 through §49-2-814 of this code. Upon completion of the investigation, the agency shall report its findings to the court.

ARTICLE 22. ADOPTION.

PART III. CONSENT OR RELINQUISHMENT; ABANDONMENT.
§48-22-301. Persons whose consent or relinquishment is required; exceptions.

(a) Subject to the limitations hereinafter set forth, consent to or relinquishment for adoption of a minor child is required of:

(1) The parents or surviving parent of a marital child, whether adult or infant;

(2) The outsider father of a marital child who has been adjudicated to be the father of the child or who has filed a paternity action which is pending at the time of the filing of the petition for adoption;

(3) The birth mother of a nonmarital child, whether adult or infant; and

(4) The determined father.

(b) Consent or relinquishment shall not be required of a parent or of any other person having custody of the adoptive child:

(1) Whose parental rights have been terminated pursuant to the provisions of §49-4-114 of this code;

(2) Whom the court finds has abandoned the child as set forth in §48-22-306 of this code; or

(3) Who, in a stepparent adoption, is the birth parent or adoptive parent of the child and is married to the petitioning adoptive parent. In such stepparent adoption, the parent must assent to the adoption by joining as a party to the petition for adoption.

(c) If the mother, legal father, or determined father is under disability, the court may order the adoption if it finds:

(1) The parental rights of the person are terminated, abandoned, or permanently relinquished;
(2) The person is incurably insane; or

(3) The disability arises solely because of age and an otherwise valid consent or relinquishment has been given.

(d) If all persons entitled to parental rights of the child sought to be adopted are deceased or have been deprived of the custody of the child by law, then consent or relinquishment is required of the legal guardian or of any other person having legal custody of the child at the time. If there is no legal guardian nor any person who has legal custody of the child, then consent or relinquishment is required from some discreet and suitable person appointed by the court to act as the next friend of the child in the adoption proceedings.

(e) If one of the persons entitled to parental rights of the child sought to be adopted is deceased, only the consent or relinquishment of the surviving person entitled to parental rights is required.

(f) If the child to be adopted is 12 years of age or over, the consent of the child is required to be given in the presence of a judge of a court of competent jurisdiction, unless for extraordinary cause, the requirement of such consent is waived by the court.

(g) Any consent to adoption or relinquishment of parental rights shall have the effect of authorizing the prospective adoptive parents or the agency to consent to medical treatment for the child, whether or not such authorization is expressly stated in the consent or relinquishment.

ARTICLE 26. DOMESTIC VIOLENCE ACT.

PART VII. CONFIDENTIALITY.

§48-26-701. Confidentiality.

(a) A program licensed pursuant to this article may not disclose, reveal, or release or be compelled to disclose,
reveal, or release, any written records or personal or personally identifying information about a program participant created or maintained in providing services, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected, pursuant to this article except:

(1) Upon written consent, or upon oral consent in emergency situations defined by legislative rule, of the person seeking or who has sought services from the program;

(2) In any proceeding brought under §9-6-4 and §9-6-5 of this code or §49-4-601 through §49-4-610 of this code;

(3) As mandated by §49-2-801 through §49-2-814 and §9-6-1 et seq. of this code;

(4) Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(5) To protect against a clear and substantial danger of imminent injury by a person receiving services to himself or herself or another; or

(6) As authorized by the releases signed by batterer intervention and prevention program participants pursuant to the provisions of subsection (b) of this section.

(b) Batterer intervention and prevention program participants shall authorize the release of information by signing the following releases:

(1) Allowing the provider to inform the victim or alleged victim and the victim’s advocates that the batterer is participating in a batterer intervention and prevention program with the provider and to provide information to the victim or alleged victim and her or his advocates, if necessary, for the victim’s or alleged victim’s safety;
(2) Allowing prior and current service providers to provide information about the batterer to the provider;

(3) Allowing the provider, for good cause, to provide information about the batterer to relevant legal entities, including courts, parole officers, probation officers, child protective services, adult protective services, law enforcement, licensed domestic violence programs, or other referral agencies;

(4) Allowing the provider to report to the court, if the participation was court ordered, and to the victim or alleged victim, if she or he requests and provides a method of notification, and to her or his advocate, any assault, failure to comply with program requirements, failure to attend the program, threat of harm by the batterer, reason for termination, and recommendations for changes in the court order; and

(5) Allowing the provider to report to the victim or alleged victim, or her or his advocate, without the participant’s authorization, all perceived threats of harm, the participant’s failure to attend, and reason for termination.

c) Monitored parenting and exchange programs may disclose to one parent or guardian, without the permission of the other parent or guardian, any perceived threat of harm or violation of the court order or violation of the monitored parenting and exchange program rules by the other parent or guardian.

d) A monitored parenting and exchange program may not release information about the child without consent of the parent with custodial responsibility or guardian.

e) In addition to the provisions set forth in this section, the release of a victim’s personally identifying information is subject to the provisions of 42 U.S.C. § 13925(b)(2).

f) A consent or authorization for the transmission or disclosure of confidential information is not effective unless
it is signed by the program participant whose information is being disclosed. Every person signing an authorization shall be given a copy.

(g) A victim of domestic violence, dating violence, sexual assault, or stalking shall not be required to provide consent to release his or her personally identifying information as a condition of eligibility for the services, nor may any personally identifying information be shared in order to comply with federal or state reporting, evaluation, or data collection requirements: Provided, That nothing in this section prohibits a program from reporting suspected abuse or neglect, as defined by law, when the program is mandated by law to report suspected abuse or neglect.

§48-26-1002. Exclusions.

The provisions of this part do not apply to therapeutic or supervised visitation or exchanges or any activity conducted by the state or others in abuse and neglect proceedings pursuant to §49-2-801 through §49-2-814 and §49-4-601 through §49-4-610 of this code in which assessment, evaluation, formulation of a treatment plan, case management, counseling, therapy, or similar activities occur.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-403. Emergency protective orders of court; hearings; persons present.

(a) Upon the filing of a verified petition under this article, the magistrate court may enter an emergency protective order as it may determine necessary to protect the petitioner or minor children from domestic violence and, upon good cause shown, may do so ex parte without the necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and present danger of abuse to the petitioner or minor children constitutes good cause for the issuance of an emergency protective order
pursuant to this section. If the respondent is not present at
the proceeding, the petitioner or the petitioner’s legal
representative shall certify to the court, in writing, the
efforts which have been made to give notice to the
respondent or just cause why notice should not be required.
Copies of medical reports or records may be admitted into
evidence to the same extent as though the original reports or
records. The custodian of the records is not required to be
present to authenticate the records for any proceeding held
pursuant to this subsection. If the magistrate court
determines to enter an emergency protective order, the order
shall prohibit the respondent from possessing firearms.

(b) Following the proceeding, the magistrate court shall
order a copy of the petition to be served immediately upon
the respondent, together with a copy of any emergency
protective order entered pursuant to the proceedings, a
notice of the final hearing before the family court, and a
statement of the right of the respondent to appear and
participate in the final hearing, as provided in subsection (d)
of this section. Copies of any order entered under the
provisions of this section, a notice of the final hearing before
the family court, and a statement of the right of the petitioner
to appear and participate in the final hearing, as provided in
subsection (d) of this section, shall also be delivered to the
petitioner. Copies of any order entered shall also be
delivered to any law-enforcement agency having
jurisdiction to enforce the order, including municipal police,
the county sheriff’s office and local office of the State
Police, within 24 hours of the entry of the order. An
emergency protective order is effective until modified by
order of the family court upon hearing as provided in
subsection (d) of this section. The order is in full force and
effect in every county in this state.

(c) Subsequent to the entry of the emergency protective
order, service on the respondent, and the delivery to the
petitioner and law-enforcement officers, the court file shall
be transferred to the office of the clerk of the circuit court
for use by the family court.
(d) The family court shall schedule a final hearing on each petition in which an emergency protective order has been entered by a magistrate. The hearing shall be scheduled not later than 10 days following the entry of the order by the magistrate. The notice of the final hearing shall be served on the respondent and delivered to the petitioner, as provided in subsection (b) of this section, and must set forth the hearing date, time, and place and include a statement of the right of the parties to appear and participate in the final hearing. The notice must also provide that the petitioner’s failure to appear will result in a dismissal of the petition and that the respondent’s failure to appear may result in the entry of a protective order against him or her for a period of 90 or 180 days, as determined by the court. The notice must also include the name, mailing address, physical location, and telephone number of the family court having jurisdiction over the proceedings. To facilitate the preparation of the notice of final hearing required by the provisions of this subsection, the family court must provide the magistrate court with a day and time in which final hearings may be scheduled before the family court within the time required by law.

(e) Upon final hearing the petitioner must prove, by a preponderance of the evidence, the allegation of domestic violence or that he or she reported or witnessed domestic violence against another and has, as a result, been abused, threatened, harassed, or has been the subject of other actions to attempt to intimidate him or her, or the petition shall be dismissed by the family court. If the respondent has not been served with notice of the emergency protective order, the hearing may be continued to permit service to be effected. The failure to obtain service upon the respondent does not constitute a basis to dismiss the petition. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of the records.

(f) A person requested by a party to be present during a hearing held under the provisions of this article shall not be precluded from being present unless that person is to be a
witness in the proceeding and a motion for sequestration has been made and the motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(g) Upon hearing, the family court may dismiss the petition or enter a protective order for a period of 90 days or, in the discretion of the court, for a period of 180 days. The hearing may be continued on motion of the respondent, at the convenience of the court. Otherwise, the hearing may be continued by the court no more than seven days. If a hearing is continued, the family court may modify the emergency protective order as it considers necessary.

(h) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant to this section that results in the issuance of an emergency protective order naming a juvenile as the respondent in which the petition for the emergency protective order is filed by or on behalf of the juvenile’s parent, guardian or custodian, or other person with whom the juvenile resides shall be treated as a petition authorized by §49-4-704 of this code, alleging the juvenile is a juvenile delinquent: Provided, That the magistrate court shall notify the prosecuting attorney in the county where the emergency protective order is issued within 24 hours of the issuance of the emergency protective order and the prosecuting attorney may file an amended verified petition to comply with the provisions of §49-4-704(a) of this code within two judicial days.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

PART II. DEFINITIONS.

§49-1-201. Definitions related, but not limited, to child abuse and neglect.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, child abuse and neglect, except in those instances where a different meaning is provided or the
"Abandonment" means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child;

"Abused child" means:

(1) A child whose health or welfare is being harmed or threatened by:

(A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;

(B) Sexual abuse or sexual exploitation;

(C) The sale or attempted sale of a child by a parent, guardian, or custodian in violation of §61-2-14h of this code;

(D) Domestic violence as defined in §48-27-202 of this code; or

(E) Human trafficking or attempted human trafficking, in violation of §61-14-2 of this code.

(2) A child conceived as a result of sexual assault, as that term is defined in this section, or as a result of the violation of a criminal law of another jurisdiction which has the same essential elements: Provided, That no victim of sexual assault may be determined to be an abusive parent, as that term is defined in this section, based upon being a victim of sexual assault.

"Abusing parent" means a parent, guardian, or other custodian, regardless of his or her age, whose conduct has
been adjudicated by the court to constitute child abuse or
neglect as alleged in the petition charging child abuse or
neglect.

“Battered parent” for the purposes of §49-4-601 et seq.
of this code means a respondent parent, guardian, or other
custodian who has been adjudicated by the court to have not
condoned the abuse or neglect and has not been able to stop
the abuse or neglect of the child or children due to being the
victim of domestic violence as defined by §48-27-202 of
this code, which was perpetrated by the same person or
persons determined to have abused or neglected the child or
children.

“Child abuse and neglect” or “child abuse or neglect”
means any act or omission that creates an abused child or a
neglected child as those terms are defined in this section.

“Child abuse and neglect services” means social
services which are directed toward:

(A) Protecting and promoting the welfare of children
who are abused or neglected;

(B) Identifying, preventing, and remedying conditions
which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children
from their families by identifying family problems and
assisting families in resolving problems which could lead to
a removal of children and a breakup of the family;

(D) In cases where children have been removed from
their families, providing time-limited reunification services
to the children and the families so as to reunify those
children with their families, or some portion of the families;

(E) Placing children in suitable adoptive homes when
reunifying the children with their families, or some portion
of the families, is not possible or appropriate; and
(F) Assuring the adequate care of children or juveniles who have been placed in the custody of the department or third parties.

“Condition requiring emergency medical treatment” means a condition which, if left untreated for a period of a few hours, may result in permanent physical damage; that condition includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness, and evidence of ingestion of significant amounts of a poisonous substance.

“Imminent danger to the physical well-being of the child” means an emergency situation in which the welfare or the life of the child is threatened. These conditions may include an emergency situation when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health, life, or safety of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling, babysitter or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian, or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian, or custodian;

(G) Sale or attempted sale of the child by the parent, guardian, or custodian;
(H) The parent, guardian, or custodian’s abuse of alcohol or drugs or other controlled substance as defined in §60A-1-101 of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child’s health or safety; or

(I) Any other condition that threatens the health, life or safety of any child in the home.

“Neglected child” means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child’s parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care, or education, when that refusal, failure, or inability is not due primarily to a lack of financial means on the part of the parent, guardian, or custodian;

(B) Who is presently without necessary food, clothing, shelter, medical care, education, or supervision because of the disappearance or absence of the child’s parent or custodian; or

(C) “Neglected child” does not mean a child whose education is conducted within the provisions of §18-8-1 et seq. of this code.

“Petitioner or copetitioner” means the department or any reputable person who files a child abuse or neglect petition pursuant to §49-4-601 et seq. of this code.

“Permanency plan” means the part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available.

“Respondent” means all parents, guardians, and custodians identified in the child abuse and neglect petition who are not petitioners or copetitioners.

“Sexual abuse” means:
(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by §61-8c-3 of this code, which a parent, guardian, or custodian engages in, attempts to engage in, or knowingly procures another person to engage in, with a child notwithstanding the fact that for a child who is less than 16 years of age, the child may have willingly participated in that conduct or the child may have suffered no apparent physical, mental or emotional injury as a result of that conduct or, for a child 16 years of age or older, the child may have consented to that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct;

(B) Any conduct where a parent, guardian, or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian, or custodian, of the person making that display, or of the child, or for the purpose of affronting or alarming the child; or

(C) Any of the offenses proscribed in §61-8b-7, §61-8b-8, or §61-8b-9 of this code.

“Sexual assault” means any of the offenses proscribed in §61-8b-3, §61-8b-4, or §61-8b-5 of this code.

“Sexual contact” means sexual contact as that term is defined in §61-8b-1 of this code.

“Sexual exploitation” means an act where:

(A) A parent, custodian, or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in §61-8c-1 of this code;

(B) A parent, guardian, or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under
circumstances in which the parent, guardian, or custodian knows that the display is likely to be observed by others who would be affronted or alarmed; or

(C) A parent, guardian, or custodian knowingly maintains or makes available a child for the purpose of engaging the child in commercial sexual activity in violation of §61-14-5 of this code.

“Sexual intercourse” means sexual intercourse as that term is defined in §61-8b-1 of this code.

“Sexual intrusion” means sexual intrusion as that term is defined in §61-8b-1 of this code.

“Serious physical abuse” means bodily injury which creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.

(a) The family court shall exercise jurisdiction over the following matters:

(1) All actions for divorce, annulment or separate maintenance brought under the provisions of §48-3-1 et seq., §48-4-1 et seq., or §48-5-1 et seq. of this code, except as provided in subsections (b) and (c) of this section;

(2) All actions to obtain orders of child support brought under the provisions of §48-11-1 et seq., §48-12-1 et seq., and §48-14-1 et seq. of this code;

(3) All actions to establish paternity brought under the provisions of §48-24-1 et seq. of this code and any dependent claims related to such actions regarding child
(4) All actions for grandparent visitation brought under the provisions of §48-10-1 et seq. of this code;

(5) All actions for the interstate enforcement of family support brought under §48-16-1 et seq. of this code and for the interstate enforcement of child custody brought under the provisions of §48-20-1 et seq. of this code;

(6) All actions for the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, including actions brought under the Uniform Child Custody Jurisdiction and Enforcement Act, as provided in §48-20-1 et seq. of this code;

(7) All petitions for writs of habeas corpus in which the issue contested is custodial responsibility for a child;

(8) All motions for temporary relief affecting parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support or domestic violence;

(9) All motions for modification of an order providing for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child or for child support or spousal support;

(10) All actions brought, including civil contempt proceedings, to enforce an order of spousal or child support or to enforce an order for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child;

(11) All actions brought by an obligor to contest the enforcement of an order of support through the withholding from income of amounts payable as support or to contest an
affidavit of accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

(12) All final hearings in domestic violence proceedings;

(13) Petitions for a change of name, exercising concurrent jurisdiction with the circuit court;

(14) All proceedings for payment of attorney fees if the family court judge has jurisdiction of the underlying action;

(15) All proceedings for property distribution brought under §48-7-1 et seq. of this code;

(16) All proceedings to obtain spousal support brought under §48-8-1 et seq. of this code;

(17) All proceedings relating to the appointment of guardians or curators of minor children brought pursuant to §44-10-3, §44-10-4 and §44-10-6 of this code, exercising concurrent jurisdiction with the circuit court; and

(18) All proceedings relating to petitions for sibling visitation.

(b) If an action for divorce, annulment, or separate maintenance does not require the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child and does not require an award or any payment of child support, the circuit court has concurrent jurisdiction with the family court over the action if, at the time of the filing of the action, the parties also file a written property settlement agreement executed by both parties.

(c) If an action for divorce, annulment, or separate maintenance is pending and a petition is filed pursuant to the provisions of §49-4-601 through §49-4-610 of this code alleging abuse or neglect of a child by either of the parties to the divorce, annulment, or separate maintenance action,
the orders of the circuit court in which the abuse or neglect petition is filed shall supersede and take precedence over an order of the family court respecting the allocation of custodial and decision-making responsibility for the child between the parents. If no order for the allocation of custodial and decision-making responsibility for the child between the parents has been entered by the family court in the pending action for divorce, annulment, or separate maintenance, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making responsibility for the child between the parents and defer to the orders of the circuit court in the abuse or neglect proceedings.

(d) If a family court judge is assigned as a judicial officer of a domestic violence court then jurisdiction of all proceedings relating to criminal misdemeanor crimes of domestic violence as referenced in §48-27-301 of this code involving a family or household member as referenced in §48-27-204(1) through §48-27-204(6) and §48-27-204(7)(A), §48-27-204(7)(B), and §48-27-204(7)(H) of this code shall be concurrent with the circuit and magistrate courts.

(e) A family court is a court of limited jurisdiction. A family court is a court of record only for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court is specifically authorized in this section and in chapter 48 of this code. A family court may not exercise the powers given courts of record in §51-5-1 of this code or exercise any other powers provided for courts of record in this code unless specifically authorized by the Legislature. A family court judge is not a “judge of any court of record” or a “judge of a court of record” as the terms are defined and used in §51-9-1 et seq. of this code.

ARTICLE 7. OFFICIAL REPORTERS.

§51-7-8. Transcripts to be furnished indigent persons in juvenile delinquency and child abuse and neglect proceedings upon timely request; payment therefor.
In any proceeding held pursuant to §49-4-601 through §49-4-725 of this code in which an indigent respondent or his or her counsel has filed a written request, in the manner prescribed by the Supreme Court of Appeals, evidencing an intent to appeal a decision of a circuit court in the proceeding, the court, upon presentation of a written request, presented within 30 days after the entry of the order sought to be appealed, shall authorize and direct the court reporter to furnish a transcript of the testimony of the proceeding or the part or parts of the transcript that have specifically been requested.

The court, after being sufficiently satisfied of the reasonableness of a voucher or claim submitted for payment of the cost of preparing the transcript, shall certify the cost to the State Auditor, who shall, in a timely manner, pay the court reporter’s fee from appropriations to the Supreme Court of Appeals.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

(a) Any person or agency who knowingly offers, gives, or agrees to give to another person money, property, service, or other thing of value in consideration for the recipient’s locating, providing, or procuring a minor child for any purpose which entails a transfer of the legal or physical custody of the child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided in this section.

(b) Any person who knowingly receives, accepts, or offers to accept money, property, service, or other thing of value to locate, provide or procure a minor child for any purpose which entails a transfer of the legal or physical custody of the child, including, but not limited to, adoption
or placement, is guilty of a felony and subject to fine and
imprisonment as provided in this section.

(c) Any person who violates the provisions of this
section is guilty of a felony and, upon conviction thereof,
may be confined in the state correctional facility for not less
than one year nor more than 10 years or, in the discretion of
the court, be confined in jail not more than one year and
fined not less than $2,000 nor more than $10,000.

(d) A child whose parent, guardian, or custodian has
sold or attempted to sell said child in violation of the
provisions of §48-22-1 et seq. of this code may be deemed
an abused child as defined by §49-1-201 of this code. The
court may place such a child in the custody of the
Department of Health and Human Resources or with
another responsible person as dictated by the best interests
of the child.

(e) This section does not prohibit the payment or receipt
of the following:

(1) Fees paid for reasonable and customary services
provided by the Department of Health and Human
Resources or any licensed or duly authorized adoption or
child-placing agency;

(2) Reasonable and customary legal, medical, hospital
or other expenses incurred in connection with the
pregnancy, birth, and adoption proceedings;

(3) Fees and expenses included in any agreement in
which a woman agrees to become a surrogate mother; or

(4) Any fees or charges authorized by law or approved
by a court in a proceeding relating to the placement plan,
prospective placement, or placement of a minor child for
adoption.

(f) At the final hearing on the adoption as provided in
§48-22-1 et seq. of this code, an affidavit of any fees and
expenses paid or promised by the adoptive parents shall be submitted to the court.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-12b. Escape from custody of the Director of Juvenile Services.

(a) Any person, under the age of 18 years of age, who escapes or attempts to escape from the custody of the Director of Juvenile Services, regardless of where that person is confined or where the escape occurs, is guilty of a delinquent act and subject to the jurisdiction of the circuit court of the county in which the escape occurred, pursuant to §49-4-701 of this code: Provided, That upon agreement of all parties, the prosecution of the escape may be transferred to the circuit court from which the juvenile was originally committed.

(b) Any person, over the age of 18 years of age or any juvenile who has been transferred to the adult jurisdiction of the committing court, who escapes or attempts to escape from the custody of the Director of Juvenile Services, regardless of where that person is confined or where the escape or attempted escape occurs, is guilty of escape and, if the person is detained or confined for an offense which is a felony or would have been a felony if committed by an adult is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not more than five years. Any person, over the age of 18 years of age or any juvenile who has been transferred to the adult jurisdiction of the committing court, who is detained for an offense which is a misdemeanor or would have been a misdemeanor if committed by an adult is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a regional jail for not more than one year.

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-25. Falsely reporting child abuse.
(a) Any person who knowingly and intentionally reports or causes to be reported to a law-enforcement officer, child protective service worker, or judicial officer that another has committed child sexual abuse, child abuse, or neglect as those terms are defined in §49-1-201 of this code who when doing so knows or has reason to know the accusation is false and who does it with the intent to influence a child custody decision shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than $1,000, sentenced to not more than sixty hours of court-approved community service, or both.

(b) In addition to any other sanctions imposed by the provisions of this section, any person convicted of a violation of this section shall be required to attend and complete a court-approved parenting class.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-8. Possession of deadly weapons by minors; prohibitions.

Notwithstanding any other provision of this article to the contrary, a person under the age of 18 years who is not married or otherwise emancipated shall not possess or carry concealed or openly any deadly weapon: Provided, That a minor may possess a firearm upon premises owned by the minor or his or her family or on the premises of another with the permission of his or her parent or guardian and in the case of property other than his or her own or that of his or her family, with the permission of the owner or lessee of the property: Provided, however, That nothing in this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess the weapon.

A violation of this section by a person under the age of 18 years shall subject the child to the jurisdiction of the
circuit court under the provisions of §49-4-701 through §49-
4-725 of this code, and the minor may be proceeded against
in the same manner as if he or she had committed an act
which if committed by an adult would be a crime, and may
be adjudicated delinquent.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY
AND DECENCY.

§61-8-12. Incest; penalty.

(a) For the purposes of this section:

(1) “Aunt” means the sister of a person’s mother or
father;

(2) “Brother” means the son of a person’s mother or
father;

(3) “Daughter” means a person’s natural daughter,
adoptive daughter, or the daughter of a person’s husband or
wife;

(4) “Father” means a person’s natural father, adoptive
father, or the husband of a person’s mother;

(5) “Granddaughter” means the daughter of a person’s
son or daughter;

(6) “Grandfather” means the father of a person’s father
or mother;

(7) “Grandmother” means the mother of a person’s
father or mother;

(8) “Grandson” means the son of a person’s son or
daughter;

(9) “Mother” means a person’s natural mother, adoptive
mother, or the wife of a person’s father;
(10) “Niece” means the daughter of a person’s brother or sister;

(11) “Nephew” means the son of a person’s brother or sister;

(12) “Sexual intercourse” means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person;

(13) “Sexual intrusion” means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party;

(14) “Sister” means the daughter of a person’s father or mother;

(15) “Son” means a person’s natural son, adoptive son, or the son of a person’s husband or wife; and

(16) “Uncle” means the brother of a person’s father or mother.

(b) A person is guilty of incest when such person engages in sexual intercourse or sexual intrusion with his or her father, mother, brother, sister, daughter, son, grandfather, grandmother, grandson, granddaughter, nephew, niece, uncle, or aunt.

(c) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than 5 years nor more than 15 years, or fined not less than $500 nor more than $5,000 and imprisoned in the penitentiary not less than five years nor more than fifteen years.

(d) In addition to any penalty provided under this section and any restitution which may be ordered by the court under §61-11A-1 et seq. of this code, the court may
order any person convicted under the provisions of this section, where the victim is a minor, to pay all or any portion of the cost of medical, psychological, or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.

(e) In any case where a person is convicted of an offense described in this section against a child and further has or may have custodial, visitation, or other parental rights to the child, the court shall find that the person is an abusing parent within the meaning of §49-4-601 through §49-4-610 of this code, and shall take further action in accord with the provisions of those sections.

ARTICLE 8B. SEXUAL OFFENSES.


In any case where a person is convicted of an offense described in this article against a child and the person has custodial, visitation, or other parental rights to the child who is the victim of the offense or any child who resides in the same household as the victim, the court shall, at the time of sentencing, find that the person is an abusing parent within the meaning of §49-4-601 through §49-4-610 of this code as to the child victim, and may find that the person is an abusing parent as to any child who resides in the same household as the victim, and shall take further action in accord with the provisions of those sections.

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-3b. Prohibiting juveniles from manufacturing, possessing and distributing nude or partially nude images of minors; creating exemptions; declaring a violation to be an act of juvenile delinquency; and providing for the punishment thereof.
(a) Any minor who intentionally possesses, creates, produces, distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of another minor posing in an inappropriate sexual manner or who distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of himself or herself posing in an inappropriate sexual manner is guilty of an act of delinquency and, upon adjudication, disposition may be made by the circuit court pursuant to the provisions of §49-4-701 through §49-4-725 of this code.

(b) As used in this section:

(1) “Posing in an inappropriate sexual manner” means exhibition of a bare female breast, female or male genitalia, pubic, or rectal areas of a minor for purposes of sexual titillation.

(2) “Visual portrayal” means:

(A) A photograph;

(B) A motion picture;

(C) A digital image;

(D) A digital video recording; or

(E) Any other mechanical or electronic recording process or device that can preserve, for later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones, personal digital assistance, and other digital storage or transmitting devices;

(c) It shall be an affirmative defense to an alleged violation of this section that a minor charged with possession of the prohibited visual depiction did neither solicit its receipt nor distribute, transmit, or present it to another person by any means.

(d) Notwithstanding the provisions of §15-12-1 et seq. of this code, an adjudication of delinquency under the
provisions of this section shall not subject the minor to the
requirements of that article and chapter.

ARTICLE 8D. CHILD ABUSE.


In any case where a person is convicted of a felony
offense against a child as set forth in this article and the
person has custodial, visitation or other parental rights to the
child who is the victim of the offense or any child who
resides in the same household as the victim, the court shall,
at the time of sentencing, find that the person is an abusing
parent within the meaning of §49-4-601 through §49-4-610
of this code as to the child victim, and may find that the
person is an abusing parent as to any child who resides in
the same household as the victim, and shall take such further
action in accord with the provisions of those sections.

ARTICLE 11. GENERAL PROVISIONS CONCERNING
CRIMES.

§61-11-23. Punishment for juvenile convicted as an adult;
eligibility for parole; factors to be considered prior to
sentencing.

(a) Notwithstanding any other provision of law to the
contrary, a sentence of life imprisonment without the
possibility of parole may not be imposed on a person who:

(1) Is convicted of an offense punishable by life
imprisonment; and

(2) Was less than 18 years of age at the time the offense
was committed.

(b) Unless otherwise provided by this code, the
provisions of §62-12-1 et seq. of this code governs the
eligibility for parole of a person who is convicted of an
offense and sentenced to confinement if he or she was less
than 18 years of age at the time the offense was committed,
except that a person who is convicted of one or more
offenses for which the sentence or any combination of sentences imposed is for a period that renders the person ineligible for parole until he or she has served more than 15 years shall be eligible for parole after he or she has served 15 years if the person was less than 18 years of age at the time each offense was committed.

(c) In addition to other factors required by law to be considered prior to the imposition of a sentence, in determining the appropriate sentence to be imposed on a person who has been transferred to the criminal jurisdiction of the court pursuant to §49-4-710 of this code and who has been subsequently tried and convicted of a felony offense as an adult, the court shall consider the following mitigating circumstances:

(1) Age at the time of the offense;

(2) Impetuosity;

(3) Family and community environment;

(4) Ability to appreciate the risks and consequences of the conduct;

(5) Intellectual capacity;

(6) The outcomes of a comprehensive mental health evaluation conducted by a mental health professional licensed to treat adolescents in the State of West Virginia: Provided, That no provision of this section may be construed to require that a comprehensive mental health evaluation be conducted;

(7) Peer or familial pressure;

(8) Level of participation in the offense;

(9) Ability to participate meaningfully in his or her defense;

(10) Capacity for rehabilitation;
(11) School records and special education evaluations;
(12) Trauma history;
(13) Faith and community involvement;
(14) Involvement in the child welfare system; and
(15) Any other mitigating factor or circumstances.

(d)(1) Prior to the imposition of a sentence on a person who has been transferred to the criminal jurisdiction of the court pursuant to §49-4-710 of this code, and who has been subsequently tried and convicted of a felony offense as an adult, the court shall consider the outcomes of any comprehensive mental health evaluation conducted by a mental health professional licensed to treat adolescents in the State of West Virginia. The comprehensive mental health evaluation must include the following:

(A) Family interviews;
(B) Prenatal history;
(C) Developmental history;
(D) Medical history;
(E) History of treatment for substance use;
(F) Social history; and
(G) A psychological evaluation.

result of convictions rendered after the effective date of this section. (2) The provisions of this subsection are only applicable to sentencing proceedings for convictions rendered after the effective date of this section and do not constitute sufficient grounds for the reconsideration of sentences imposed as the

ARTICLE 12. POSTMORTEM EXAMINATIONS.
*§61-12-10. When autopsies made and by whom performed; records of date investigated; copies of records and information; reporting requirements.

(a) If in the opinion of the chief medical examiner, or of the county medical examiner of the county in which the death in question occurred, it is advisable and in the public interest that an autopsy be made, or if an autopsy is requested by either the prosecuting attorney or the judge of the circuit court or other court of record having criminal jurisdiction in that county, an autopsy shall be conducted by the chief medical examiner or his or her designee, by a member of his or her staff, or by a competent pathologist designated and employed by the chief medical examiner under the provisions of this article. For this purpose, the chief medical examiner may employ any county medical examiner who is a pathologist who holds board certification or board eligibility in forensic pathology or has completed an American Board of Pathology fellowship in forensic pathology to make the autopsies, and the fees to be paid for autopsies under this section shall be in addition to the fee provided for investigations pursuant to §61-12-8 of this code. A full record and report of the findings developed by the autopsy shall be filed with the office of the chief medical examiner by the person making the autopsy.

(b) Within the discretion of the chief medical examiner, or of the person making the autopsy, or if requested by the prosecuting attorney of the county, or of the county where any injury contributing to or causing the death was sustained, a copy of the report of the autopsy shall be furnished to the prosecuting attorney.

(c) The office of the chief medical examiner shall keep full, complete and properly indexed records of all deaths investigated, containing all relevant information concerning the death and the autopsy report if an autopsy report is made. Any prosecuting attorney or law-enforcement officer may

*NOTE: This section was also amended by H. B. 4217 (Chapter 29), which passed subsequent to the act.
secure copies of these records or information necessary for
the performance of his or her official duties.

(d) Copies of these records or information shall be
furnished, upon request, to any court of law, or to the parties
therein to whom the cause of death is a material issue,
except where the court determines that interests in a civil
matter conflict with the interests in a criminal proceeding,
in which case the interests in the criminal proceeding shall
take precedence. The office of chief medical examiner shall
be reimbursed a reasonable rate by the requesting party for
costs incurred in the production of records under this
subsection and subsection (c) of this section.

(e) The chief medical examiner is authorized to release
investigation records and autopsy reports to the
multidisciplinary team authorized by §49-4-402 of this code
and as authorized in subsection (h) of this section. At the
direction of the Secretary of the Department of Health and
Human Resources the chief medical examiner may release
records and information to other state agencies when
considered to be in the public interest.

(f) Any person performing an autopsy under this section
may keep and retain, for and on behalf of the chief medical
examiner, any tissue from the body upon which the autopsy
was performed which may be necessary for further study or
consideration.

(g) In cases of the death of any infant in the State of
West Virginia where sudden infant death syndrome is the
suspected cause of death and the chief medical examiner or
the medical examiner of the county in which the death in
question occurred considers it advisable to perform an
autopsy, the chief medical examiner or the medical
examiner of the county in which the death occurred shall
notify the sudden infant death syndrome program within the
division of maternal and child health and to inform the
program of all information to be given to the infant’s
parents.
(h) If the chief medical officer determines that a drug overdose is the cause of death of a person, the chief medical examiner shall provide notice of the death to the West Virginia Controlled Substances Monitoring Program Database Review Committee established pursuant to §60A-9-5(b) of this code and shall include in the notice any information relating to the cause of the fatal overdose.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND TESTIMONY OF CHILD WITNESS.

§62-6B-5. Memorialization of statements of certain child witnesses; admissibility; hearing.

(a) After the effective date of this section, whenever any law-enforcement officer, physician, psychologist, social worker, or investigator, in the course of his or her employment or profession or while engaged in an active criminal investigation as a law-enforcement officer or an agent of a prosecuting attorney, obtains a statement from a child 13 years of age or younger who is an alleged victim in an investigation or prosecution alleging a violation of the provisions of §61-8B-3, §61-8B-4, §61-8B-5, or §61-8B-7 of this code, he or she shall immediately make a contemporaneous written notation and recitation of the statement received or obtained. An audio recording or video recording with sound capability of the statement may be used in lieu of the written recitation required by the provisions of this section. Failure to comply with the provisions of this section creates a presumption that the statement is inadmissible. The statement may be admitted if, after a hearing on the matter, the court finds by clear and convincing evidence that the failure to comply with the provisions of this section was a good faith omission and that the content of the proffered statement is an accurate recital of the information provided by the child and is otherwise admissible.
(b) The provisions of this section shall not apply to:

(1) Medical personnel and other persons performing a forensic medical examination of a child who is an alleged victim; and

(2) Prosecuting attorneys when counseling with a child in preparation for eliciting the child’s testimony in court.

CHAPTER 38

(S. B. 539 - By Senators Trump, Stollings and Woelfel)

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §14-2-17a of the Code of West Virginia, 1931, as amended, relating to increasing the limit for settling claims against the Division of Highways under the shortened procedure for road condition claims.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-17a. Shortened procedure for road condition claims.

Notwithstanding the regular and shortened procedures provided for in §14-2-16 and §14-2-17 of this code, there shall be a shortened procedure for road condition claims. The shortened procedure authorized by this section shall apply only to a claim possessing all of the following characteristics:

(1) The claim does not arise under an appropriation for the current fiscal year.
(2) The claim alleges that a condition on the state’s highways or roads caused property damage.

(3) The Division of Highways concurs in the claim.

(4) The amount claimed does not exceed $3,000.

The Division of Highways shall prepare a stipulation concerning the claim and file it with the clerk. The commission shall order the claim approved and shall file its statement with the clerk.

CHAPTER 39

(S. B. 584 - By Senators Blair, Boso, Sypolt and Facemire)

[Passed March 8, 2018; in effect from passage.]
[Approved by the Governor on March 20, 2018.]

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:

§1. Finding and declaring certain claims against the Department of Administration; Division of Corrections; Department of Environmental Protection; Department of Health and Human Resources; Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities; Division of Highways; Division of Motor Vehicles; Regional Jail and Correctional Facility Authority; State Board of Education; State of West Virginia; and Department of Veterans Assistance to be moral obligations of the state and directing payment thereof.
The Legislature has considered the findings of fact and recommendations reported to it by the Legislative Claims Commission concerning various claims against the state and agencies thereof and in respect to each of the following claims, the Legislature adopts those findings of fact as its own and in respect of the claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below and directs the Auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) *Claims against the Department of Administration, Office of Technology:*

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Ricoh USA.................................$16,781.29

(2) South Charleston Electric Company........$3,000.00

(b) *Claims against the Division of Corrections:*

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Shelby Skaggs.............................$24.30

(2) Donald B. Surber, Jr. ......................$70.00

(c) *Claim against the Department of Environmental Protection:*

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Potesta & Associates Inc. $193,170.00

(d) *Claims against the Department of Health and Human Resources:*

(TO BE PAID FROM GENERAL REVENUE FUND)
29  (1) Saunders Staffing, Inc. ......................... $7,521.64
30  (2) Social Solutions Global Inc. ................. $83,781.00
31  (e) Claims against the Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities:
34  (TO BE PAID FROM GENERAL REVENUE FUND)
35  (1) Management Registry, Inc. .................... $1,229.34
36  (2) Sunbelt Staffing ................................ $6,315.00
37  (f) Claims against Division of Highways:
38  (TO BE PAID FROM STATE ROAD FUND)
39  (1) Robert A. Abell and Linda Abell ........... $117.08
40  (2) Jessica Adams and Christopher D. Adams ... $397.83
41  (3) Susan M. Adams ................................ $500.00
42  (4) Harmon Adkins ................................ $83.50
43  (5) Carmen Archer .................................. $321.00
44  (6) Vincent Lee Ash ................................ $297.89
45  (7) Pervous A. Badilishamwalimu ............... $83.72
46  (8) Kimberly Bailes and James R. Bailes Jr. .. $726.61
47  (9) Erika Bailey and Timothy C. Bailey ........ $304.95
48  (10) Randall D. Bailey and Veronica Bailey ... $264.43
49  (11) Kelli Bails ..................................... $500.00
50  (12) Caleb Banks ................................... $500.00
51  (13) Georgia Loraine Barido and Michael Ray Barido .......... $568.05
52  (14) Sharon Barnett ................................ $217.20
53  (15) Charles J. Barnette ......................... $1,000.00
54  (16) Timothy Barrar and Andrea Barrar ...... $451.21
55  (17) Edward J. Beech and Barbara J. Beech ... $297.97
56  (18) Angelia Bell, Administratrix of the Estate of Raheem Bonds .... $75,000.00
59  (19) Jessica Bishoff ................................ $385.24
60  (20) Jeffrey Bland .................................. $391.58
61  (21) Joseph Blevins and Sharon A. Blevins .... $141.00
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Robert M. Haverland ................................ $947.56  
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William D. Helms Sr. .................................. $132.44  
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Cynthia R. Hinkle ..................................... $613.86  
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Maynard L. Holliday ................................ $190.80  
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Jack Johnson ...............................................$57.00
Rebecca Anne Johnson .......................... $250.00
Sherry L. Johnson ..................................... $168.54
Jack Jones Jr. and Cristy Jones .......$146.18
Jason Jones .......................................$163.91
Sheila K. Jones-Marino ......................$492.05
Linsey Justice ........................................... $398.32
Michael Alexander Justice
and Amber Justice ...................................$84.75
John E. Kester .......................................... $500.00
Tim Kiehle ............................................... $255.02
Stephen J. Kindler and Kathleen Kindler ...... $808.15
Thomas Lee Kirk.................................$435.65
Roger Kirtley ............................................ $217.30
Susan Knauss ........................................... $286.31
Jennifer Lacy and Brian Lacy ..............$250.00
Eric T. Lafferty ......................................... $500.00
Fonda Lambert ........................................... $596.33
Shana Lambert and Robert Lambert ......$668.96
Justin Lantz and Robert Lantz ............$405.07
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Rodney Legg and Retha Legg ...............$193.55
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and Michael Alan Leist ......................$690.85
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and Lelah A. Leonard ......................$500.00
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Karen Lonsinger ......................................$228.27
Stacey Losh and Gregory Losh ............$500.00
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and Mike Swiger ......................................$500.00
Erin Mader ............................................... $500.00
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and Kimberly A. Madous .................$419.39
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and McGee Motors LTD ........................................... $630.00
(211) Jonathan McGoldrick ........................................... $108.28
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(224) Nickolas Moneypenny ........................................... $1,469.69
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(230) Charles Nuckles Jr ........................................... $1,000.00
(231) Bobby J. Nutter and Sandra Nutter ............... $116.60
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(233) Chelsie Palmeri ........................................... $315.00
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(275) Everett E. Sansom and Carolyn Sansom ........... $115.00
(276) Lewis Saunders ........................................ $179.18
(277) Deborah G. Sbarra ................................... $241.38
(278) Tommy Seabolt ........................................ $129.04
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(286) David L. Shell ......................................... $500.00
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(292) Jame Slack and Stella Slack ......................... $255.45
(293) Edward W. Sloan ...................................... $225.77
(294) Roger D. Smallwood ................................ $598.74
(295) Lisa Lynn Smith ....................................... $393.53
(296) Michelle D. Smith .................................... $329.28
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(298) Randy G. Smith ...................................... $80.00
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(305) Francis Joseph Stanek .......................$1,000.00
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(307) Steven P. Starkey ........................................ $333.96
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(310) Triston Stewart ............................................ $637.60
(311) Donna Stanley and Roger Stoffel ............ $473.29
(312) Gregory Stone and Jill Stone .................... $500.00
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(314) Jarin Hongraisan and Phenphone P. Suanse .......... $500.00
(315) Lorraine Swatt ..................................... $25,000.00
(316) Brenda R. Talbott .................................. $250.00
(317) Fern S. Teel .............................................. $930.18
(318) Kandace Thompson and Joseph Thompson .......... $318.47
(319) Pamela Thompson .......................................... $98.44
(320) Rodney Thompson ......................................... $253.54
(321) Lisa D. Tignor .............................................. $500.00
(322) Gary Tucker ................................................ $271.36
(323) Brenda Turner and Harold R. Turner .......... $256.79
(324) James W. Turner ......................................... $321.34
(325) Clinton Uphold .......................................... $300.00
(326) Stephen W. Van Buren and Lory Van Buren ........ $206.70
(327) Nina VanWay and Brian VanWay ........... $181.90
(328) Hobert V. Varney ........................................ $394.32
(329) Ryan W. Vaughan ........................................ $500.00
(330) Michael A. Vecchio ........................................ $500.00
(331) Marguerite Wageman .................................... $250.00
(332) Sharon D. Walker ........................................... $126.67
(333) Heather L. Walls ........................................ $382.44
(334) Jeffrey Walls, Panhandle Pre-Owned Auto Sales Inc. .... $448.19
(335) Ann S. Walters ........................................... $239.76
(336) Ashley M. Walters and Maculette Walters ........ $344.98
(g) Claim against the Division of Motor Vehicles:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Jackson Kelly, PLLC .............................................. $590.00

(h) Claims against the Regional Jail and Correctional Facility Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Gary R. Baker .................................................. $647.00

(2) Michael Jay Bostic ............................................. $1,576.00
(3) Gregory L. Gillum, II.................................$200.00
(4) Tarryn Hoffman........................................$100.00
(5) Jeremy Matthew Moore...............................$100.00
(6) Harry R. Walker, Jr. .....................................$36.86

(i) Claim against the State Board of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) USA Presort, Inc., dba Infocon .....................$254.47

(j) Claim against the State of West Virginia:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Davie Lee Hurt......................................$1,250,000.00

(k) Claim against the Division of Veterans Assistance:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) G4S Secure Solutions (USA) Inc..................$2,546.34

(l) Claim against the Public Service Commission of West Virginia:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Pullman Power, LLC .............................$204,176.95

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants and that prior to the payments to any claimant provided in this bill, the Legislative Claims Commission shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The Legislative Claims Commission shall deliver all releases
obtained from claimants to the department against which the claim was allowed.

CHAPTER 40

(Com. Sub. for H. B. 2028 - By Delegates Folk, Hanshaw, Shot, Dean, Fleischauer, Fluharty, McGeehan, Paynter, Martin and Wilson)

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §14-2-2 of the Code of West Virginia, 1931, as amended, relating to the venue for suits and other actions against the state; allowing a plaintiff or petitioner to file a claim or petition against the state, a state officer, or state agency in the circuit court of a county in which the plaintiff or petitioner resides or in which a claim arose or, alternatively, in the circuit court of Kanawha County.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-2. Venue for certain suits and actions.

(a) Any suit, action, or proceeding in which the state, the Governor, any other state officer, or a state agency is made a party defendant, or any suit attempting to enjoin or otherwise suspend or affect a judgment or decree on behalf of the state obtained in any circuit court, may be brought and prosecuted in the circuit court of any county wherein the plaintiff or petitioner who is appearing in the action or proceeding resides, or where the cause of action arose; or, alternatively, in the circuit court of Kanawha County.
(b) Any proceeding for injunctive or mandamus relief involving the taking, title, or collection for or prevention of damage to real property may be brought and presented in the circuit court of the county in which the real property affected is situate.

c) This section shall apply only to such proceedings as are not prohibited by the Constitutional immunity of the state from suit under section thirty-five, article six of the Constitution of the State.

CHAPTER 41


[Passed March 3, 2018; in effect from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT recognizing and declaring certain claims against an agency of the state 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:

§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 over-expenditures
of the departmental appropriations by officers of the state
spending units, the claims having been previously
considered by the Legislative Claims Commission 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 Legislative Claims
Commission 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
Legislative Claims Commission 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 §12-3-10 of the Code
of West Virginia, 1931, as amended, for the payments
thereof out of any fund appropriated and available for the
purpose.

Claims against the Department of Health and Human
Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Adams-Reed Funeral Home ...................... $3,750.00
(2) DeGarmo Funeral Home ......................... $1,250.00
(3) Dodd & Reed Funeral Home .................... $3,750.00
(4) Ford Funeral Home, Inc .......................... $6,250.00
(5) Melton Mortuary, Inc. ........................... $27,500.00
(6) Morgan Funeral Home ............................ $1,250.00
(7) Sunbelt Staffing .................................. $164,486.95
AN ACT to repeal §17C-15-29 and §17C-15-38 of the Code of West Virginia, 1931, as amended, relating to repealing antiquated and inoperative provisions of the code regarding approval of safety glass and lighting in motor vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. EQUIPMENT.

§1. Repeal of sections relating to approval of vehicle equipment by Commissioner of Division of Highways.

1 That §17C-15-29 and §17C-15-38 of the Code of West Virginia, 1931, as amended, are hereby repealed.
Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to unattended motor vehicles and penalties.

§17C-14-1 of the Code of West Virginia, 1931, as amended, is hereby repealed.

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CHAPTER 44

(Com. Sub. for H. B. 2464 - By Delegate Cowles)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §46A-6-107 of the Code of West Virginia, 1931, as amended, relating to disclaimers and exclusions of warranties for used manufactured homes; providing that a consumer may waive the warranties of merchantability and fitness for a particular use; providing that a consumer may waive a particular defect or malfunction which the merchant has identified and disclosed in writing to the consumer; providing for the manner and content of waivers; and providing a definition.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-107. Disclaimer of warranties and remedies prohibited.

(a) Except as otherwise provided in subsection (b) of this section, with respect to goods which are the subject of or are intended to become the subject of a consumer transaction, no merchant may:
(1) Exclude, modify, or otherwise attempt to limit any warranty, express, or implied, including the warranties of merchantability and fitness for a particular purpose; or

(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express, or implied.

(b) A consumer who purchases a used manufactured home may waive the warranties of merchantability and fitness for a particular purpose, or waive a warranty as to a particular defect or malfunction which the merchant has identified and disclosed in writing to the consumer, if the used manufactured home is not being sold for human habitation: Provided, That notice be posted on the front door of the used manufactured home that it is not being sold for human habitation: Provided, however, That the waiver is not effective unless the waiver:

(1) Is in writing;

(2) Is conspicuous and is in plain language;

(3) Identifies with particularity the disclosed defect or malfunction, if any, in the used manufactured home for which the warranty is to be waived;

(4) Describes any additional defects or malfunctions, if any, disclosed to the merchant by a previous owner of the used manufactured home or discoverable by the merchant after an inspection of the used manufactured home;

(5) States that the warranty being waived applies only to the disclosed defect or malfunction, if any, to the extent the merchant intends to waive a warranty as to a specific defect;

(6) Acknowledges that the used manufactured home will not be used for human habitation: Provided, That the consumer shall sign or initial such provision in order to evidence the consumer’s acknowledgment thereof; and
(7) Is signed by both the consumer and the merchant before the sales contract is executed.

For purposes of this subsection, “used manufactured home” means a manufactured home, as defined in §21-9-2 of this code, that is more than four years old from its date of production and has previously been occupied, used, or sold for purposes other than resale.

CHAPTER 45


[Passed March 10, 2018; in effect ninety days from passage.] [Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, to amend and reenact §46A-6F-501; all relating generally to prohibiting telemarketing companies from transmitting misleading or inaccurate caller identification information; and providing exceptions thereto.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6F. TELEMARKETING.

PART V. UNFAIR OR DECEPTIVE ACTS OR PRACTICES; PENALTIES.

§46A-6F-501. Unfair or deceptive acts or practices.

It is an unfair or deceptive act or practice and a violation of this article for any seller or telemarketer to engage in the following conduct:
(1) To advertise or represent that registration as a telemarketer equals an endorsement or approval by the state or any governmental agency of the state;

(2) To request or receive payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person’s credit history, credit record, or credit rating until:

(A) The time frame in which the telemarketer has represented all of the goods or services will be provided to that person has expired; and

(B) The telemarketer has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved;

(3) To obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person’s checking, savings, share, or similar account, without that person’s express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(A) Express written authorization by the customer, which may include the customer’s signature on the negotiable instrument; or

(B) Express oral authorization which is tape recorded and made available upon request to the customer’s bank and which evidences clearly both the customer’s authorization of payment for the goods and services that are the subject of the sales offer and the customer’s receipt of all of the following information:

(i) The date of the draft(s);

(ii) The amount of the draft(s);
(iii) The payor’s name;

(iv) The number of draft payments (if more than one);

(v) A telephone number for customer inquiry that is answered during normal business hours; and

(vi) The date of the customer’s oral authorization.

(C) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer’s check, draft, or other form of negotiable paper, that includes:

(i) All of the information contained in subparagraphs (i) through (vi), paragraph (B), subdivision (3) of this section; and

(ii) The procedures by which the customer can obtain a refund from the telemarketer in the event the confirmation is inaccurate;

(4) To procure the services of any professional delivery, courier or other pick-up service to obtain immediate receipt and possession of a consumer’s payment unless:

(A) Such service is requested by the consumer;

(B) The consumer is informed that he or she can inspect the goods or services prior to payment and may refuse to accept the goods or services; and

(C) The consumer is actually afforded an opportunity to inspect the goods or services prior to payment;

(5) To engage in any other unfair or deceptive conduct which will create a likelihood of confusion or misunderstanding to any reasonable consumer;

(6) To misrepresent the requirements of this section;
(7) To provide substantial assistance or support to any telemarketer when that person knows or consciously avoids knowing that the telemarketer is engaged in any act or practice that violates this section;

(8) To engage in any “unfair methods of competition and unfair or deceptive acts or practices” as specified in §46A-6-102(f) of this code and made unlawful by the provisions of §46A-6-102 of this code; or

(9) To engage in transmission of misleading or inaccurate caller identification information, including, but not limited to, circumventing caller identification technology that allows the consumer to identify from what phone number or organization the call has originated from, or to otherwise misrepresent the origin and nature of the solicitation: Provided, That the provisions of this subsection do not apply to a communications service provider that delivers a communication originated by another person or entity.

CHAPTER 46

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

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §16-5H-2 and §16-5H-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5Y-2, §16-5Y-4, and §16-5Y-5 of said code; to amend said code by adding thereto a new article, designated §16-54-1, §16-54-2, §16-54-3, §16-54-4, §16-54-5, §16-54-6, §16-54-7, §16-54-8, and §16-54-9; to amend and reenact §30-3-14 of said code; to
amend and reenact §30-3A-1, §30-3A-2, §30-3A-3, and §30-3A-4 of said code; to amend and reenact §30-4-19 of said code; to amend and reenact §30-5-6 of said code; to amend and reenact §30-7-11 of said code; to amend and reenact §30-8-18 of said code; to amend and reenact §30-10-19 of said code; to amend and reenact §30-14-12a of said code; to amend and reenact §30-36-2 of said code; to amend said code by adding thereto a new section, designated §60A-5-509; and to amend and reenact §60A-9-4, §60A-9-5, and §60A-9-5a of said code, all relating to reducing the use of certain prescription drugs; providing for an exemption from registration for office-based, medication-assisted treatment program in specified cases; providing for an exemption for medication-assisted treatment programs; clarifying physician responsibility for medication-assisted treatment; clarifying definition of “pain management clinic”; providing for emergency rulemaking; defining terms; providing for an advance directive; requiring consultation with patients prior to prescribing an opioid; limiting the amount of opioid prescriptions; requiring a narcotics contract in certain circumstances; providing exceptions to prescribing limits; providing for referral to a pain clinic or pain specialist; providing reports to licensing boards regarding abnormal or unusual prescribing practices; requiring referral to certain alternative treatments; requiring insurance coverage for certain procedures to treat chronic pain; updating board’s titles; requiring the Board of Pharmacy to report quarterly to various licensing boards; exempting the Board of Pharmacy from certain purchasing requirements; clarifying who must report to the Controlled Substances Monitoring Program Database; clarifying the practice of acupuncture; precluding retaliation against a health care provider for declining to prescribe a narcotic; and permitting the investigation and discipline for abnormal and unusual prescribing and dispensing of prescription drugs.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.

“Chronic pain” means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. For purposes of this article, “chronic pain” does not include pain directly associated with a terminal condition.

“Director” means the Director of the Office of Health Facility Licensure and Certification within the Office of the Inspector General.

“Owner” means any person, partnership, association, or corporation listed as the owner of a pain management clinic on the licensing forms required by this article.

“Pain management clinic” means all privately-owned pain management clinics, facilities, or offices not otherwise exempted from this article and which meet both of the following criteria:

1. Where in any month more than 50 percent of patients of the clinic are prescribed or dispensed Schedule II opioids or other Schedule II controlled substances specified in rules promulgated pursuant to this article for chronic pain resulting from conditions that are not terminal; and

2. The facility meets any other identifying criteria established by the secretary by rule.

“Physician” means an individual authorized to practice medicine or surgery or osteopathic medicine or surgery in this state.

“Prescriber” means an individual who is authorized by law to prescribe drugs or drug therapy related devices in the course of the individual’s professional practice, including only a medical or osteopathic physician authorized to practice medicine or surgery; a physician assistant or
osteopathic physician assistant who holds a certificate to
prescribe drugs; or an advanced nurse practitioner who
holds a certificate to prescribe.

“Secretary” means the Secretary of the West Virginia
Department of Health and Human Resources. The secretary
can define in rules any term or phrase used in this article
which is not expressly defined.


(a) The Secretary of the Department of Health and
Human Resources, in collaboration with the West Virginia
Board of Medicine and the West Virginia Board of
Osteopathy, shall promulgate rules in accordance with the
provisions of §29A-1-1 et seq. of this code for the licensure
of pain management clinics to ensure adequate care,
treatment, health, safety, welfare, and comfort of patients at
these facilities. These rules shall include, at a minimum:

(1) The process to be followed by applicants seeking a
license;

(2) The qualifications and supervision of licensed and
nonlicensed personnel at pain management clinics and
training requirements for all facility health care practitioners
who are not regulated by another board;

(3) The provision and coordination of patient care,
including the development of a written plan of care;

(4) The management, operation, staffing, and equipping
of the pain management clinic;

(5) The clinical, medical, patient, and business records
kept by the pain management clinic;

(6) The procedures for inspections and for the review of
utilization and quality of patient care;

(7) The standards and procedures for the general
operation of a pain management clinic, including facility
(8) Identification of drugs that may be used to treat chronic pain that identify a facility as a pain management clinic, including, at a minimum, tramadol and carisoprodol;

(9) Any other criteria that identify a facility as a pain management clinic;

(10) The standards and procedures to be followed by an owner in providing supervision, direction, and control of individuals employed by or associated with a pain management clinic;

(11) Data collection and reporting requirements; and

(12) Such other standards or requirements as the secretary determines are appropriate.

(b) The rules authorized by this section may be filed as emergency rules if deemed necessary to promptly effectuate the purposes of this article. The Legislature finds that the changes made to this article during the 2018 regular session of the Legislature constitute an emergency for the purposes of filing any amendment to existing rules.

ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.


“Addiction” means a primary, chronic disease of brain reward, motivation, memory, and related circuitry. Dysfunction in these circuits leads to characteristic biological, psychological, social, and spiritual manifestations which is reflected in an individual pathologically pursuing reward or relief by substance use, or both, and other behaviors. Addiction is characterized by inability to consistently abstain; impairment in behavioral
control; craving; diminished recognition of significant problems with one’s behaviors; interpersonal problems with one’s behaviors and interpersonal relationships; a dysfunctional emotional response; and as addiction is currently defined by the American Society of Addiction Medicine.

“Administrator” means an individual designated by the governing body to be responsible for the day-to-day operation of the opioid treatment programs.

“Advanced alcohol and drug abuse counselor” means an alcohol and drug abuse counselor who is certified by the West Virginia Certification Board for Addiction and Prevention Professionals who demonstrates a high degree of competence in the addiction counseling field.

“Alcohol and drug abuse counselor” means a counselor certified by the West Virginia Certification Board for Addiction and Prevention Professionals for specialized work with patients who have substance use problems.

“Biopsychosocial” means of, relating to, or concerned with, biological, psychological, and social aspects in contrast to the strictly biomedical aspects of disease.

“Center for Substance Abuse Treatment” means the center under the Substance Abuse and Mental Health Services Administration that promotes community-based substance abuse treatment and recovery services for individuals and families in the community and provides national leadership to improve access, reduce barriers, and promote high quality, effective treatment and recovery services.

“Controlled Substances Monitoring Program Database” means the database maintained by the West Virginia Board of Pharmacy pursuant to §60A-9-3 of this code that monitors and tracks certain prescriptions written or dispensed by dispensers and prescribers in West Virginia.
“Director” means the Director of the Office of Health Facility Licensure and Certification.

“Dispense” means the preparation and delivery of a medication-assisted treatment medication in an appropriately labeled and suitable container to a patient by a medication-assisted treatment program or pharmacist.

“Governing body” means the person or persons identified as being legally responsible for the operation of the opioid treatment program. A governing body may be a board, a single entity or owner, or a partnership. The governing body must comply with the requirements prescribed in rules promulgated pursuant to this article.

“Medical director” means a physician licensed within the State of West Virginia who assumes responsibility for administering all medical services performed by the medication-assisted treatment program, either by performing them directly or by delegating specific responsibility to authorized program physicians and health care professionals functioning under the medical director’s direct supervision and functioning within their scope of practice.

“Medication-assisted treatment” means the use of medications and drug screens, in combination with counseling and behavioral therapies, to provide a holistic approach to the treatment of substance use disorders.

“Medication-assisted treatment program” means all publicly and privately owned opioid treatment programs and office-based, medication-assisted treatment programs, which prescribe medication-assisted treatment medications and treat substance use disorders, as those terms are defined in this article.

“Medication-assisted treatment medication” means any medication that is approved by the United States Food and Drug Administration under Section 505 of the Federal Food,
Drug and Cosmetic Act, 21 U. S. C. § 355, for use in the treatment of substance use disorders that is an opioid agonist or partial opioid agonist and is listed on the Schedule of Controlled Substances in §60A-2-2201 et seq. of this code.

“Office-based, medication-assisted treatment” means all publicly or privately owned clinics, facilities, offices, or programs that provide medication-assisted treatment to individuals with substance use disorders through the prescription, administration, or dispensing of a medication-assisted treatment medication in the form of a partial opioid agonist.

“Opioid agonist” means substances that bind to and activate the opiate receptors resulting in analgesia and pain regulation, respiratory depression, and a wide variety of behavioral changes. As used in this article, the term “opioid agonist” does not include partial agonist medications used as an alternative to opioid agonists in the treatment of opioid addiction.

“Opioid treatment program” means all publicly- or privately-owned medication-assisted treatment programs in clinics, facilities, offices, or programs that provide medication-assisted treatment to individuals with substance use disorders through on-site administration or dispensing of a medication-assisted treatment medication in the form of an opioid agonist or partial opioid agonist.

“Owner” means any person, partnership, association, or corporation listed as the owner of a medication-assisted treatment program on the licensing or registration forms required by this article.

“Partial opioid agonist” means a Federal Drug Administration approved medication that is used as an alternative to opioid agonists for the treatment of substance use disorders and that binds to and activates opiate receptors, but not to the same degree as full agonists.
“Physician” means an individual licensed in this state to practice allopathic medicine or surgery by the West Virginia Board of Medicine or osteopathic medicine or surgery by the West Virginia Board of Osteopathic Medicine and that meets the requirements of this article.

“Prescriber” means a person authorized in this state, working within their scope of practice, to give direction, either orally or in writing, for the preparation and administration of a remedy to be used in the treatment of substance use disorders.

“Program sponsor” means the person named in the application for the certification and licensure of an opioid treatment program who is responsible for the administrative operation of the opioid treatment program and who assumes responsibility for all of its employees, including any practitioners, agents, or other persons providing medical, rehabilitative, or counseling services at the program.

“Secretary” means the Secretary of the West Virginia Department of Health and Human Resources or his or her designee.

“State opioid treatment authority” means the agency or individual designated by the Governor to exercise the responsibility and authority of the state for governing the treatment of substance use disorders, including, but not limited to, the treatment of opiate addiction with opioid drugs.

“State oversight agency” means the agency or office of state government identified by the secretary to provide regulatory oversight of medication-assisted treatment programs on behalf of the State of West Virginia.

“Substance” means the following:

(1) Alcohol;
(2) Controlled substances defined by §60A-2-204, §60A-2-206, §60A-2-208, and §60A-2-210 of this code; or

(3) Any chemical, gas, drug, or medication consumed which causes clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.

“Substance Abuse and Mental Health Services Administration” means the agency under the United States Department of Health and Human Services responsible for the accreditation and certification of medication-assisted treatment programs and that provides leadership, resources, programs, policies, information, data, contracts, and grants for the purpose of reducing the impact of substance abuse and mental or behavioral illness.

“Substance use disorder” means patterns of symptoms resulting from use of a substance that the individual continues to take, despite experiencing problems as a result; or as defined in the most recent edition of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders.

“Telehealth” means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment education, care management, and self-management of a patient’s health care while the patient is at the originating site and the health care provider is at a distant site.

“Variance” means written permission granted by the secretary to a medication-assisted treatment program that a requirement of this article or rules promulgated pursuant to this article may be accomplished in a manner different from the manner set forth in this article or associated rules.

“Waiver” means a formal, time-limited agreement between the designated oversight agency and the
medication-assisted treatment program that suspends a rule, policy, or standard for a specific situation so long as the health and safety of patients is better served in the situation by suspension of the rule, policy, or standard than by enforcement.

§16-5Y-4. Office-based, medication-assisted treatment programs to obtain registration; application; fees and inspections.

(a) No person, partnership, association, or corporation may operate an office-based, medication-assisted treatment program without first obtaining a registration from the secretary in accordance with the provisions of this article and the rules lawfully promulgated pursuant to this article.

(b) Any person, partnership, association, or corporation desiring a registration to operate an office-based, medication-assisted treatment program in this state shall file with the Office of Health Facility Licensure and Certification an application in such form and with such information as the secretary shall prescribe and furnish accompanied by an application fee.

(c) The Director of the Office of Health Facility Licensure and Certification or his or her designee shall inspect and review all documentation submitted with the application. The director shall then provide a recommendation to the secretary whether to approve or deny the application for registration. The secretary shall issue a registration if the facility is in compliance with the provisions of this article and with the rules lawfully promulgated pursuant to this article.

(d) A registration shall be issued in one of three categories:

(1) An initial 12-month registration shall be issued to an office-based, medication-assisted treatment program establishing a new program or service for which there is insufficient consumer participation to demonstrate
substantial compliance with this article and with all rules promulgated pursuant to this article;

(2) A provisional registration shall be issued when an office-based, medication-assisted treatment program seeks a renewal registration, or is an existing program as of the effective date of this article and is seeking an initial registration, and the office-based, medication-assisted treatment program is not in substantial compliance with this article and with all rules promulgated pursuant to this article, but does not pose a significant risk to the rights, health, and safety of a consumer. It shall expire not more than six months from the date of issuance, and may not be consecutively reissued; or

(3) A renewal registration shall be issued when an office-based, medication-assisted treatment program is in substantial compliance with this article and with all rules promulgated pursuant to this article. A renewal registration shall expire not more than one year from the date of issuance.

(e) At least 60 days prior to the registration expiration date, an application for renewal shall be submitted by the office-based, medication-assisted treatment program to the secretary on forms furnished by the secretary. A registration shall be renewed if the secretary determines that the applicant is in compliance with this article and with all rules promulgated pursuant to this article. A registration issued to one program location pursuant to this article is not transferrable or assignable. Any change of ownership of a registered office-based, medication-assisted treatment program requires submission of a new application. The office-based, medication-assisted treatment program shall notify the secretary of any change in ownership within 10 days of the change and must submit a new application within the time frame prescribed by the secretary.

(f) Any person, partnership, association, or corporation seeking to obtain or renew a registration for an office-based,
medication-assisted treatment program in this state must submit to the secretary the following documentation:

(1) Full operating name of the program as advertised;
(2) Legal name of the program as registered with the West Virginia Secretary of State;
(3) Physical address of the program;
(4) Preferred mailing address for the program;
(5) Email address to be used as the primary contact for the program;
(6) Federal Employer Identification Number assigned to the program;
(7) All business licenses issued to the program by this state, the state Tax Department, the Secretary of State, and all other applicable business entities;
(8) Brief description of all services provided by the program;
(9) Hours of operation;
(10) Legal Registered Owner Name – name of the person registered as the legal owner of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal owner separately, indicating the percentage of ownership;
(11) Medical director’s full name, medical license number, Drug Enforcement Administration registration number, and a listing of all current certifications;
(12) For each physician, counselor, or social worker of the program, provide the following:
(A) Employee’s role and occupation within the program;
(B) Full legal name;

(C) Medical license, if applicable;

(D) Drug Enforcement Administration registration number, if applicable;

(E) Drug Enforcement Administration identification number to prescribe buprenorphine for addiction, if applicable; and

(F) Number of hours worked at program per week;

(13) Name and location address of all programs owned or operated by the applicant;

(14) Notarized signature of applicant;

(15) Check or money order for registration fee;

(16) Verification of education and training for all physicians, counselors, and social workers practicing at or used by referral by the program such as fellowships, additional education, accreditations, board certifications, and other certifications; and

(17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber practicing at the program for the three months preceding the date of application.

(g) Upon satisfaction that an applicant has met all of the requirements of this article, the secretary shall issue a registration to operate an office-based, medication-assisted treatment program. An entity that obtains this registration may possess, have custody or control of, and dispense drugs indicated and approved by the United States Food and Drug Administration for the treatment of substance use disorders.

(h) The office-based, medication-assisted treatment program shall display the current registration in a prominent
location where services are provided and in clear view of all patients.

(i) The secretary or his or her designee shall perform complaint and verification inspections on all office-based, medication-assisted treatment programs that are subject to this article and all rules adopted pursuant to this article to ensure continued compliance.

(j) Any person, partnership, association, or corporation operating an office-based, medication-assisted treatment program shall be permitted to continue operation until the effective date of the new rules promulgated pursuant to this article. At that time a person, partnership, association, or corporation shall file for registration within six months pursuant to the licensing procedures and requirements of this section and the new rules promulgated hereunder. The existing procedures of the person, partnership, association, or corporation shall remain effective until receipt of the registration.

(k) A person, partnership, association, or corporation providing office-based, medication-assisted treatment to no more than 30 patients of their practice or program is exempt from the registration requirement contained in §16-5Y-4(a) of this code: Provided, That it:

(1) Operates in compliance with all legislative rules promulgated pursuant to this article regulating office-based, medication-assisted treatment; and

(2) Attests to the Office of Health Facility Licensure and Certification on a form prescribed by the secretary that the person, partnership, association, or corporation requires counselling and drug screens, has implemented diversion control measures, will provide patient numbers upon request, and will provide any other information required by the secretary in rule; and
3 Is prohibited from establishing an office-based, medication-assisted treatment at any other location or facility after the submission of an attestation submitted pursuant to §16-5Y-4(k)(2) of this code. This subdivision includes any person, partnership, association, or corporation that has an ownership interest in a partnership, association, or corporation or other corporate entity providing office-based, medication-assisted treatment.

§16-5Y-5. Operational requirements.

(a) The medication-assisted treatment program shall be licensed and registered in this state with the secretary, the Secretary of State, the state Tax Department, and all other applicable business or licensing entities.

(b) The program sponsor need not be a licensed physician but shall employ a licensed physician for the position of medical director, when required by the rules promulgated pursuant to this article.

(c) Each medication-assisted treatment program shall designate a medical director. If the medication-assisted treatment program is accredited by a Substance Abuse and Mental Health Services Administration approved accrediting body that meets nationally accepted standards for providing medication-assisted treatment, including the Commission on Accreditation of Rehabilitation Facilities or the Joint Commission on Accreditation of Healthcare Organizations, then the program may designate a medical director to oversee all facilities associated with the accredited medication-assisted treatment program. The medical director shall be responsible for the operation of the medication-assisted treatment program, as further specified in the rules promulgated pursuant to this article. He or she may delegate the day-to-day operation of a medication-assisted treatment program as provided in rules promulgated pursuant to this article. Within 10 days after termination of a medical director, the medication-assisted treatment program shall notify the director of the identity of another
medical director for that program. Failure to have a medical
director practicing at the program may be the basis for a
suspension or revocation of the program license. The
medical director shall:

(1) Have a full, active, and unencumbered license to
practice allopathic medicine or surgery from the West
Virginia Board of Medicine or to practice osteopathic
medicine or surgery from the West Virginia Board of
Osteopathic Medicine in this state and be in good standing
and not under any probationary restrictions;

(2) Meet both of the following training requirements:

(A) If the physician prescribes a partial opioid agonist,
he or she shall complete the requirements for the Drug
Addiction Treatment Act of 2000; and

(B) Complete other programs and continuing education
requirements as further described in the rules promulgated
pursuant to this article;

(3) Practice at the licensed or registered medication-
assisted treatment program a sufficient number of hours,
based upon the type of medication-assisted treatment
license or registration issued pursuant to this article, to
ensure regulatory compliance, and carry out those duties
specifically assigned to the medical director as further
described in the rules promulgated pursuant to this article;

(4) Be responsible for monitoring and ensuring
compliance with all requirements related to the licensing
and operation of the medication-assisted treatment program;

(5) Supervise, control, and direct the activities of each
individual working or operating at the medication-assisted
treatment program, including any employee, volunteer, or
individual under contract, who provides medication-
assisted treatment at the program or is associated with the
provision of that treatment. The supervision, control, and
direction shall be provided in accordance with rules promulgated by the secretary; and

(6) Complete other requirements prescribed by the secretary by rule.

(d) Each medication-assisted treatment program shall designate counseling staff, either employees, or those used on a referral-basis by the program, which meet the requirements of this article and the rules promulgated pursuant to this article. The individual members of the counseling staff shall have one or more of the following qualifications:

(1) Be a licensed psychiatrist;

(2) Certification as an alcohol and drug counselor;

(3) Certification as an advanced alcohol and drug counselor;

(4) Be a counselor, psychologist, marriage and family therapist, or social worker with a master’s level education with a specialty or specific training in treatment for substance use disorders, as further described in the rules promulgated pursuant to this article;

(5) Under the direct supervision of an advanced alcohol and drug counselor, be a counselor with a bachelor’s degree in social work or another relevant human services field; Provided, That the individual practicing with a bachelor’s degree under supervision applies for certification as an alcohol and drug counselor within three years of the date of employment as a counselor; or

(6) Be a counselor with a graduate degree actively working toward licensure or certification in the individual’s chosen field under supervision of a licensed or certified professional in that field and/or advanced alcohol and drug counselor.
(e) The medication-assisted treatment program shall be eligible for, and not prohibited from, enrollment with West Virginia Medicaid and other private insurance. Prior to directly billing a patient for any medication-assisted treatment, a medication-assisted treatment program must receive either a rejection of prior authorization, rejection of a submitted claim, or a written denial from a patient’s insurer or West Virginia Medicaid denying coverage for such treatment: Provided, That the secretary may grant a variance from this requirement pursuant to §15-5Y-6 of this code. The program shall also document whether a patient has no insurance. At the option of the medication-assisted treatment program, treatment may commence prior to billing.

(f) The medication-assisted treatment program shall apply for and receive approval as required from the United States Drug Enforcement Administration, Center for Substance Abuse Treatment, or an organization designated by Substance Abuse and Mental Health and Mental Health Administration.

(g) All persons employed by the medication-assisted treatment program shall comply with the requirements for the operation of a medication-assisted treatment program established within this article or by any rule adopted pursuant to this article.

(h) All employees of an opioid treatment program shall furnish fingerprints for a state and federal criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be accompanied by a signed authorization for the release of information and retention of the fingerprints by the Criminal Identification Bureau and the Federal Bureau of Investigation. The opioid treatment program shall be subject to the provisions of §16-49-1 et seq. of this code and subsequent rules promulgated thereunder.
(i) The medication-assisted treatment program shall not be owned by, nor shall it employ or associate with, any physician or prescriber:

(1) Whose Drug Enforcement Administration number is not currently full, active, and unencumbered;

(2) Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by and is not full, active, and unencumbered in any jurisdiction; or

(3) Whose license is anything other than a full, active, and unencumbered license to practice allopathic medicine or surgery by the West Virginia Board of Medicine or osteopathic medicine or surgery by the West Virginia Board of Osteopathic Medicine in this state, and, who is in good standing and not under any probationary restrictions.

(j) A person may not dispense any medication-assisted treatment medication, including a controlled substance as defined by §60A-1-101 of this code, on the premises of a licensed medication-assisted treatment program, unless he or she is a physician or pharmacist licensed in this state and employed by the medication-assisted treatment program unless the medication-assisted treatment program is a federally certified narcotic treatment program. Prior to dispensing or prescribing medication-assisted treatment medications, the treating physician must access the Controlled Substances Monitoring Program Database to ensure the patient is not seeking medication-assisted treatment medications that are controlled substances from multiple sources and to assess potential adverse drug interactions, or both. Prior to dispensing or prescribing medication-assisted treatment medications, the treating physician shall also ensure that the medication-assisted treatment medication utilized is related to an appropriate diagnosis of a substance use disorder and approved for such usage. The physician shall also review the Controlled Substances Monitoring Program Database no less than
quarterly and at each patient’s physical examination. The results obtained from the Controlled Substances Monitoring Program Database shall be maintained with the patient’s medical records.

(k) A medication-assisted treatment program responsible for medication administration shall comply with:

(1) The West Virginia Board of Pharmacy regulations;

(2) The West Virginia Board of Examiners for Registered Professional Nurses regulations;

(3) All applicable federal laws and regulations relating to controlled substances; and

(4) Any requirements as specified in the rules promulgated pursuant to this article.

(l) Each medication-assisted treatment program location shall be licensed separately, regardless of whether the program is operated under the same business name or management as another program.

(m) The medication-assisted treatment program shall develop and implement patient protocols, treatment plans, or treatment strategies and profiles, which shall include, but not be limited by, the following guidelines:

(1) When a physician diagnoses an individual as having a substance use disorder, the physician may treat the substance use disorder by managing it with medication in doses not exceeding those approved by the United States Food and Drug Administration as indicated for the treatment of substance use disorders and not greater than those amounts described in the rules promulgated pursuant to this article. The treating physician and treating counselor’s diagnoses and treatment decisions shall be made according to accepted and prevailing standards for medical care;
(2) The medication-assisted treatment program shall maintain a record of all of the following:

(A) Medical history and physical examination of the individual;

(B) The diagnosis of substance use disorder of the individual;

(C) The plan of treatment proposed, the patient’s response to the treatment, and any modification to the plan of treatment;

(D) The dates on which any medications were prescribed, dispensed, or administered, the name and address of the individual for whom the medications were prescribed, dispensed, or administered, and the amounts and dosage forms for any medications prescribed, dispensed, or administered;

(E) A copy of the report made by the physician or counselor to whom referral for evaluation was made, if applicable; and

(F) A copy of the coordination of care agreement, which is to be signed by the patient, treating physician, and treating counselor. If a change of treating physician or treating counselor takes place, a new agreement must be signed. The coordination of care agreement must be updated or reviewed at least annually. If the coordination of care agreement is reviewed, but not updated, this review must be documented in the patient’s record. The coordination of care agreement will be provided in a form prescribed and made available by the secretary;

(3) Medication-assisted treatment programs shall report information, data, statistics, and other information as directed in this code, and the rules promulgated pursuant to this article to required agencies and other authorities;
(4) A prescriber authorized to prescribe a medication-assisted treatment medication who practices at a medication-assisted treatment program is responsible for maintaining the control and security of his or her prescription blanks and any other method used for prescribing a medication-assisted treatment medication. The prescriber shall comply with all state and federal requirements for tamper-resistant prescription paper. In addition to any other requirements imposed by statute or rule, the prescriber shall notify the secretary and appropriate law-enforcement agencies in writing within 24 hours following any theft or loss of a prescription blank or breach of any other method of prescribing a medication-assisted treatment medication; and

(5) The medication-assisted treatment program shall have a drug testing program to ensure a patient is in compliance with the treatment strategy.

(n) Medication-assisted treatment programs shall only prescribe, dispense, or administer liquid methadone to patients pursuant to the restrictions and requirements of the rules promulgated pursuant to this article.

(o) The medication-assisted treatment program shall immediately notify the secretary, or his or her designee, in writing of any changes to its operations that affect the medication-assisted treatment program’s continued compliance with the certification and licensure requirements.

(p) If a physician treats a patient with more than 16 milligrams per day of buprenorphine then clear medical notes shall be placed in the patient’s medical file indicating the clinical reason or reasons for the higher level of dosage.

(q) If a physician is not the patient’s obstetrical or gynecological provider, the physician shall consult with the patient’s obstetrical or gynecological provider to the extent
possible to determine whether the prescription is appropriate for the patient.

(r) A practitioner providing medication-assisted treatment may perform certain aspects of telehealth if permitted under his or her scope of practice.

(s) The physician shall follow the recommended manufacturer’s tapering schedule for the medication-assisted treatment medication. If the schedule is not followed, the physician shall document in the patient’s medical record and the clinical reason why the schedule was not followed. The secretary may investigate a medication-assisted treatment program if a high percentage of its patients are not following the recommended tapering schedule.

ARTICLE 54. OPIOID REDUCTION ACT.

§16-54-1. Definitions.

As used in this section:

“Acute pain” means a time limited pain caused by a specific disease or injury.

“Chronic pain” means a noncancer, non-end of life pain lasting more than three months or longer than the duration of normal tissue healing.

“Health care practitioner” or “practitioner” means:

(1) A physician licensed pursuant to the provisions of §30-3-1 et seq. and §30-14-1 et seq. of this code;

(2) A podiatrist licensed pursuant to the provisions of §30-3-1 et seq. of this code;

(3) A physician assistant with prescriptive authority as set forth in §30-3E-3 of this code;
(4) An advanced practice registered nurse with prescriptive authority as set forth in §30-7-15a of this code;

(5) A dentist licensed pursuant to the provisions of §30-4-1 et seq. of this code; and

(6) An optometrist licensed pursuant to the provisions of §30-8-1 et seq. of this code;

“Office” means the Office of Drug Control Policy.

“Pain clinic” means the same as that term is defined in §16-5H-2 of this code.

“Pain specialist” means a practitioner who is board certified in pain management or a related field.

§16-54-2. Voluntary nonopioid advanced directive form.

(a) The office shall establish a voluntary nonopioid advanced directive form. The form shall be available on the office’s web site. The form shall indicate to a health care practitioner that an individual may not be administered or offered a prescription or medication order for an opioid. The advance directive shall be filed in the individual’s medical record in either a health care facility or a private office of a practitioner, or both, and shall be transferred with the person from one practitioner to another or from one health care facility to another.

(b) An individual may revoke the voluntary nonopioid advanced directive form for any reason and may do so by written or oral means.

(c) A practitioner without actual knowledge of an advance directive as set forth in §16-54-2(a) of this code and who prescribes an opioid in a medical emergency situation is not civilly or criminally liable for failing to act in accordance with the directives unless the act or omission was the result of a practitioner’s gross negligence or willful misconduct. For purposes of this section, a “medical
emergency situation” shall mean an acute injury or illness
that poses an immediate risk to a person’s life or long-term
health.

§16-54-3. Opioid prescription notifications.

Prior to issuing a prescription for an opioid, a
practitioner shall:

(1) Advise the patient regarding the quantity of the
opioid and a patient’s option to fill the prescription in a
lesser quantity; and

(2) Inform the patient of the risks associated with the
opioid prescribed.

§16-54-4. Opioid prescription limitations.

(a) When issuing a prescription for an opioid to an adult
patient seeking treatment in an emergency room for
outpatient use, a health care practitioner may not issue a
prescription for more than a four-day supply.

(b) When issuing a prescription for an opioid to an adult
patient seeking treatment in an urgent care facility setting
for outpatient use, a health care practitioner may not issue a
prescription for more than a four-day supply: Provided,
That an additional dosing for up to no more than a seven-
day supply may be permitted, but only if the medical
rational for more than a four-day supply is documented in
the medical record.

(c) A health care practitioner may not issue an opioid
prescription to a minor for more than a three-day supply and
shall discuss with the parent or guardian of the minor the
risks associated with opioid use and the reasons why the
prescription is necessary.

(d) A dentist or an optometrist may not issue an opioid
prescription for more than a three-day supply at any time.
(e) A practitioner may not issue an initial opioid prescription for more than a seven-day supply. The prescription shall be for the lowest effective dose which in the medical judgement of the practitioner would be the best course of treatment for this patient and his or her condition.

(f) Prior to issuing an initial opioid prescription, a practitioner shall:

(1) Take and document the results of a thorough medical history, including the patient’s experience with nonopioid medication, nonpharmacological pain management approaches, and substance abuse history;

(2) Conduct, as appropriate, and document the results of a physical examination;

(3) Develop a treatment plan, with particular attention focused on determining the cause of the patient’s pain; and

(4) Access relevant prescription monitoring information under the Controlled Substances Monitoring Program Database.

(g) Notwithstanding any provision of this code or legislative rule to the contrary, no medication listed as a Schedule II controlled substance as set forth in §60A-2-206 of this code, may be prescribed by a practitioner for greater than a 30-day supply: Provided, That two additional prescriptions, each for a 30-day period for a total of a 90-day supply, may be prescribed if the practitioner accesses the West Virginia Controlled Substances Monitoring Program Database as set forth in §60A-9-1 et seq. of this code: Provided, however, That the limitations in this section do not apply to cancer patients, patients receiving hospice care from a licensed hospice provider, patients receiving palliative care, a patient who is a resident of a long-term care facility, or a patient receiving medications that are being prescribed for use in the treatment of substance abuse or opioid dependence.
(h) A practitioner is required to conduct and document the results of a physical examination every 90 days for any patient for whom he or she continues to treat with any Schedule II controlled substance as set forth in §60-2-206 of this code.

(i) A veterinarian licensed pursuant to the provisions of §30-10-1 et seq. of this code may not issue more than an initial opioid prescription for more than a seven-day supply. The prescription shall be for the lowest effective dose which in the medical judgment of the veterinarian would be the best course of treatment for this patient and his or her condition.

(j) A prescription for any opioid drug listed on Schedule II as set forth in §60A-2-206 of this code for greater than a seven-day period shall require the patient to execute a narcotics contract with their prescribing practitioner. The contract shall be made a part of the patient’s medical record. The narcotics contract is required to provide that:

1. The patient agrees only to obtain scheduled medications from this particular prescribing practitioner;

2. The patient agrees he or she will only fill those prescriptions at a single pharmacy which includes a pharmacy with more than one location;

3. The patient agrees to notify the prescribing practitioner within 72 hours of any emergency where he or she is prescribed scheduled medication; and

4. If the patient fails to honor the provisions of the narcotics contract, the prescribing practitioner may either terminate the provider-patient relationship or continue to treat the patient without prescribing a Schedule II opioid for the patient. Should the practitioner decide to terminate the relationship, he or she is required to do so pursuant to the provisions of this code and any rules promulgated hereunder. Termination of the relationship for the patient’s
failure to honor the provisions of the contract is not subject to any disciplinary action by the practitioner’s licensing board.

§16-54-5. Subsequent prescriptions; limitations.

(a) No fewer than six days after issuing the initial prescription as set forth in §16-54-4 of this code, the practitioner, after consultation with the patient, may issue a subsequent prescription for an opioid to the patient if:

(1) The subsequent prescription would not be deemed an initial prescription pursuant to §16-54-4 of this code;

(2) The practitioner determines the prescription is necessary and appropriate to the patient’s treatment needs and documents the rationale for the issuance of the subsequent prescription; and

(3) The practitioner determines that issuance of the subsequent prescription does not present an undue risk of abuse, addiction, or diversion and documents that determination.

(b) Prior to issuing the subsequent prescription of the course of treatment, a practitioner shall discuss with the patient, or the patient’s parent or guardian if the patient is under 18 years of age, the risks associated with the drug being prescribed. This discussion shall include:

(1) The risks of addiction and overdose associated with opioid drugs and the dangers of taking opioid drugs with alcohol, benzodiazepines, and other central nervous system depressants;

(2) The reasons why the prescription is necessary;

(3) Alternative treatments that may be available; and

(4) Risks associated with the use of the drugs being prescribed, specifically that opioids are highly addictive, even when taken as prescribed, that there is a risk of
developing a physical or psychological dependence on the controlled substance, and that the risks of taking more opioids than prescribed, or mixing sedatives, benzodiazepines, or alcohol with opioids, can result in fatal respiratory depression.

(c) The discussion as set forth in §16-54-5(b) of this code shall be included in a notation in the patient’s medical record.

§16-54-6. Ongoing treatment; referral to pain clinic or pain specialist.

(a) At the time of the issuance of the third prescription for a prescription opioid the practitioner shall consider referring the patient to a pain clinic or a pain specialist. The practitioner shall discuss the benefits of seeking treatment through a pain clinic or a pain specialist and provide him or her with an understanding of any risks associated by choosing not to pursue that as an option.

(b) If the patient declines to seek treatment from a pain clinic or a pain specialist and opts to remain a patient of the practitioner, and the practitioner continues to prescribe an opioid for pain as provided in this code, the practitioner shall:

(1) Note in the patient’s medical records that the patient knowingly declined treatment from a pain clinic or pain specialist;

(2) Review, at a minimum of every three months, the course of treatment, any new information about the etiology of the pain, and the patient’s progress toward treatment objectives and document the results of that review;

(3) Assess the patient prior to every renewal to determine whether the patient is experiencing problems associated with physical and psychological dependence and document the results of that assessment; and
(4) Periodically make reasonable efforts, unless clinically contraindicated, to either stop the use of the controlled substance, decrease the dosage, try other drugs or treatment modalities in an effort to reduce the potential for abuse or the development of physical or psychological dependence, and document with specificity the efforts undertaken.

§16-54-7. Exceptions.

(a) This article does not apply to a prescription for a patient who is currently in active treatment for cancer, receiving hospice care from a licensed hospice provider or palliative care provider, or is a resident of a long-term care facility, or to any medications that are being prescribed for use in the treatment of substance abuse or opioid dependence.

(b) A practitioner may prescribe an initial seven-day supply of an opioid to a post-surgery patient immediately following a surgical procedure. Based upon the medical judgment of the practitioner, a subsequent prescription may be prescribed by the practitioner pursuant to the provisions of this code. Nothing in this section authorizes a practitioner to prescribe any medication which he or she is not permitted to prescribe pursuant to their practice act.

(c) A practitioner who acquires a patient after January 1, 2018, who is currently being prescribed an opioid from another practitioner shall be required to access the Controlled Substances Monitoring Program Database as set forth in §60A-9-1 et seq. of this code. Any prescription would not be deemed an initial prescription pursuant to the provisions of this section. The practitioner shall otherwise treat the patient as set forth in this code.

(d) This article does not apply to an existing practitioner-patient relationship established before January 1, 2018, where there is an established and current opioid
treatment plan which is reflected in the patient’s medical
records.

§16-54-8. Treatment of pain.

(a) When patients seek treatment for any of the myriad conditions that cause pain, a health care practitioner shall refer or prescribe to a patient any of the following treatment alternatives, based on the practitioner’s clinical judgment and the availability of the treatment, before starting a patient on an opioid: physical therapy, occupational therapy, acupuncture, massage therapy, osteopathic manipulation, chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code.

(b) Nothing in this section should be construed to require that all of the treatment alternatives set forth in §16-54-8(a) of this code are required to be exhausted prior to the patient receiving a prescription for an opioid.

(c) At a minimum, an insurance provider who offers an insurance product in this state, the Bureau for Medical Services, and the Public Employees Insurance Agency shall provide coverage for 20 visits per event of physical therapy, occupational therapy, osteopathic manipulation, a chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code, when ordered by a health care practitioner to treat conditions that cause chronic pain.

(d) A patient may seek treatment for physical therapy, occupational therapy, osteopathic manipulation, a chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code, prior to seeking treatment from a practitioner and a practitioner referral is not required as a condition of coverage by the Bureau for Medical Services, the Public Employees Insurance Agency, and any insurance provider who offers an insurance product in this state. Any deductible, coinsurance, or co-pay required for any of these services may not be greater than the deductible, coinsurance, or co-pay required for a primary care visit.
(e) Nothing in this section precludes a practitioner from simultaneously prescribing an opioid and prescribing or recommending any of the procedures set forth in §16-54-8(a) of this code.

§16-54-9. Discipline.

A violation of this article is grounds for disciplinary action by the board that regulates the health care practitioner who commits the violation.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to medical professional liability and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrist; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determination; referral to law-enforcement authorities.

(a) The board may independently initiate disciplinary proceedings as well as initiate disciplinary proceedings based on information received from medical peer review committees, physicians, podiatrists, hospital administrators, professional societies, the Board of Pharmacy, and others.

The board may initiate investigations as to professional incompetence or other reasons for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees, hospital administrators, professional societies, or others; or unfavorable outcomes arising out of medical professional liability. The board shall initiate an
investigation if it receives notice that three or more judgments, or any combination of judgments and settlements resulting in five or more unfavorable outcomes arising from medical professional liability, have been rendered or made against the physician or podiatrist within a five-year period. The board may not consider any judgments or settlements as conclusive evidence of professional incompetence or conclusive lack of qualification to practice.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or podiatrist known to that medical peer review committee. Copies of the requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the board, the provision of such copies will not jeopardize the board’s investigation. In the event that copies are provided, the subject physician or podiatrist is allowed 15 days to comment on the requested information and such comments must be considered by the board.

The chief executive officer of every hospital shall, within 60 days after the completion of the hospital’s formal disciplinary procedure and also within 60 days after the commencement of and again after the conclusion of any resulting legal action, report in writing to the board the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced, or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical professional liability, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain
records on a timely basis or failure to attend staff or section
meetings need not be reported. Voluntary cessation of
hospital privileges for reasons unrelated to professional
competence or ethics need not be reported.

Any managed care organization operating in this state
which provides a formal peer review process shall report in
writing to the board, within 60 days after the completion of
any formal peer review process and also within 60 days after
the commencement of and again after the conclusion of any
resulting legal action, the name of any physician or
podiatrist whose credentialing has been revoked or not
renewed by the managed care organization. The managed
care organization shall also report in writing to the board
any other disciplinary action taken against a physician or
podiatrist relating to professional ethics, professional
liability, moral turpitude, or drug or alcohol abuse within 60
days after completion of a formal peer review process which
results in the action taken by the managed care organization.
For purposes of this subsection, “managed care
organization” means a plan that establishes, operates, or
maintains a network of health care providers who have
entered into agreements with and been credentialed by the
plan to provide health care services to enrollees or insureds
to whom the plan has the ultimate obligation to arrange for
the provision of or payment for health care services through
organizational arrangements for ongoing quality assurance,
utilization review programs, or dispute resolutions.

Any professional society in this state comprised
primarily of physicians or podiatrists which takes formal
disciplinary action against a member relating to professional
ethics, professional incompetence, medical professional
liability, moral turpitude, or drug or alcohol abuse shall
report in writing to the board within 60 days of a final
decision the name of the member, together with all pertinent
information relating to the action.

Every person, partnership, corporation, association,
insurance company, professional society, or other
organization providing professional liability insurance to a physician or podiatrist in this state, including the state Board of Risk and Insurance Management, shall submit to the board the following information within 30 days from any judgment or settlement of a civil or medical professional liability action excepting product liability actions: The name of the insured; the date of any judgment or settlement; whether any appeal has been taken on the judgment and, if so, by which party; the amount of any settlement or judgment against the insured; and other information required by the board.

Within 30 days from the entry of an order by a court in a medical professional liability action or other civil action in which a physician or podiatrist licensed by the board is determined to have rendered health care services below the applicable standard of care, the clerk of the court in which the order was entered shall forward a certified copy of the order to the board.

Within 30 days after a person known to be a physician or podiatrist licensed or otherwise lawfully practicing medicine and surgery or podiatry in this state or applying to be licensed is convicted of a felony under the laws of this state or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of the physician or podiatrist or applicant, the nature of the offense committed, and the final judgment and sentence of the court.

Upon a determination of the board that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society, or other organization has failed or refused to make a report required by this subsection, the board shall provide written notice to the alleged violator stating the nature of the alleged
violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with §29A-5-1 et seq. of this code. After reviewing the record of the hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than $1,000 nor more than $10,000 against the violator. The board shall notify any person so assessed of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within 30 days, the Attorney General may institute a civil action in the Circuit Court of Kanawha County to recover the amount of the assessment. In any civil action, the court’s review of the board’s action shall be conducted in accordance with §29A-5-4 of this code. Notwithstanding any other provision of this article to the contrary, when there are conflicting views by recognized experts as to whether any alleged conduct breaches an applicable standard of care, the evidence must be clear and convincing before the board may find that the physician or podiatrist has demonstrated a lack of professional competence to practice with a reasonable degree of skill and safety for patients.

Any person may report to the board relevant facts about the conduct of any physician or podiatrist in this state which in the opinion of that person amounts to medical professional liability or professional incompetence.

The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

The filing of a report with the board pursuant to any provision of this article, any investigation by the board, or any disposition of a case by the board does not preclude any action by a hospital, other health care facility, or professional society comprised primarily of physicians or podiatrists to suspend, restrict, or revoke the privileges or membership of the physician or podiatrist.
(c) The board may deny an application for license or other authorization to practice medicine and surgery or podiatry in this state and may discipline a physician or podiatrist licensed or otherwise lawfully practicing in this state who, after a hearing, has been adjudged by the board as unqualified due to any of the following reasons:

1. Attempting to obtain, obtaining, renewing, or attempting to renew a license to practice medicine and surgery or podiatry by bribery, fraudulent misrepresentation, or through known error of the board;

2. Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude, or directly relates to the practice of medicine. Any plea of nolo contendere is a conviction for the purposes of this subdivision;

3. False or deceptive advertising;

4. Aiding, assisting, procuring, or advising any unauthorized person to practice medicine and surgery or podiatry contrary to law;

5. Making or filing a report that the person knows to be false; intentionally or negligently failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record required by state or federal law; or inducing another person to do any of the foregoing. The reports and records covered in this subdivision mean only those that are signed in the capacity as a licensed physician or podiatrist;

6. Requesting, receiving, or paying directly or indirectly a payment, rebate, refund, commission, credit, or other form of profit or valuable consideration for the referral of patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, supplies of any kind, drugs, medication,
or any other medical goods, services, or devices used in connection with medical or other health care services;

(7) Unprofessional conduct by any physician or podiatrist in referring a patient to any clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest unless the physician or podiatrist discloses in writing such interest to the patient. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed or any pharmacy for purposes of purchasing any prescribed drug or any other medical goods or devices used in connection with medical or other health care services;

As used in this subdivision, “proprietary interest” does not include an ownership interest in a building in which space is leased to a clinical laboratory or pharmacy at the prevailing rate under a lease arrangement that is not conditional upon the income or gross receipts of the clinical laboratory or pharmacy;

(8) Exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity;

(9) Making a deceptive, untrue, or fraudulent representation in the practice of medicine and surgery or podiatry;

(10) Soliciting patients, either personally or by an agent, through the use of fraud, intimidation, or undue influence;

(11) Failing to keep written records justifying the course of treatment of a patient, including, but not limited to, patient histories, examination and test results, and treatment rendered, if any;

(12) Exercising influence on a patient in such a way as to exploit the patient for financial gain of the physician or podiatrist or of a third party. Any influence includes, but is
not limited to, the promotion or sale of services, goods, appliances, or drugs;

(13) Prescribing, dispensing, administering, mixing, or otherwise preparing a prescription drug, including any controlled substance under state or federal law, other than in good faith and in a therapeutic manner in accordance with accepted medical standards and in the course of the physician’s or podiatrist’s professional practice. A physician who discharges his or her professional obligation to relieve the pain and suffering and promote the dignity and autonomy of dying patients in his or her care and, in so doing, exceeds the average dosage of a pain relieving controlled substance, as defined in Schedules II and III of the Uniform Controlled Substance Act, does not violate this article;

(14) Performing any procedure or prescribing any therapy that, by the accepted standards of medical practice in the community, would constitute experimentation on human subjects without first obtaining full, informed, and written consent;

(15) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the person knows or has reason to know he or she is not competent to perform;

(16) Delegating professional responsibilities to a person when the physician or podiatrist delegating the responsibilities knows or has reason to know that the person is not qualified by training, experience, or licensure to perform them;

(17) Violating any provision of this article or a rule or order of the board or failing to comply with a subpoena or subpoena duces tecum issued by the board;

(18) Conspiring with any other person to commit an act or committing an act that would tend to coerce, intimidate,
or preclude another physician or podiatrist from lawfully advertising his or her services;

(19) Gross negligence in the use and control of prescription forms;

(20) Professional incompetence;

(21) The inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process, loss of motor skill, or abuse of drugs or alcohol. A physician or podiatrist adversely affected under this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he or she may resume the competent practice of medicine and surgery or podiatry with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor any orders entered by the board shall be used against the physician or podiatrist in any other proceeding; or

(22) Knowingly failing to report to the board any act of gross misconduct committed by another licensee of the board.

(d) The board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing, or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the same effect as a verdict or plea of guilt. Upon application of
a physician that has had his or her license revoked because of a drug related felony conviction, upon completion of any sentence of confinement, parole, probation, or other court-ordered supervision and full satisfaction of any fines, judgments, or other fees imposed by the sentencing court, the board may issue the applicant a new license upon a finding that the physician is, except for the underlying conviction, otherwise qualified to practice medicine: Provided, That the board may place whatever terms, conditions, or limitations it deems appropriate upon a physician licensed pursuant to this subsection.

(e) The board may refer any cases coming to its attention to an appropriate committee of an appropriate professional organization for investigation and report. Except for complaints related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by bribery or fraudulent misrepresentation, any complaint filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of grounds for the complaint shall be dismissed: Provided, That in cases of conduct alleged to be part of a pattern of similar misconduct or professional incapacity that, if continued, would pose risks of a serious or substantial nature to the physician’s or podiatrist’s current patients, the investigating body may conduct a limited investigation related to the physician’s or podiatrist’s current capacity and qualification to practice and may recommend conditions, restrictions, or limitations on the physician’s or podiatrist’s license to practice that it considers necessary for the protection of the public. Any report shall contain recommendations for any necessary disciplinary measures and shall be filed with the board within 90 days of any referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board after full investigation shall take whatever action it considers appropriate, as provided in this section.
(f) The investigating body, as provided in §30-3-14(e) of this code, may request and the board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to submit to a physical or mental examination by a physician or physicians approved by the board. A physician or podiatrist submitting to an examination has the right, at his or her expense, to designate another physician to be present at the examination and make an independent report to the investigating body or the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is considered to have given his or her consent to submit to all examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to an examination under circumstances which the board finds are not beyond his or her control, failure or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.

(g) In addition to any other investigators it employs, the board may appoint one or more licensed physicians to act for it in investigating the conduct or competence of a physician.

(h) In every disciplinary or licensure denial action, the board shall furnish the physician or podiatrist or applicant with written notice setting out with particularity the reasons for its action. Disciplinary and licensure denial hearings shall be conducted in accordance with §29A-5-1 et seq. of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence for trial courts of record in this state shall apply to all hearings. A transcript of all
hearings under this section shall be made, and the respondent may obtain a copy of the transcript at his or her expense. The physician or podiatrist has the right to defend against any charge by the introduction of evidence, the right to be represented by counsel, the right to present and cross examine witnesses and the right to have subpoenas and subpoenas duces tecum issued on his or her behalf for the attendance of witnesses and the production of documents. The board shall make all its final actions public. The order shall contain the terms of all action taken by the board.

(i) In disciplinary actions in which probable cause has been found by the board, the board shall, within 20 days of the date of service of the written notice of charges or 60 days prior to the date of the scheduled hearing, whichever is sooner, provide the respondent with the complete identity, address, and telephone number of any person known to the board with knowledge about the facts of any of the charges; provide a copy of any statements in the possession of or under the control of the board; provide a list of proposed witnesses with addresses and telephone numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing: Provided, That the board shall not be required to furnish or produce any materials which contain opinion work product information or would be a violation of the attorney-client privilege. Within 20 days of the date of service of the written notice of charges, the board shall disclose any exculpatory evidence with a continuing duty to do so throughout the disciplinary process. Within 30 days of receipt of the board’s mandatory discovery, the respondent shall provide the board with the complete identity, address, and telephone number of any person known to the respondent with knowledge about the facts of any of the charges; provide a
list of proposed witnesses with addresses and telephone
numbers, to be called at hearing, with a brief summary of
his or her anticipated testimony; provide disclosure of any
trial expert pursuant to the requirements of Rule 26(b)(4) of
the West Virginia Rules of Civil Procedure; provide
inspection and copying of the results of any reports of
physical and mental examinations or scientific tests or
experiments; and provide a list and copy of any proposed
exhibit to be used at the hearing.

(j) Whenever it finds any person unqualified because of
any of the grounds set forth in §30-3-14(c) of this code, the
board may enter an order imposing one or more of the
following:

(1) Deny his or her application for a license or other
authorization to practice medicine and surgery or podiatry;

(2) Administer a public reprimand;

(3) Suspend, limit, or restrict his or her license or other
authorization to practice medicine and surgery or podiatry
for not more than five years, including limiting the practice
of that person to, or by the exclusion of, one or more areas
of practice, including limitations on practice privileges;

(4) Revoke his or her license or other authorization to
practice medicine and surgery or podiatry or to prescribe or
dispense controlled substances for any period of time,
including for the life of the licensee, that the board may find
to be reasonable and necessary according to evidence
presented in a hearing before the board or its designee;

(5) Require him or her to submit to care, counseling, or
treatment designated by the board as a condition for initial
or continued licensure or renewal of licensure or other
authorization to practice medicine and surgery or podiatry;

(6) Require him or her to participate in a program of
education prescribed by the board;
(7) Require him or her to practice under the direction of a physician or podiatrist designated by the board for a specified period of time; and

(8) Assess a civil fine of not less than $1,000 nor more than $10,000.

(k) Notwithstanding the provisions of §30-1-8 of this code, if the board determines the evidence in its possession indicates that a physician’s or podiatrist’s continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided in §30-3-4(j) of this code on a temporary basis and without a hearing if institution of proceedings for a hearing before the board are initiated simultaneously with the temporary action and begin within 15 days of the action. The board shall render its decision within five days of the conclusion of a hearing under this subsection.

(l) Any person against whom disciplinary action is taken pursuant to this article has the right to judicial review as provided in §29A-5-1 et seq. and §29A-6-1 et seq. of this code: Provided, That a circuit judge may also remand the matter to the board if it appears from competent evidence presented to it in support of a motion for remand that there is newly discovered evidence of such a character as ought to produce an opposite result at a second hearing on the merits before the board and:

(1) The evidence appears to have been discovered since the board hearing; and

(2) The physician or podiatrist exercised due diligence in asserting his or her evidence and that due diligence would not have secured the newly discovered evidence prior to the appeal.

A person may not practice medicine and surgery or podiatry or deliver health care services in violation of any disciplinary order revoking, suspending, or limiting his or
her license while any appeal is pending. Within 60 days, the board shall report its final action regarding restriction, limitation, suspension, or revocation of the license of a physician or podiatrist, limitation on practice privileges, or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing medical malpractice insurance in this state, the American Medical Association, the American Podiatry Association, professional societies of physicians or podiatrists in the state, and any entity responsible for the fiscal administration of Medicare and Medicaid.

(m) Any person against whom disciplinary action has been taken under this article shall, at reasonable intervals, be afforded an opportunity to demonstrate that he or she can resume the practice of medicine and surgery or podiatry on a general or limited basis. At the conclusion of a suspension, limitation, or restriction period the physician or podiatrist may resume practice if the board has so ordered.

(n) Any entity, organization or person, including the board, any member of the board, its agents or employees and any entity or organization or its members referred to in this article, any insurer, its agents or employees, a medical peer review committee and a hospital governing board, its members or any committee appointed by it acting without malice and without gross negligence in making any report or other information available to the board or a medical peer review committee pursuant to law and any person acting without malice and without gross negligence who assists in the organization, investigation, or preparation of any such report or information or assists the board or a hospital governing body or any committee in carrying out any of its duties or functions provided by law is immune from civil or criminal liability, except that the unlawful disclosure of confidential information possessed by the board is a misdemeanor as provided in this article.
(o) A physician or podiatrist may request in writing to the board a limitation on or the surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate sanction as provided in this section. The board may grant the request and, if it considers it appropriate, may waive the commencement or continuation of other proceedings under this section. A physician or podiatrist whose license is limited or surrendered or against whom other action is taken under this subsection may, at reasonable intervals, petition for removal of any restriction or limitation on or for reinstatement of his or her license to practice medicine and surgery or podiatry.

(p) In every case considered by the board under this article regarding discipline or licensure, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of disqualification due to any reason set forth in §30-3-14(c) of this code. If probable cause is found to exist, all proceedings on the charges shall be open to the public who are entitled to all reports, records, and nondeliberative materials introduced at the hearing, including the record of the final action taken: Provided, That any medical records, which were introduced at the hearing and which pertain to a person who has not expressly waived his or her right to the confidentiality of the records, may not be open to the public nor is the public entitled to the records.

(q) If the board receives notice that a physician or podiatrist has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a hospital or a professional society, as defined in §30-3-14(b) of this code, for three or more incidents during a five-year period, the board shall require the physician or podiatrist to practice under the direction of a physician or podiatrist designated by the board for a specified period of time to be established by the board.
(r) Notwithstanding any other provisions of this article, the board may, at any time, on its own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the West Virginia State Bar’s mediator referral service of certified mediators with expertise in professional disciplinary matters. The board and the physician or podiatrist may choose a mediator from that list. If the board and the physician or podiatrist are unable to agree on a mediator, the board shall designate a mediator from the list by neutral rotation. The mediation shall not be considered a proceeding open to the public, and any reports and records introduced at the mediation shall not become part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all mediation proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated: Provided, That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree in writing.

(s) A physician licensed under this article may not be disciplined for providing expedited partner therapy in accordance with §16-4F-1 et seq. of this code.

(t) Whenever the board receives credible information that a licensee of the board is engaging or has engaged in criminal activity or the commitment of a crime under state or federal law, the board shall report the information, to the extent that sensitive or confidential information may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority and/or prosecuting authority. This duty exists in addition to and is distinct from
the reporting required under federal law for reporting actions relating to health care providers to the United States Department of Health and Human Services.

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-1. Definitions.

1. For the purposes of this article, the words or terms defined in this section have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

“Accepted guideline” is a care or practice guideline for pain management developed by a nationally recognized clinical or professional association or a specialty society or government-sponsored agency that has developed practice or care guidelines based on original research or on review of existing research and expert opinion. An accepted guideline also includes policy or position statements relating to pain management issued by any West Virginia board included in §30-1-1 et seq. of this code with jurisdiction over various health care practitioners. Guidelines established primarily for purposes of coverage, payment, or reimbursement do not qualify as accepted practice or care guidelines when offered to limit treatment options otherwise covered by the provisions of this article.

“Board” or “licensing board” means the West Virginia Board of Medicine, the West Virginia Board of Osteopathy, the West Virginia Board of Registered Nurses, the West Virginia Board of Pharmacy, the West Virginia Board of Optometry, or the West Virginia Board of Dentistry.

“Nurse” means a registered nurse licensed in the State of West Virginia pursuant to the provisions of §30-7-1 et seq. of this code.

“Pain” means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.
“Pain-relieving controlled substance” includes, but is not limited to, an opioid or other drug classified as a Schedule II through V controlled substance and recognized as effective for pain relief, and excludes any drug that has no accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision including, but not limited to, any drug classified as a Schedule I controlled substance.

“Pharmacist” means a registered pharmacist licensed in the State of West Virginia pursuant to the provisions of §30-5-1 et seq. of this code.

“Prescriber” shall mean:

1. A physician licensed pursuant to the provisions of §30-3-1 et seq. or §30-14-1 et seq. of this code;
2. An advanced practice registered nurse with prescriptive authority as set forth in §30-7-15a of this code;
3. A dentist licensed pursuant to the provisions of §30-4-1 et seq. of this code; and
4. An optometrist licensed pursuant to the provisions of §30-8-1 et seq. of this code.

§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of pain.

(a) A prescriber is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for prescribing, administering, or dispensing pain-relieving controlled substances for the purpose of alleviating or controlling pain if:

1. In the case of a dying patient experiencing pain, the prescriber practices in accordance with an accepted guideline as defined in §30-3A-1 of this code and discharges his or her professional obligation to relieve the dying
patient’s pain and promote the dignity and autonomy of the dying patient; or

(2) In the case of a patient who is not dying and is experiencing pain, the prescriber discharges his or her professional obligation to relieve the patient’s pain, if the prescriber can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that accepted guideline. Evidence of substantial compliance with an accepted guideline may be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.

(b) A health care provider, as defined in §55-7B-2 of this code, with prescriptive authority is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for declining to prescribe, or declining to continue to prescribe, any controlled substance to a patient which the health care provider with prescriptive authority is treating if the health care provider with prescriptive authority in the exercise of reasonable prudent judgment believes the patient is misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for their use.

(c) A licensed registered professional nurse is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for administering pain-relieving controlled substances to alleviate or control pain, if administered in accordance with the orders of a licensed physician.

(d) A licensed pharmacist is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for dispensing a prescription for a pain-relieving controlled substance to alleviate or control pain, if dispensed in accordance with the orders of a licensed physician.
(e) For purposes of this section, the term “disciplinary sanctions” includes both remedial and punitive sanctions imposed on a licensee by a licensing board, arising from either formal or informal proceedings.

(f) The provisions of this section apply to the treatment of all patients for pain, regardless of the patient’s prior or current chemical dependency or addiction. The board may develop and issue policies or guidelines establishing standards and procedures for the application of this article to the care and treatment of persons who are chemically dependent or addicted.

§30-3A-3. Acts subject to discipline or prosecution.

(a) Nothing in this article shall prohibit disciplinary action or criminal prosecution of a prescriber for:

(1) Failing to maintain complete, accurate, and current records documenting the physical examination and medical history of the patient, the basis for the clinical diagnosis of the patient, and the treatment plan for the patient;

(2) Writing a false or fictitious prescription for a controlled substance scheduled in §60A-2-201 et seq. of this code; or

(3) Prescribing, administering, or dispensing a controlled substance in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§801, et seq. or chapter §60A-1-101 et seq. of this code;

(4) Diverting controlled substances prescribed for a patient to the physician’s own personal use or

(5) Abnormal or unusual prescribing or dispensing patterns, or both as identified by the Controlled Substance Monitoring Program set forth in §60A-9-1 et seq. of this code. These prescribing and dispensing patterns may be
(b) Nothing in this article shall prohibit disciplinary action or criminal prosecution of a nurse or pharmacist for:

(1) Administering or dispensing a controlled substance in violation of the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§801, et seq. or §60A-1-101 of this code; or

(2) Diverting controlled substances prescribed for a patient to the nurse’s or pharmacist’s own personal use.

§30-3A-4. Abnormal or unusual prescribing practices.

(a) Upon receipt of the quarterly report set forth in §60A-9-1 et seq. of this code, the licensing board shall notify the prescriber that he or she has been identified as a potentially unusual or abnormal prescriber. The board may take appropriate action, including, but not limited to, an investigation or disciplinary action based upon the findings provided in the report.

(b) A licensing board may upon receipt of credible and reliable information independent of the quarterly report as set forth in §60A-9-1 et seq. of this code initiate an investigation into any alleged abnormal prescribing or dispensing practices of a licensee.

(c) The licensing boards and prescribers shall have all rights and responsibilities in their practice acts.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may initiate a complaint upon receipt of the quarterly report from the Board of Pharmacy as required by §60A-9-1 et seq. of this code or upon receipt of credible information and shall, upon the receipt of a written
complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.

(b) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee, certificate holder, or permittee has violated §30-4-19(a) of this code or rules promulgated pursuant to this article.

c) Upon a finding of probable cause to go forward with a complaint, the board shall provide a copy of the complaint to the licensee, certificate holder, or permittee.

d) Upon a finding that probable cause exists that the licensee, certificate holder, or permittee has violated §30-4-19(g) of this code or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for disciplinary action against the licensee, certificate holder, or permittee. Any hearing shall be held in accordance with the provisions of this article and shall require a violation to be proven by a preponderance of the evidence.

e) A member of the complaint committee or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict, or revoke the license, certificate, or permit of, or impose probationary conditions upon, or take disciplinary action against, any licensee, certificate holder, or permittee for any of the following reasons:
(1) Obtaining a board authorization by fraud, misrepresentation, or concealment of material facts;

(2) Being convicted of a felony or a misdemeanor crime of moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;

(4) Intentional violation of a lawful order or legislative rule of the board;

(5) Having had a board authorization revoked or suspended, other disciplinary action taken, or an application for a board authorization denied by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice;

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare, or safety of the public;

(8) Having an incapacity that prevents a licensee from engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence, and safety to the public;

(9) Committing fraud in connection with the practice of dentistry or dental hygiene;

(10) Failing to report to the board one’s surrender of a license or authorization to practice dentistry or dental hygiene in another jurisdiction while under disciplinary investigation by any of those authorities or bodies for conduct that would constitute grounds for action as defined in this section;

(11) Failing to report to the board any adverse judgment, settlement, or award arising from a malpractice claim arising related to conduct that would constitute grounds for action as defined in this section;
(12) Being guilty of unprofessional conduct as contained in the American Dental Association principles of ethics and code of professional conduct. The following acts are conclusively presumed to be unprofessional conduct:

(A) Being guilty of any fraud or deception;

(B) Committing a criminal operation or being convicted of a crime involving moral turpitude;

(C) Abusing alcohol or drugs;

(D) Violating any professional confidence or disclosing any professional secret;

(E) Being grossly immoral;

(F) Harassing, abusing, intimidating, insulting, degrading, or humiliating a patient physically, verbally, or through another form of communication;

(G) Obtaining any fee by fraud or misrepresentation;

(H) Employing directly or indirectly, or directing or permitting any suspended or unlicensed person so employed, to perform operations of any kind or to treat lesions of the human teeth or jaws, or correct malimposed formations thereof;

(I) Practicing or offering or undertaking to practice dentistry under any firm name or trade name not approved by the board;

(J) Having a professional connection or association with, or lending his or her name to another, for the illegal practice of dentistry, or professional connection or association with any person, firm, or corporation holding himself or herself, themselves, or itself out in any manner contrary to this article;

(K) Making use of any advertising relating to the use of any drug or medicine of unknown formula;
(L) Advertising to practice dentistry or perform any operation thereunder without causing pain;

(M) Advertising professional superiority or the performance of professional services in a superior manner;

(N) Advertising to guarantee any dental service;

(O) Advertising in any manner that is false or misleading in any material respect;

(P) Soliciting subscriptions from individuals within or without the state for, or advertising or offering to individuals within or without the state, a course or instruction or course materials in any phase, part, or branch of dentistry or dental hygiene in any journal, newspaper, magazine, or dental publication, or by means of radio, television, or United States mail, or in or by any other means of contacting individuals: Provided, That the provisions of this paragraph may not be construed so as to prohibit:

(i) An individual dentist or dental hygienist from presenting articles pertaining to procedures or technique to state or national journals or accepted dental publications; or

(ii) Educational institutions approved by the board from offering courses or instruction or course materials to individual dentists and dental hygienists from within or without the state; or

(Q) Engaging in any action or conduct which would have warranted the denial of the license.

(13) Knowing or suspecting that a licensee is incapable of engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence, and safety to the public, and failing to report any relevant information to the board;

(14) Using or disclosing protected health information in an unauthorized or unlawful manner;
(15) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of any licensing examination;

(16) Failing to furnish to the board or its representatives any information legally requested by the board or failing to cooperate with or engaging in any conduct which obstructs an investigation being conducted by the board;

(17) Announcing or otherwise holding himself or herself out to the public as a specialist or as being specially qualified in any particular branch of dentistry or as giving special attention to any branch of dentistry or as limiting his or her practice to any branch of dentistry without first complying with the requirements established by the board for the specialty and having been issued a certificate of qualification in the specialty by the board;

(18) Failing to report to the board within 72 hours of becoming aware of any life threatening occurrence, serious injury, or death of a patient resulting from dental treatment or complications following a dental procedure;

(19) Failing to report to the board any driving under the influence and/or driving while intoxicated offense; or

(20) Violation of any of the terms or conditions of any order entered in any disciplinary action.

(i) For the purposes of §30-4-19(g) of this code, disciplinary action may include:

1. Reprimand;
2. Probation;
3. Restrictions;
4. Suspension;
5. Revocation;
(6) Administrative fine, not to exceed $1,000 per day per violation;

(7) Mandatory attendance at continuing education seminars or other training;

(8) Practicing under supervision or other restriction; or

(9) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time.

(j) In addition to any other sanction imposed, the board may require a licensee or permittee to pay the costs of the proceeding.

(k) The board may defer disciplinary action with regard to an impaired licensee who voluntarily signs an agreement, in a form satisfactory to the board, agreeing not to practice dental care and to enter an approved treatment and monitoring program in accordance with the board’s legislative rule: Provided, That this subsection does not apply to a licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to an offense relating to a controlled substance in any jurisdiction.

(l) A person authorized to practice under this article who reports or otherwise provides evidence of the negligence, impairment, or incompetence of another member of this profession to the board or to any peer review organization is not liable to any person for making the report if the report is made without actual malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS, AND PHARMACIES.

§30-5-6. Powers and duties of the board.

(a) (1) The board has all the powers and duties set forth in this article, by rule, in §30-1-1 et seq. of this code and elsewhere in law, including the power to:
(2) Hold meetings;

(3) Establish additional requirements for a license, permit, and registration;

(4) Establish procedures for submitting, approving, and rejecting applications for a license, permit, and registration;

(5) Determine the qualifications of any applicant for a license, permit, and registration;

(6) Establish a fee schedule;

(7) Issue, renew, deny, suspend, revoke, or reinstate a license, permit, and registration;

(8) Prepare, conduct, administer, and grade written, oral, or written and oral examinations for a license and registration and establish what constitutes passage of the examination;

(9) Contract with third parties to administer the examinations required under the provisions of this article;

(10) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;

(11) Regulate mail order pharmacies;

(12) Maintain an office, and hire, discharge, establish the job requirements, and fix the compensation of employees and contract with persons necessary to enforce the provisions of this article. Inspectors shall be licensed pharmacists;

(13) Investigate alleged violations of the provisions of this article, legislative rules, orders, and final decisions of the board;

(14) Conduct disciplinary hearings of persons regulated by the board;
(15) Determine disciplinary action and issue orders;

(16) Institute appropriate legal action for the enforcement of the provisions of this article;

(17) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(18) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(19) Propose rules in accordance with the provisions of §29A-3-1 et seq. of this code to implement the provisions of this article;

(20) Sue and be sued in its official name as an agency of this state;

(21) Confer with the Attorney General or his or her assistant in connection with legal matters and questions; and

(22) Take all other actions necessary and proper to effectuate the purposes of this article.

(b) The board is exempt from state purchasing laws, legislative rules, and policies for the purposes of spending grant money if the grant is in relation to substance use and controlled substances.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-11. Denial, revocation, or suspension of license; grounds for discipline.

(a) The board shall have the power to deny, revoke, or suspend any license to practice registered professional nursing issued or applied for in accordance with the provisions of this article, or to otherwise discipline a licensee or applicant upon proof that he or she:
6 (1) Is or was guilty of fraud or deceit in procuring or
7 attempting to procure a license to practice registered
8 professional nursing; or

9 (2) Has been convicted of a felony; or

10 (3) Is unfit or incompetent by reason of negligence,
11 habits, or other causes; or

12 (4) Is habitually intemperate or is addicted to the use of
13 habit-forming drugs; or

14 (5) Is mentally incompetent; or

15 (6) Is guilty of conduct derogatory to the morals or
16 standing of the profession of registered nursing; or

17 (7) Is practicing or attempting to practice registered
18 professional nursing without a license or reregistration; or

19 (8) Has demonstrated abnormal prescribing or
20 dispensing practices pursuant to §30-3A-4 of this code; or

21 (9) Has willfully or repeatedly violated any of the
22 provisions of this article.

23 (b) An advanced practice registered nurse licensed
24 under this article may not be disciplined for providing
25 expedited partner therapy in accordance with §16-4F-1 et
26 seq. of this code.

ARTICLE 8. OPTOMETRISTS.

§30-8-18. Complaints; investigations; due process procedure;
grounds for disciplinary action.

1 (a) The board may upon its own motion based on
2 credible information or based upon the quarterly report from
3 the Board of Pharmacy as required by §60A-9-1 et seq. of
4 this code shall upon the written complaint of any person
5 cause an investigation to be made to determine whether
grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee, certificate holder, or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or permittee has violated §30-8-18(g) of this code or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or permittee has violated §30-8-18(g) of this code or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license, certificate, or permit or the imposition of sanctions against the licensee, certificate holder, or permittee. Any hearing shall be held in accordance with the provisions of this article, and the provisions of §29A-5-1 and §29A-6-1 et seq. of this code.

(e) Any member of the board or the executive secretary of the board may issue subpoenas and subpoenas duces tecum on behalf of the board to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive secretary may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, or revoke the license, certificate, or permit of, impose probationary conditions upon or take disciplinary action against, any licensee, certificate holder, or permittee for any of the following reasons once a violation has been proven by a preponderance of the evidence:
(1) Obtaining a license, certificate, or permit by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk;

(4) Intentional violation of a lawful order;

(5) Having had an authorization to practice optometry revoked, suspended, other disciplinary action taken, by the proper authorities of another jurisdiction;

(6) Having had an application to practice optometry denied by the proper authorities of another jurisdiction;

(7) Exceeded the scope of practice of optometry;

(8) Aiding or abetting unlicensed practice;

(9) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare, or safety of the public; or

(10) False and deceptive advertising; this includes, but is not limited to, the following:

(A) Advertising “free examination of eyes”, or words of similar import and meaning; or

(B) Advertising frames or mountings for glasses, contact lenses, or other optical devices which does not accurately describe the same in all its component parts.

(h) For the purposes of §30-8-18(g) of this code disciplinary action may include:

(1) Reprimand;

(2) Probation;
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(3) Administrative fine, not to exceed $1,000 per day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee or certificate holders to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

ARTICLE 10. VETERINARIANS.

§30-10-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion and shall upon the written complaint of any person or based upon the quarterly report from the Board of Pharmacy as required by §60A-9-1 et seq. of this code cause an investigation to be made to determine whether grounds exist for disciplinary action under this article.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee, permittee, registrant, or certificate holder.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee, permittee, registrant, or certificate holder has violated any provision of this article.

(d) Upon a finding that probable cause exists that the licensee, permittee, registrant, or certificate holder has violated this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license, permit, registration, or certificate or the
imposition of sanctions against the licensee, permittee, registrant, or certificate holder. The hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by this article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny, refuse to renew, suspend, or revoke the license, permit, registration, or certificate of, impose probationary conditions upon or take disciplinary action against, any licensee, permittee, registrant, or certificate holder for any of the following reasons:

(1) Obtaining a license, permit, registration, or certificate by fraud, misrepresentation, or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct;

(4) Intentional violation of this article or lawful order;

(5) Having had a license or other authorization to practice revoked or suspended, other disciplinary action taken, or an application for licensure or other authorization refused, revoked, or suspended by the proper authorities of another jurisdiction, irrespective of intervening appeals and stays; or
(6) Engaging in any act which has endangered or is likely to endanger the health, welfare, or safety of the public.

(h) For the purposes of §30-10-19(g) of this code, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 a day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee, permittee, registrant, or certificate holder to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12a. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; probable cause determinations; referrals to law-enforcement authorities.

(a) The board may independently initiate suspension or revocation proceedings as well as initiate suspension or revocation proceedings based on information received from any person, including but not limited to the Board of Pharmacy as required by §60A-9-1 et seq. of this code.
The board shall initiate investigations as to professional incompetence or other reasons for which a licensed osteopathic physician and surgeon may be adjudged unqualified if the board receives notice that three or more judgments or any combination of judgments and settlements resulting in five or more unfavorable outcomes arising from medical professional liability have been rendered or made against such osteopathic physician within a five-year period.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any osteopathic physician known to that medical peer review committee. Copies of such requests for information from a medical peer review committee may be provided to the subject osteopathic physician if, in the discretion of the board, the provision of such copies will not jeopardize the board’s investigation. In the event that copies are provided, the subject osteopathic physician has 15 days to comment on the requested information and such comments must be considered by the board.

After the completion of a hospital’s formal disciplinary procedure and after any resulting legal action, the chief executive officer of such hospital shall report in writing to the board within 60 days the name of any member of the medical staff or any other osteopathic physician practicing in the hospital whose hospital privileges have been revoked, restricted, reduced, or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any osteopathic physician by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude, or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.
Any professional society in this state comprised primarily of osteopathic physicians or physicians and surgeons of other schools of medicine which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude, or drug or alcohol abuse, shall report in writing to the board within 60 days of a final decision the name of such member, together with all pertinent information relating to such action.

Every person, partnership, corporation, association, insurance company, professional society, or other organization providing professional liability insurance to an osteopathic physician in this state shall submit to the board the following information within 30 days from any judgment, dismissal, or settlement of a civil action or of any claim involving the insured: The date of any judgment, dismissal, or settlement; whether any appeal has been taken on the judgment, and, if so, by which party; the amount of any settlement or judgment against the insured; and such other information required by the board.

Within 30 days after a person known to be an osteopathic physician licensed or otherwise lawfully practicing medicine and surgery in this state or applying to be licensed is convicted of a felony under the laws of this state, or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of such osteopathic physician or applicant, the nature of the offense committed and the final judgment and sentence of the court.

Upon a determination of the board that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society, or other organization has failed or refused to make a report
required by this subsection, the board shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with the provisions of §29A-5-1 et seq. of this code. After reviewing the record of such hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than $1,000 nor more than $10,000 against such violator. The board shall notify anyone assessed of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within 30 days, the Attorney General may institute a civil action in the Circuit Court of Kanawha County to recover the amount of the assessment. In any such civil action, the court’s review of the board’s action shall be conducted in accordance with the provisions of §29A-5-4 of this code.

Any person may report to the board relevant facts about the conduct of any osteopathic physician in this state which in the opinion of such person amounts to professional malpractice or professional incompetence.

The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or professional society comprised primarily of osteopathic physicians or physicians and surgeons of other schools of medicine to suspend, restrict, or revoke the privileges or membership of such osteopathic physician.

(c) In every case considered by the board under this article regarding suspension, revocation, or issuance of a
license whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of cause to suspend, revoke, or refuse to issue a license as set forth in §30-14-11(a) of this code. If such probable cause is found to exist, all proceedings on such charges shall be open to the public who are entitled to all reports, records, and nondeliberative materials introduced at such hearing, including the record of the final action taken: Provided, That any medical records, which were introduced at such hearing and which pertain to a person who has not expressly waived his or her right to the confidentiality of such records, shall not be open to the public nor is the public entitled to such records. If a finding is made that probable cause does not exist, the public has a right of access to the complaint or other document setting forth the charges, the findings of fact and conclusions supporting such finding that probable cause does not exist, if the subject osteopathic physician consents to such access.

(d) If the board receives notice that an osteopathic physician has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a medical peer review committee, a hospital or professional society, as defined in §30-14-12(a) of this code, for three or more incidents in a five-year period, the board shall require the osteopathic physician to practice under the direction of another osteopathic physician for a specified period to be established by the board.

(e) Whenever the board receives credible information that a licensee of the board is engaging or has engaged in criminal activity or the commitment of a crime under state or federal law, the board shall report the information, to the extent that sensitive or confidential information may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting required under federal law for reporting
ARTICLE 36. ACUPUNCTURISTS.

§30-36-2. Definitions.

(a) Unless the context in which used clearly requires a different meaning, as used in this article:

(1) “Acupuncture” means a form of health care, based on a theory of energetic physiology, that describes the interrelationship of the body organs or functions with an associated point or combination of points.

(2) “Board” means the West Virginia Acupuncture Board.

(3) “License” means a license issued by the board to practice acupuncture.

(4) “Moxibustion” means the burning of mugwort on or near the skin to stimulate the acupuncture point.

(5) “Practice acupuncture” means the use of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.

(b) (1) “Practice acupuncture” includes:

(A) Stimulation of points of the body by the insertion of acupuncture needles;

(B) The application of moxibustion; and

(C) Manual, mechanical, thermal, or electrical therapies only when performed in accordance with the principles of oriental acupuncture medical theories.

(2) The practice of acupuncture does not include the procedure of auricular acupuncture when used in the context
of a chemical dependency treatment program when the person is trained and approved by the National Acupuncture Detoxification Association or an equivalent certifying body.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.

§60A-5-509. Unlawful retaliation against health care providers.

(a) A health care provider has the right to exercise his or her professional judgment to decline to administer, dispense, or prescribe narcotics without being subject to actual or threatened acts of reprisal.

(b) It shall be unlawful for any person or entity to engage in any form of threats or reprisal, or to engage in, or hire, or conspire with, others to commit acts or activities of any nature, the purpose of which is to punish, embarrass, deny, or reduce privileges or compensation, or cause economic loss or to aid, abet, incite, compel, or coerce any person to engage in such threats or reprisal, against a health care provider as a result of, or in retaliation for, the refusal of that health care provider to administer, dispense, or prescribe narcotics.

(c) Any person or entity who violates the foregoing shall be subject to a private right of action by the affected health care provider and shall be liable in the amount of three times the economic loss sustained as a direct and proximate result of the reprisal.

(d) A health care provider that prevails in an action brought pursuant to this section shall be entitled to an award of costs and attorney fees.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-4. Required information.
(a) The following individuals shall report the required information to the Controlled Substances Monitoring Program Database when:

(1) A medical services provider dispenses a controlled substance listed in Schedule II, III, IV, V, or an opioid antagonist;

(2) A prescription for the controlled substance or opioid antagonist is filled by:

(A) A pharmacist or pharmacy in this state;

(B) A hospital, or other health care facility, for outpatient use; or

(C) A pharmacy or pharmacist licensed by the Board of Pharmacy, but situated outside this state for delivery to a person residing in this state; and

(3) A pharmacist or pharmacy sells an opioid antagonist.

(b) The above individuals shall in a manner prescribed by rules promulgated by the Board of Pharmacy pursuant to this article, report the following information, as applicable:

(1) The name, address, pharmacy prescription number, and Drug Enforcement Administration controlled substance registration number of the dispensing pharmacy or the dispensing physician or dentist;

(2) The full legal name, address, and birth date of the person for whom the prescription is written;

(3) The name, address, and Drug Enforcement Administration controlled substances registration number of the practitioner writing the prescription;

(4) The name and national drug code number of the Schedule II, III, and IV controlled substance or opioid antagonist dispensed;
(5) The quantity and dosage of the Schedule II, III, and IV controlled substance or opioid antagonist dispensed;

(6) The date the prescription was written and the date filled;

(7) The number of refills, if any, authorized by the prescription;

(8) If the prescription being dispensed is being picked up by someone other than the patient on behalf of the patient, information about the person picking up the prescription as set forth on the person’s government-issued photo identification card shall be retained in either print or electronic form until such time as otherwise directed by rule promulgated by the Board of Pharmacy; and

(9) The source of payment for the controlled substance dispensed.

(c) Whenever a medical services provider treats a patient for an overdose that has occurred as a result of illicit or prescribed medication, the medical service provider shall report the full legal name, address, and birth date of the person who is being treated, including any known ancillary evidence of the overdose. The Board of Pharmacy shall coordinate with the Division of Justice and Community Services and the Office of Drug Control Policy regarding the collection of overdose data.

(d) The Board of Pharmacy may prescribe by rule promulgated pursuant to this article the form to be used in prescribing a Schedule II, III, and IV substance or opioid antagonist if, in the determination of the Board of Pharmacy, the administration of the requirements of this section would be facilitated.

(e) Products regulated by the provisions of §60A-10-1 et seq. of this code shall be subject to reporting pursuant to the provisions of this article to the extent set forth in said article.
(f) Reporting required by this section is not required for a drug administered directly to a patient by a practitioner. Reporting is, however, required by this section for a drug dispensed to a patient by a practitioner. The quantity dispensed by a prescribing practitioner to his or her own patient may not exceed an amount adequate to treat the patient for a maximum of 72 hours with no greater than two 72-hour cycles dispensed in any 15-day period of time.

(g) The Board of Pharmacy shall notify a physician prescribing buprenorphine or buprenorphine/naloxone within 60 days of the availability of an abuse deterrent or a practitioner-administered form of buprenorphine or buprenorphine/naloxone if approved by the Food and Drug Administration as provided in FDA Guidance to Industry. Upon receipt of the notice, a physician may switch his or her patients using buprenorphine or buprenorphine/naloxone to the abuse deterrent or a practitioner-administered form of the drug.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

(a)(1) The information required by this article to be kept by the Board of Pharmacy is confidential and not subject to the provisions of §29B-1-1 et seq. of this code or obtainable as discovery in civil matters absent a court order and is open to inspection only by inspectors and agents of the Board of Pharmacy, members of the West Virginia State Police expressly authorized by the Superintendent of the West Virginia State Police to have access to the information, authorized agents of local law-enforcement agencies as members of a federally affiliated drug task force, authorized agents of the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical Services, duly authorized agents of the Office of the Chief Medical Examiner for use in post-mortem examinations, duly authorized agents of the Office of Health Facility Licensure and Certification for use in certification, licensure, and regulation of health facilities, duly authorized agents of
licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III, and IV controlled substances, prescribing practitioners and pharmacists, a dean of any medical school or his or her designee located in this state to access prescriber level data to monitor prescribing practices of faculty members, prescribers, and residents enrolled in a degree program at the school where he or she serves as dean, a physician reviewer designated by an employer of medical providers to monitor prescriber level information of prescribing practices of physicians, advance practice registered nurses, or physician assistants in their employ, and a chief medical officer of a hospital or a physician designated by the chief executive officer of a hospital who does not have a chief medical officer, for prescribers who have admitting privileges to the hospital or prescriber level information, and persons with an enforceable court order or regulatory agency administrative subpoena. All law-enforcement personnel who have access to the Controlled Substances Monitoring Program Database shall be granted access in accordance with applicable state laws and the Board of Pharmacy’s rules, shall be certified as a West Virginia law-enforcement officer and shall have successfully completed training approved by the Board of Pharmacy. All information released by the Board of Pharmacy must be related to a specific patient or a specific individual or entity under investigation by any of the above parties except that practitioners who prescribe or dispense controlled substances may request specific data related to their Drug Enforcement Administration controlled substance registration number or for the purpose of providing treatment to a patient: Provided, That the West Virginia Controlled Substances Monitoring Program Database Review Committee established in §30A-9-5(b) of this code is authorized to query the database to comply with §30A-9-5(b) of this code.

(2) Subject to the provisions of §60A-9-5(a)(1) of this code, the Board of Pharmacy shall also review the West Virginia Controlled Substances Monitoring Program
Database and issue reports that identify abnormal or unusual practices of patients and practitioners with prescriptive authority who exceed parameters as determined by the advisory committee established in this section. The Board of Pharmacy shall communicate with practitioners and dispensers to more effectively manage the medications of their patients in the manner recommended by the advisory committee. All other reports produced by the Board of Pharmacy shall be kept confidential. The Board of Pharmacy shall maintain the information required by this article for a period of not less than five years. Notwithstanding any other provisions of this code to the contrary, data obtained under the provisions of this article may be used for compilation of educational, scholarly, or statistical purposes, and may be shared with the West Virginia Department of Health and Human Resources for those purposes, as long as the identities of persons or entities and any personally identifiable information, including protected health information, contained therein shall be redacted, scrubbed, or otherwise irreversibly destroyed in a manner that will preserve the confidential nature of the information. No individual or entity required to report under §60A-9-4 of this code may be subject to a claim for civil damages or other civil relief for the reporting of information to the Board of Pharmacy as required under and in accordance with the provisions of this article.

(3) The Board of Pharmacy shall establish an advisory committee to develop, implement, and recommend parameters to be used in identifying abnormal or unusual usage patterns of patients and practitioners with prescriptive authority in this state. This advisory committee shall:

(A) Consist of the following members: A physician licensed by the West Virginia Board of Medicine; a dentist licensed by the West Virginia Board of Dental Examiners; a physician licensed by the West Virginia Board of Osteopathic Medicine; a licensed physician certified by the American Board of Pain Medicine; a licensed physician
board certified in medical oncology recommended by the West Virginia State Medical Association; a licensed physician board certified in palliative care recommended by the West Virginia Center on End of Life Care; a pharmacist licensed by the West Virginia Board of Pharmacy; a licensed physician member of the West Virginia Academy of Family Physicians; an expert in drug diversion; and such other members as determined by the Board of Pharmacy.

(B) Recommend parameters to identify abnormal or unusual usage patterns of controlled substances for patients in order to prepare reports as requested in accordance with §60A-9-5(a)(2) of this code.

(C) Make recommendations for training, research, and other areas that are determined by the committee to have the potential to reduce inappropriate use of prescription drugs in this state, including, but not limited to, studying issues related to diversion of controlled substances used for the management of opioid addiction.

(D) Monitor the ability of medical services providers, health care facilities, pharmacists, and pharmacies to meet the 24-hour reporting requirement for the Controlled Substances Monitoring Program set forth in §60A-9-3 of this code, and report on the feasibility of requiring real-time reporting.

(E) Establish outreach programs with local law enforcement to provide education to local law enforcement on the requirements and use of the Controlled Substances Monitoring Program Database established in this article.

(b) The Board of Pharmacy shall create a West Virginia Controlled Substances Monitoring Program Database Review Committee of individuals consisting of two prosecuting attorneys from West Virginia counties, two physicians with specialties which require extensive use of controlled substances and a pharmacist who is trained in the use and abuse of controlled substances. The review
committee may determine that an additional physician who is an expert in the field under investigation be added to the team when the facts of a case indicate that the additional expertise is required. The review committee, working independently, may query the database based on parameters established by the advisory committee. The review committee may make determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns indicated by outliers in the system or abnormal or unusual usage patterns of controlled substances by patients which the review committee has reasonable cause to believe necessitates further action by law enforcement or the licensing board having jurisdiction over the practitioners or dispensers under consideration. The licensing board having jurisdiction over the practitioner or dispenser under consideration shall report back to the Board of Pharmacy regarding any findings, investigation, or discipline resulting from the findings of the review committee within 30 days of resolution of any action taken by the licensing board resulting from the information provided by the Board of Pharmacy. The review committee shall also review notices provided by the chief medical examiner pursuant to §61-12-10(h) of this code and determine on a case-by-case basis whether a practitioner who prescribed or dispensed a controlled substance resulting in or contributing to the drug overdose may have breached professional or occupational standards or committed a criminal act when prescribing the controlled substance at issue to the decedent. Only in those cases in which there is reasonable cause to believe a breach of professional or occupational standards or a criminal act may have occurred, the review committee shall notify the appropriate professional licensing agency having jurisdiction over the applicable practitioner or dispenser and appropriate law-enforcement agencies and provide pertinent information from the database for their consideration. The number of cases identified shall be determined by the review committee based on a number that can be adequately reviewed by the review committee. The information obtained and developed may not be shared except as
provided in this article and is not subject to the provisions of §29B-1-1 et seq. of this code or obtainable as discovering in civil matters absent a court order.

(c) The Board of Pharmacy is responsible for establishing and providing administrative support for the advisory committee and the West Virginia Controlled Substances Monitoring Program Database Review Committee. The advisory committee and the review committee shall elect a chair by majority vote. Members of the advisory committee and the review committee may not be compensated in their capacity as members but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(d) The Board of Pharmacy shall promulgate rules with advice and consent of the advisory committee, after consultation with the licensing boards set forth in §60A-9-5(d)(4) of this code and in accordance with the provisions of §29A-3-1 et seq. of this code. The Legislature finds that the changes made to this section during the course of the 2018 regular session of the Legislature constitutes an emergency and the Board of Pharmacy shall promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to incorporate these modifications. The legislative rules must include, but shall not be limited to, the following matters:

(1) Identifying parameters used in identifying abnormal or unusual prescribing or dispensing patterns;

(2) Processing parameters and developing reports of abnormal or unusual prescribing or dispensing patterns for patients, practitioners, and dispensers;

(3) Establishing the information to be contained in reports and the process by which the reports will be generated and disseminated;

(4) Dissemination of these reports at least quarterly to:
(A) The West Virginia Board of Medicine codified in §30-3-1 et seq. of this code;

(B) The West Virginia Board of Osteopathic Medicine codified in §30-14-1 et seq. of this code;

(C) The West Virginia Board of Examiners for Registered Professional Nurses codified in §30-7-1 et seq. of this code;

(D) The West Virginia Board of Dentistry codified in §30-4-1 et seq. of this code;

(E) The West Virginia Board of Optometry codified in §30-8-1 et seq. of this code; and

(F) The West Virginia Board of Veterinary Medicine codified in §30-10-1 et seq. of this code; and

(5) Setting up processes and procedures to ensure that the privacy, confidentiality, and security of information collected, recorded, transmitted, and maintained by the review committee is not disclosed except as provided in this section.

(e) Persons or entities with access to the West Virginia Controlled Substances Monitoring Program Database pursuant to this section may, pursuant to rules promulgated by the Board of Pharmacy, delegate appropriate personnel to have access to said database.

(f) Good faith reliance by a practitioner on information contained in the West Virginia Controlled Substances Monitoring Program Database in prescribing or dispensing or refusing or declining to prescribe or dispense a Schedule II, III, or IV controlled substance shall constitute an absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing or declining to prescribe or dispense.
(g) A prescribing or dispensing practitioner may notify law enforcement of a patient who, in the prescribing or dispensing practitioner’s judgment, may be in violation of §60A-4-410 of this code, based on information obtained and reviewed from the Controlled Substances Monitoring Program Database. A prescribing or dispensing practitioner who makes a notification pursuant to this subsection is immune from any civil, administrative, or criminal liability that otherwise might be incurred or imposed because of the notification if the notification is made in good faith.

(h) Nothing in the article may be construed to require a practitioner to access the West Virginia Controlled Substances Monitoring Program Database except as provided in §60A-9-5 of this code.

(i) The Board of Pharmacy shall provide an annual report on the West Virginia Controlled Substances Monitoring Program to the Legislative Oversight Commission on Health and Human Resources Accountability with recommendations for needed legislation no later than January 1 of each year.

§60A-9-5a. Practitioner requirements to access database and conduct annual search of the database; required rulemaking.

(a) All practitioners, as that term is defined in §60A-2-101 of this code who prescribe or dispense Schedule II, III, or IV controlled substances shall register with the West Virginia Controlled Substances Monitoring Program and obtain and maintain online or other electronic access to the program database: Provided, That compliance with the provisions of this subsection must be accomplished within 30 days of the practitioner obtaining a new license: Provided, however, That the Board of Pharmacy may renew a practitioner’s license without proof that the practitioner meet the requirements of this subsection.
(b) All persons with prescriptive or dispensing authority and in possession of a valid Drug Enforcement Administration registration identification number and who are licensed by the Board of Medicine as set forth in §30-3-1 et seq. of this code, the Board of Registered Professional Nurses as set forth in §30-7-1 et seq. of this code, the Board of Dental Examiners as set forth in §30-7-1 et seq. of this code, the Board of Osteopathic Medicine as set forth in §30-14-1 et seq. of this code, the West Virginia Board of Veterinary Medicine as set forth in §30-10-1 et seq. of this code, and the West Virginia Board of Optometrists as set forth in §30-8-1 et seq. of this code, upon initially prescribing or dispensing any Schedule II controlled substance, any opioid or any benzodiazepine to a patient who is not suffering from a terminal illness, and at least annually thereafter should the practitioner or dispenser continue to treat the patient with a controlled substance, shall access the West Virginia Controlled Substances Monitoring Program Database for information regarding specific patients. The information obtained from accessing the West Virginia Controlled Substances Monitoring Program Database for the patient shall be documented in the patient’s medical record maintained by a private prescriber or any inpatient facility licensed pursuant to the provisions of chapter 16 of this code. A pain-relieving controlled substance shall be defined as set forth in §30-3A-1 of this code.

(c) The various boards mentioned in §60A-9-5(b) of this code shall promulgate both emergency and legislative rules pursuant to the provisions of §29A-3-1 et seq. of this code to effectuate the provisions of this article.
AN ACT to amend and reenact §60A-2-204, §60A-2-206, §60A-2-210, and §60A-2-212 of the Code of West Virginia, 1931, as amended, all relating to updating schedules of controlled substances; reorganizing each schedule by removing numbering and lettering for subparts; by providing that the drugs listed in each schedule include not just the drug’s chemical substance but also any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the such compounds are possible within the chemical designation; and by adding specific chemical compounds to three of the schedules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

1 (a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation.

8 (b) Opiates.
9 Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]—phenylacetamide);
11 Acetylmethadon;
12 Allylprodine;
13 Alphacetylomethadon (except levoalphacetylomethadon also known as levo-alpha-acetylmethadon, levomethadyl acetate, or LAAM);
16 Alphameprodine;
17 Alphamethadon;
18 Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(( propanilido) piperidine);
21 Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]—phenylpropanamide);
23 Benzethidine;
24 Betacetylmethadon;
25 Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
27 Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
30 Betameprodine;
31 Betamethadon;
32 Betaprodine;
33 Clonitazene;
34 Dextromoramide;
35  Diampromide;
36  Diethylthiambutene;
37  Difenoxin;
38  Dimenoxadol;
39  Dimepheptanol;
40  Dimethylthiambutene;
41  Dioxaphetyl butyrate;
42  Dipipanone;
43  Ethylmethylthiambutene;
44  Etonitazene;
45  Etoxeridine;
46  Furethidine;
47  Hydroxypethidine;
48  Ketobemidone;
49  Levomoramide;
50  Levophenacylmorphan;
51  3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
      piperidyl]-N-phenylpropanamide);
52  3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-
      4- piperidinyl]—phenylpropanamide);
53  Morpheridine;
54  MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
55  Noracymethadol;
58  Norlevorphanol;
59  Normethadone;
60  Norpipanone;
61  Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
62  PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxy piperidine);
63  Phenadoxone;
64  Phenampromide;
65  Phenomorphan;
66  Phenoperidine;
67  Piritramide;
68  Proheptazine;
69  Properidine;
70  Propiram;
71  Racemoramide;
72  Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
73  Tilidine;
74  Trimeperidine.
75  (c) Opium derivatives:
76  Acetorphine;
77  Acetyldihydrocodeine;
78  Benzylmorphine;
82  Codeine methylbromide;
83  Codeine-N-Oxide;
84  Cyprenorphine;
85  Desomorphine;
86  Dihydromorphine;
87  Drotebanol;
88  Etorphine (except HCl Salt);
89  Heroin;
90  Hydromorphinol;
91  Methyldesorphine;
92  Methyldihydromorphine;
93  Morphine methylbromide;
94  Morphine methylsulfonate;
95  Morphine-N-Oxide;
96  Myrophine;
97  Nicocodeine;
98  Nicomorphine;
99  Normorphine;
100  Pholcodine;
101  Thebacon.
102  (d) *Hallucinogenic substances.*
Alpha-ethyltryptamine; some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA;

4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

N-(2-Methoxybenzyl)-4-bromo-2,5-dimethoxyphenethylamine. The substance has the acronym 25B-NBOMe.

2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe)

2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe)

2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

2,5-dimethoxy-4-ethylamphetamine; some trade or other names: DOET;

2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);

4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine;

paramethoxyamphetamine; PMA;

5-methoxy-3, 4-methylenedioxy-amphetamine;

4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; “DOM”; and “STP”;
3,4-methylenedioxy amphetamine;
3,4-methylenedioxymethamphetamine (MDMA);
3,4-methylenedioxy-N-ethylamphetamine (also known as (ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);
N-hydroxy-3,4-methylenedioxyamphetamine (also known as (hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and (hydroxy MDA);
3,4,5-trimethoxy amphetamine;
5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);
Alpha-methyltryptamine (other name: AMT);
Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N- dimethyltryptamine; mappine;
Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;
Dimethyltryptamine; some trade or other names: DMT;
5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);
Ibogaine; some trade and other names: 7-Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1’, 2’: 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;
Lysergic acid diethylamide;
Marihuana;
Mescaline;
Parahexyl-7374; some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;

Peyote; meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, immediate derivative, mixture or preparation of such plant, its seeds or extracts;

N-ethyl-3-piperidyl benzilate;

N-methyl-3-piperidyl benzilate;

Psilocybin;

Psilocyn;

Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, immediate derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-
phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine; TPCP, TCP;

1-[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.

4-methylmethcathinone (Mephedrone);

3,4-methylenedioxypyrovalerone (MDPV);

2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);

2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D);

2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);

2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I);

2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);

2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4);

2-(2,5-Dimethoxyphenyl)ethanamine (2C-H);

2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N);

2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P);

3,4-Methylenedioxy-N-methylcathinone (Methylone);

2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7, its optical isomers, salts and salts of isomers
5-methoxy-N,N-dimethyltryptamine some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT(5-MeO-DMT)

Alpha-methyltryptamine (other name: AMT)

5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT)

Synthetic Cannabinoids as follows:

2-[(1R,3S)-3-hydroxy-cyclohexyl]-5- (2-methyloctan-2-yl)phenol) {also known as CP 47,497 and homologues};

rel-2-[(1S,3R)-3-hydroxy-cyclohexyl]-5-(2-methylnonan-2-yl)phenol {also known as CP 47,497-C8 homolog};

[(6aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)] {also known as HU-210};

(dexanabinol);

(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzol[c]chromen-1-ol) {also known as HU-211};

1-Pentyl-3-(1-naphthoyl)indole {also known as JWH-018};

1-Butyl-3-(1-naphthoyl)indole {also known as JWH-073};

(2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-015};

(1-hexyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-019};
1-[2-(4-morpholinyl)ethyl]-1H-indol-3-yl]-1-naphthalenyl-methanone {also known as JWH-200};

1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone {also known as JWH-250};

2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl)-5-(2-methyloctan-2-yl)phenol {also known as CP 55,940};

(4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -methanone {also known as JWH-122};

(4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -methanone {also known as JWH-398};

(4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone {also known as RCS-4};

1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenyl) ethanone {also known as RCS-8};

1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081);

1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201); and

1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694).

Synthetic cannabinoids:

CP 47,497 AND homologues, 2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methyloctan-2-YL)phenol);

HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-Methylotcan-2-YL)-6A,7,10,10A-tetrahydrobenzo[C] chromen-1-OL]);
HU-211, (dextanabinol, (6AS,10AS)-9-hydroxymethyl)-6,6-Dimethyl-3-(2-methyl-274-octan-2-yl)-6A,7,10,10-tetrahydrobenzo[C]chromen-1-ol); 275
JWH-018, 1-pentyl-3-(1-naphthoyl)indole;
JWH-019, 1-hexyl-3-(1-naphthoyl)indole;
JWH-073, 1-butyl-3-(1-naphthoyl)indole;
JWH-200, (1-(2-morpholin-4-ylethyl)indol-3-yl)-Naphthalen-1-ylmethanone;
JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl)indole.]
Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (5F-ADB);
Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (5F-AMB);
Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (FUB-AMB);
N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (5F-APINACA);
N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (ADB-FUBINACA);
Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (MDMB-CHMICA);
Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (MDMB-FUBINACA);
Tetrahydrocannabinols:
DELTA-1 CIS OR trans tetrahydrocannabinol and their Optical isomers.
DELTA-6 CIS OR trans tetrahydrocannabinol and their optical isomers.

DELTA-3,4 CIS or their trans tetrahydrocannabinol and their optical isomers.

Synthetic Phenethylamines

2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe/2C-I-NBOMe);

2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe/2C-C-NBOMe);

2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe/2C-B-NBOMe);

Synthetic Opioids (including their isomers, esters, ethers, salts and salts of isomers, esters and ethers):

N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl);

furanyl fentanyl;

3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700);

N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide, (butyryl fentanyl);

N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide, (beta-hydroxythiofentanyl).

N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide (acryl fentanyl)
N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide (isobutyryl fentanyl)  
N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide (cyclopropyl fentanyl)  
2-(2,4-dichlorophenyl)-N-((1S,2S)-2-(dimethylamino)cyclohexyl)-N-methylacetamide (also known as U-48800)  
Trans-3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methyl-benzamide (also known as U-49900)  
Trans-3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzeneacetamide (also known as U-51754)  
Opioid Receptor Agonist  
AH-7921 (3,4-dichloro-N-(1-dimethylamino)cyclohexylmethyl]benzamide).  
Naphthoylindoles or any compound containing a 3-(-1-Napthoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include the following:  
JWH 015;  
JWH 018;  
JWH 019;  
JWH 073;  
JWH 081;  
JWH 122;  
JWH 200;  
JWH 210;
Naphthylmethylindoles or any compound containing a 1-hindol-3-yl-(1-naphthyl) methane structure with a substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 175 and JWH 184.

Naphthoylpyrroles or any compound containing a 3-(1-Naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 147 and JWH 307.

Naphthylmethylindenones or any compound containing a Naphthylideneindene structure with substitution at the 3-Position of the indene ring whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 176.

Phenylacetylindoles or any compound containing a 3-Phenylacetylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

RCS-8, SR-18 OR BTM-8;
JWH 250;
JWH 203;
Cyclohexylphenols or any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with a substitution at the 5-position of the phenolic ring whether or not substituted in the cyclohexyl ring to any extent. This shall include the following:

- CP 47,497 and its homologues and analogs;
- Cannabicyclohexanol;
- CP 55,940.

Benzoylindoles or any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

- AM 694;
- Pravadoline WIN 48,098;
- RCS 4;
- AM 679.

Dibenzopyrans or any compound containing a 11-hydroxydelta 8-tetrahydrocannabinol structure with substitution on the 3-pentyl group. This shall include HU-210, HU-211, JWH 051 and JWH 133.

Adamantoylindoles or any compound containing a 3-(-1-Adamantoyl) indole structure with substitution at the
nitrogen atom of the indole ring whether or not further substituted in the adamantoyl ring system to any extent. This shall include AM1248.

Tetramethylcyclopropylindoles or any compound containing A 3-tetramethylcyclopropylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent. This shall include UR-144 and XLR-11.

N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide. This shall include AKB48.

Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research. Since nomenclature of these substances is not internationally standardized, any immediate precursor or immediate derivative of these substances shall be covered.

Tryptamines:

5- methoxy- N- methyl-N-isopropyltryptamine (5-MeO-MiPT)

4-hydroxy-N,N-diisopropyltryptamine (4-HO-DiPT)

4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-MiPT)

4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET)

4-acetoxy-N,N-diisopropyltryptamine (4-AcO-DiPT)

5-methoxy-α-methyltryptamine (5-MeO-AMT)

4-methoxy-N,N-Dimethyltryptamine (4-MeO-DMT)
448 4-hydroxy Diethyltryptamine (4-HO-DET)
449 5- methoxy- N,N- diallyltryptamine (5-MeO-DALT)
450 4-acetoxy-N,N-Dimethyltryptamine (4-AcO DMT)
451 4-hydroxy Diethyltryptamine (4-HO-DET)
452 (e) *Depressants.*
453 Mecloqualone;
454 Methaqualone.
455 (f) *Stimulants.*
456 Aminorex; some other names: aminoxaphen; 2-amino-
457 5- phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-
458 oxazolamine;
459 Cathinone; some trade or other names: 2-amino-1-
460 phenyl-1- propanone, alpha-aminopropiophenone, 2-
461 aminopropiophenone and norephedrone;
462 Fenethylline;
463 Methcathinone, its immediate precursors and immediate
464 derivatives, its salts, optical isomers and salts of optical
465 isomers; some other names: (2-(methylamino)-
466 propiophenone; alpha-
467 (methylamino)propiophenone; 2-(methylamino)-1-
468 phenylpropan-1- one; alpha—
469 methylaminopropiophenone; monomethylpropion; 3,4-
470 methylenedioxyxpyrovalerone and/or mephedrone; 3,4-
471 methylenedioxyxpyrovalerone (MPVD); ephedrine; N-
472 methylcathinone; methylcathinone; AL-464; AL-422; AL-
473 463 and UR1432;
474 (+-) cis-4-methylaminorex; ((+-)cis-4,5-dihydro-4-
475 methyl- 5-phenyl-2-oxazolamine);
N-ethylamphetamine;
N,N-dimethylamphetamine; also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

Alpha-pyrrolidinopentiophenone, also known as alpha-PVP, optical isomers, salts and salts of isomers.

Substituted amphetamines:
2-Fluoroamphetamine
3-Fluoroamphetamine
4-Fluoroamphetamine
2-chloroamphetamine
3-chloroamphetamine
4-chloroamphetamine
2-Fluoromethamphetamine
3-Fluoromethamphetamine
4-Fluoromethamphetamine
4-chloromethamphetamine

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:
N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers.
N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thienylfentanyl), its optical isomers, salts and salts of isomers.
N-benzylpiperazine, also known as BZP.

Cyclopentyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide);

4-fluorobutyryl fentanyl (N-(4-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]-butyramide);

Isobutyryl fentanyl (2-methyl-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]-propanamide);

Methoxyacetyl fentanyl (2-methoxy-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]-acetamide);

3-methylbutyryl fentanyl (N-[3-methyl-1-(2-phenylethyl)piperidin-4-yl]-N-phenylbutyramide);

4-methoxybutyryl fentanyl (N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide);

Ocfentanil (N-(2-fluorophenyl)-2-methoxy-N-[1-(2-phenylethyl)piperidin-4-yl]-acetamide);

Tetrahydrofuran fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide);

Valeryl fentanyl (N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]pentanamide).

(h) The following controlled substances are included in Schedule I:

Synthetic Cathinones or any compound, except bupropion or compounds listed under a different schedule, or compounds used within legitimate and approved medical research, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with Monocyclic or fused polycyclic ring systems, whether or not the compound is further modified in any of the following ways:

By substitution in the ring system to any extent with Alkyl, alklyenedioxy, alkoxy, haloalkyl, hydroxyl or halide
Substituents whether or not further substituted in the ring system by one or more other univalent substituents.

By substitution at the 3-position with an acyclic alkyl substituent.

By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups.

By inclusion of the 2-amino nitrogen atom in a cyclic structure.

Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research.

§60A-2-206. Schedule II.

(a) Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation.

(b) Substances, vegetable origin or chemical synthesis. — Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone and naltrexone, and their respective salts, but including the following:

Raw opium;
Opium extracts;
Opium fluid;
Powdered opium;
Granulated opium;
Tincture of opium;
Codeine;
Dihydroetorphine;
Ethylmorphine;
Etorphine hydrochloride;
Hydrocodone;
Hydromorphone;
Metopon;
Morphine;
Oripavine;
Oxycodone;
Oxymorphone; and
Thebaine;

Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the
substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

Opium poppy and poppy straw;

Coca leaves and any salt, compound, derivative or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;

Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

(c) Opiates. —

Alfentanil;

Alphaprodine;

Anileridine;

Bezitramide;

Bulk dextropropoxyphene (nondosage forms);

Carfentanil;

Dihydrocodeine;

Diphenoxylate;

Fentanyl;

Isomethadone;
Levo-alphacetylmethadol; some other names: levo-
alpha-acetylmethadol, levomethadyl acetate, LAAM;

Levomethorphan;

Levorphanol;

Metazocine;

Methadone;

Methadone-Intermediate, 4-cyano-2-dimethylamino-4,
4-diphenyl butane;

Moramide-Intermediate, 2-methyl-3-morpholino-1,
1-diphenylpropane-carboxylic acid;

Pethidine; (meperidine);

Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
phenylpiperidine;

Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-
carboxylate;

Pethidine-Intermediate-C, 1-methyl-4-
phenylpiperidine-4-carboxylic acid;

Phenazocine;

Piminodine;

Racemethorphan;

Racemorphan;

Remifentanil;

Sufentanil;

Tapentadol
Thiafentanil (4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-2-(thienyl)ethylpiperidine), including its isomers, esters, ethers, salts and salts of isomers, esters and ethers.

(d) **Stimulants.** —

Amphetamine, its salts, optical isomers and salts of its optical isomers;

Methamphetamine, its salts, isomers and salts of its isomers;

Methylphenidate;

Phenmetrazine and its salts; and

Lisdexamfetamine.

(e) **Depressants.** —

Amobarbital;

Glutethimide;

Pentobarbital;

Phencyclidine;

Secobarbital.

(f) **Hallucinogenic substances:**

Dronabinol [(-)-delta-9-trans tetrahydrocannabinol] if in an FDA approved oral solution

Nabilone: [Another name for nabilone: (+)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzof[b,d]pyran-9-one].

(g) **Immediate precursors.** — Unless specifically excepted or unless listed in another schedule, any material,
compound, mixture, or preparation which contains any quantity of the following substances:

Immediate precursor to amphetamine and methamphetamine:

Phenylacetone;

Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

Immediate precursors to phencyclidine (PCP):

1-phenylcyclohexylamine; and

1-piperidinocyclohexanecarbonitrile (PCC).

Immediate precursor to fentanyl:

4-anilino-N-phenethyl-4-piperidine (ANPP).

§60A-2-210. Schedule IV.

(a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation.

(b) Narcotic drugs. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;
Dextropropoxyphene (alpha-\((+)-4\text{-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane}).

(c) *Depressants.*

Alprazolam;

Barbital;

Bromazepam;

Camazepam;

Carisoprodol;

Chlortal betaine;

Chlortal hydrate;

Chlordiazepoxide;

Clobazam;

Clonazepam;

Clorazepate;

Clotiazepam;

Cloxazolam;

Delorazepam;

Diazepam;

Dichloralphenazone;

Estazolam;

Ethchlorvynol;

Ethinamate;

Ethyl loflazepate;
Fludiazepam; 41
Flunitrazepam; 42
Flurazepam; 43
Fospropofol; 44
Halazepam; 45
Haloxazolam; 46
Ketazolam; 47
Loprazolam; 48
Lorazepam; 49
Lormetazepam; 50
Mebutamate; 51
Medazepam; 52
Meprobamate; 53
Methohexital; 54
Methylphenobarbital (mephobarbital); 55
Midazolam; 56
Nimetazepam; 57
Nitrazepam; 58
Nordiazepam; 59
Oxazepam; 60
Oxazolam; 61
Paraldehyde; 62
63 Petrichloral;
64 Phenobarbital;
65 Pinazepam;
66 Prazepam;
67 Quazepam;
68 Temazepam;
69 Tetrazepam;
70 Triazolam;
71 Zaleplon;
72 Zolpidem;
73 Zopiclone’
74 Suvorexant ([(7R)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-
75 methyl-1,4-diazepan-1-yl] [5-methyl-2-(2H-1,2,3-triazol-
76 2-yl)phenyl]methanone).
77 (d) Any material, compound, mixture or preparation
78 which contains any quantity of Fenfluramine and
79 Dexfenfluramine.
80 (e) *Stimulants*.
81 Cathine ((+)-norpseudoephedrine);
82 Diethylpropion;
83 Fenproporex;
84 Mazindol;
85 Mefenorex;
Modafinil;

Pemoline (including organometallic complexes and chelates thereof);

Phentermine;

Pipradrol;

Sibutramine;

SPA ((-)-1-dimethylamino-1,2-diphenylethane);

Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl] (1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino)methyl]-2-methoxybenzoic acid);

(f) Other substances. —

Pentazocine;

Butorphanol.

Tramadol (2-[(dimethylamino)methyl]-1-(3-methoxyphenyl) cyclohexanol);

Amyl nitrite, butyl nitrite, isobutyl nitrite and the other organic nitrites are controlled substances and no product containing these compounds as a significant component shall be possessed, bought or sold other than pursuant to a bona fide prescription or for industrial or manufacturing purposes.

§60A-2-212. Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence
of such isomers, esters, ethers and salts is possible within
the specific chemical designation.

(b) Narcotic drugs containing nonnarcotic active
medicinal ingredients. Any compound, mixture or
preparation containing any of the following narcotic drugs or
their salts calculated as the free anhydrous base or alkaloid in
limited quantities as set forth below, which shall include one
or more nonnarcotic active medicinal ingredients in sufficient
proportion to confer upon the compound, mixture or
preparation valuable medicinal qualities other than those
possessed by the narcotic drug alone.

Not more than 200 milligrams of codeine per 100
milliliters or per 100 grams;

Not more than 100 milligrams of dihydrocodeine per
100 milliliters or per 100 grams;

Not more than 100 milligrams of ethylmorphine per 100
milliliters or per 100 grams;

Not more than 2.5 milligrams of diphenoxylate and not
less than 25 micrograms of atropine sulfate per dosage unit;

Not more than 100 milligrams of opium per 100
milliliters or per 100 grams;

Not more than 0.5 milligrams of difenoxin and not less
than 25 micrograms of atropine sulfate per dosage unit.

(c) Stimulants: —

Pyrovalerone.

(d) Any compound, mixture or preparation containing
as its single active ingredient ephedrine, pseudoephedrine or
phenylpropanolamine, their salts or optical isomers, or salts
of optical isomers except products which are for pediatric
use primarily intended for administration to children under
the age of 12: Provided, That neither the offenses set forth
in section four hundred one, article four of this chapter, nor
the penalties therein, shall be applicable to ephedrine,
pseudoephedrine or phenylpropanolamine which shall be subject to the provisions of article ten of this chapter.

(e) *Depressants:* —

- Ezogabine \([N-[2\text{-amino}-4,94\text{-fluorobenzylamino}]-\text{phenyl}]-\text{carbamic acid ethyl ester}]\);
- Lacosamide \([(R)-2\text{-acetoamido- N -benzyl-3-methoxy-propionamide}]\);
- Pregabalin \([(S)-3\text{-(aminomethyl)-5-methylhexanoic acid}]\); and
- Brivaracetam ((2S)-2-[(4R)-2-o xo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact).

(f) *Other substances:*

- Gabapentin
- Pregabalin

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**CHAPTER 48**

(H. B. 4624 - By Delegates Howell, Hamrick, Pack, Brewer, Jennings, Iaquinta, Ferro, Hill, Diserio, Marcum and Maynard)

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §1-1-5 of the Code of West Virginia, 1931, as amended, relating to West Virginia coordinate systems; defining terms; updating plane coordinate values; establishing conversion factor for conversion from meters to United States Survey feet; directing use of certain
data published by the National Geodetic Survey; setting requirements for survey establishing coordinates that is relied on by governmental entities or the public; setting requirements for certain maps, plats, reports, descriptions or geospatial products to be relied on by governmental entities or the public; setting legal requirements for describing location of land boundary corners; requiring certification of compliance be filed for certain documents recorded in public records or deed records; setting requirements for certain plats and descriptions of surveys; requiring official geodetic data to be referenced in the State be defined for National Spatial Reference System; requiring compliance with accuracy and reporting requirements for certain maps, plats, reports, descriptions or geospatial products; clarifying that other coordinate systems, data and geodetic reference networks may be used where appropriate; eliminating obsolete language; and updating references.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. LIMITS AND JURISDICTION.

§1-1-5. West Virginia coordinate systems; definitions; plane coordinates, limitations of use; conversion factor for meters to feet; official geodetic datum.

(a) The following acronyms used throughout this section shall have the following meanings:

1 “FGDC” means the Federal Geographic Data Committee or its successors;

2 “NSRS” means “The National Spatial Reference System” or its successors;

3 “NGS” means “The National Geodetic Survey” or its successors;

4 “SPCS” means “State Plane Coordinate System” or its successors; and
(5) “WVCS” means “The West Virginia Coordinate System”.

(b) The most recent system of plane coordinates which has been established by the NGS, based on the NSRS, and known as the SPCS, for defining and stating the positions or locations of points within West Virginia shall be known and designated as the West Virginia Coordinate System.

c) The plane coordinate values used to express the position or location of a point in this system shall consist of two distances, expressed in U.S. Survey feet and decimals of a foot or in meters and decimals of a meter. One of these distances, to be known as the x-coordinate, shall give the position in an east-and-west direction. The other, to be known as the y-coordinate, shall give the position in a north-and-south direction.

d) The associated factor of one meter equals 39.37/12 United States Survey feet shall be used in any conversion necessitated by changing values from meters to United States Survey feet.

e) For the purpose of the use of this system the state is divided into a North Zone and a South Zone.

The area now included in the following counties is the North Zone: Barbour, Berkeley, Brooke, Doddridge, Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, Wirt and Wood.

The area now included in the following counties is the South Zone: Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lewis, Lincoln, Logan, McDowell, Mason, Mercer, Mingo, Monroe, Nicholas, Pendleton, Pocahontas, Putnam, Raleigh, Randolph, Roane, Summers, Upshur, Wayne, Webster and Wyoming.
(f) As established for use in the North Zone, the WVCS shall be named and in any land description, map, survey or geospatial product in which it is used it shall be designated the WVCS North Zone.

As established for use in the South Zone, WVCS shall be named and in any land description, map, survey or geospatial product in which it is used it shall be designated the WVCS South Zone.

(g) Information and mathematical data for defining the WVCS, and previous versions thereof, including but not limited to, the West Virginia Coordinate System of 1927 and the West Virginia Coordinate System of 1983, and information and mathematical data for translating or converting coordinates between the WVCS and the previous versions thereof, shall be the information and data published by the NGS for such purposes.

(h) For purposes of describing the location of any survey station in the State of West Virginia, it shall be considered a complete, legal and satisfactory description of the location to give the position of the survey station on the WVCS as defined in this section.

(i) Any survey that establishes WVCS coordinates to express definite positions, which is to be used or relied upon by any federal, state or local government entity, or by the public generally, shall be performed:

(1) By a professional surveyor licensed to practice surveying in the State of West Virginia pursuant to §30-13A-1 et seq. of this code; and

(2) In compliance with all other laws, rules or regulations governing surveying in the State of West Virginia;

(3) In compliance with the Geospatial Positioning Accuracy Standards established and published by the FGDC, and in effect at the time the survey is performed.
(j) In addition to any other requirements imposed by law, rule or regulation, any map, plat, report, description or geospatial product that claims to report WVCS coordinates to express definite positions, to be used or relied upon by any federal, state or local government entity, or by the public generally, shall show, or have attached thereto, metadata that meets the requirements established by the FGDC in effect at the time the map, plat, report, description or geospatial product was produced, including a description of the methodology used to establish the WVCS coordinate values reported that is adequate for users to evaluate the accuracy of the coordinates.

(k) For purposes of describing the location of any land boundary corner in the State of West Virginia, it shall be considered a complete, legal and satisfactory description of the location to give the position of the land boundary corner on the WVCS as required in this section, in addition to other location information as may otherwise be required by law, rule or regulation: Provided, That nothing contained in this section requires a purchaser or mortgagee of real property to rely wholly on a land description, any part of which depends exclusively upon the WVCS.

(l) When any tract of land to be defined by a single description extends from one into the other of the coordinate zones specified in this section, the position of all points on its boundaries may refer to either of the two zones. The zone which is being used shall be specifically named in the description.

(m) No coordinates based on the WVCS, purporting to define the position of a point on a land boundary, may be presented to be recorded in any public records or deed records unless a certification is attached thereto and, recorded simultaneously therewith, certifying the coordinates were established in compliance with the laws, rules and regulations governing surveying in West Virginia by a professional surveyor licensed to practice surveying in West Virginia pursuant to §30-13A-1 et seq. of this code.
(n) A plat and a description of survey purporting to define the position of a point on a land boundary by the use of the WVCS must show the following:

(1) The accuracy of the coordinates stated at the 95 percent confidence level and in compliance with the Geospatial Positioning Accuracy Standards established and published by the FGDC in effect at the time of the survey. The coordinate accuracies reported by the surveyor shall take into account the network accuracy of existing control, as well as additional systematic effects:

(2) The applicable datum, datum tag, epoch date in a decimal year format, and the zone that are the basis of the coordinates. The datum, datum tag, epoch date and zone shall be as published by the NGS and shall be shown by an appropriate note, or by suffix such as “NAD83 (2011) epoch 2010.00, WVCS, South Zone”; and

(3) The signature and seal of the professional surveyor licensed to practice surveying in West Virginia pursuant to §30-13A-1 et seq. of this code.

(o) The use of the term “West Virginia Coordinate System North or South Zone” on any map, report or survey or other document shall be limited to coordinates based on the WVCS as defined in this section.

(p) Nothing in this section prevents the recording in any public record of any deed, map, plat, survey, description or of any other document or writing of whatever nature which would otherwise constitute a recordable instrument or document even though the same is not based upon or done in conformity with the WVCS established by this section, nor does nonconformity with the WVCS invalidate any deed, map, plat, survey, description or other document which is otherwise proper.

(q) The official geodetic datums to which geodetic coordinates (including, but not limited to, latitude,
longitude, ellipsoid height, orthometric height or dynamic height) are referenced within the State of West Virginia shall be as defined for the NSRS.

(r) Any map, plat, report, description or geospatial product that establishes or reports geodetic positions referenced to the NSRS for the purpose of expressing definite positions that is to be used by or relied on by any federal, state or local government entity or by the public generally shall comply with the accuracy and reporting requirements set forth above for the WVCS.

(s) The provisions of this chapter shall not be construed to prohibit the appropriate use of other coordinate systems, datums and other geodetic reference networks.

CHAPTER 49

(Com. Sub. for H. B. 2483 - By Delegates Eldridge, Butler, Rohrbach, R. Miller, Sobonya and Iaquinta)

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, all relating to requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any person in its custody that has been transferred to adult jurisdiction of the circuit court and who turns 18 years of age; requiring transfer of juvenile under adult jurisdiction from a juvenile facility upon reaching 18 years of age if he or she has either been convicted or is in a pretrial status; directing the Division of Juvenile Services to notify the circuit court 180 days or as soon as practicable prior to a juvenile reaching 18 years of age; requiring the circuit court to set and conduct a hearing prior to
the transfer to an adult correctional facility; making provisions of law related to victims applicable to proceedings held pursuant to the section; prohibiting persons 18 or older that commit an adult offense while under the custody of the Division of Juvenile Services from being returned to the placement in a juvenile facility; requiring the court to conduct a hearing prior to the completion of the adult sentence; and prohibiting a court from remanding a person who has reached 18 years of age and completed serving an adult sentence to a juvenile facility.

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

**ARTICLE 4. COURT ACTIONS.**

**§49-4-720. Prohibition on committing juveniles to adult facilities.**

(a) A juvenile, including one who has been transferred to criminal jurisdiction of the court, may not be detained or confined in any institution in which he or she has contact with or comes within sight or sound of any adult persons incarcerated because he or she has have been convicted of a crime or are awaiting trial on criminal charges or with the security staff (including management) or direct-care staff of a jail or locked facility for adults.

(b) A child who has been convicted or is awaiting trial of an offense under the adult jurisdiction of the circuit court may not be held in custody in an adult correctional facility of this state while under the age of 18 years. The Division of Juvenile Services shall notify the sentencing court and copy the county prosecuting attorney of the sentencing court within 180 days, or as soon as practicable, that the child will be turning 18 years of age. The court shall, upon receipt of the notice, set the matter for a hearing. Before the child reaches 18 years of age, the court shall hold a hearing and enter an order transferring the offender to an adult correctional facility, a facility for youthful offenders, if applicable: or any other disposition
the court considers appropriate, which does not violate the provisions of subsection (a) of this section: Provided, That the court may not remand a person who reached the age of 18 years to a juvenile facility or place the person with other juveniles.

(c) The provisions of §61-11A-1 et seq. of this code, are applicable to proceedings under this section.

§49-4-722. Conviction for offense while in custody.

(a) Notwithstanding any other provision of law to the contrary, any person who is 18 years of age or older who is convicted as an adult of an offense that he or she committed while in the custody of the Division of Juvenile Services and who is therefore sentenced to a regional jail or state correctional facility for the offense may not be returned to the custody of the division upon the completion of his or her adult sentence.

(b) Prior to completion of the adult sentence specified in §49-4-722(a) of this code, the circuit court having jurisdiction over the underlying juvenile matter shall conduct a hearing to determine whether the person who has turned 18 years of age shall remain in the regional jail during pendency of the underlying juvenile matter or if another disposition or pretrial placement is appropriate and available: Provided, That the court may not remand a child who reached the age of 18 years to a juvenile facility or placement during the pendency of the underlying juvenile matter.
AN ACT to amend and reenact §17-15-4 of the Code of West Virginia, 1931, as amended, relating to removing reference to certain entities with respect to work performed by prisoners; and relating to incarceration sentence reduction for the performance of certain approved work.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. COUNTY CONVICT ROAD FORCE.

§17-15-4. Work by prisoners; relief of sheriffs and others from liability for injuries, etc.

1 Any person convicted of a criminal offense and
2 sentenced to confinement in a county or regional jail may,
3 as incident to such sentence of confinement, be required to
4 perform labor within the jail, as a trustee or otherwise, or in
5 and upon the buildings, grounds, institutions, roads, bridges,
6 streams or other public works of the county or the area
7 within which the regional jail is located if he or she meets
8 the following criteria:
9
10 (1) Such person is at least eighteen years of age;
11
12 (2) Such person is physically and mentally sound and
13 has not been exempted for medical reasons from such work
14 by a licensed physician or other medical professional; and
(3) Such person is considered by the sheriff or the executive director of the West Virginia Regional Jail Authority or designee not to pose a threat to the community if released for work purposes.

(b) The work described in subsection (a) of this section shall be performed under the supervision, care and custody of the executive director of the West Virginia Regional Jail Authority or designee, the sheriff, his or her deputies, correctional officers or other persons charged with inmate supervision to perform maintenance or control litter in this state.

(c) In order to effectuate the provisions of this section, the sheriff or the executive director of the West Virginia Regional Jail and Correctional Facility Authority or designee shall promulgate rules for the safe and useful employment of inmate labor.

(d) Notwithstanding any provision of this code to the contrary, the executive director of the West Virginia Regional Jail Authority or its designee, members and agents, the sheriff, his or her deputies, correctional officers and agents shall be immune from liability of any kind for accidents, injuries or death to such inmate except for accident, injury or death resulting directly from gross negligence or malfeasance.

(e) The sheriff of the county in which the work is to be performed, with the approval of the executive director of the West Virginia Regional Jail Authority or designee, may hire or appoint any personnel necessary for the supervision of inmate labor.

(f) Nothing in this section shall be construed to allow the use of inmate labor for private projects or as contract employees of for-profit businesses.

(g) Any inmate who performs work pursuant to the provisions of this section shall receive, as sole and full
compensation therefor, a reduction in his or her term of incarceration by one day for every eight hours of approved work: Provided, That any reduction of sentence earned pursuant to the provisions of this section shall be in addition to any other reduction of sentence the inmate may accumulate.

(h) Any person being held as a detainee or for contempt may voluntarily participate in such labor as provided for in this section under the terms and conditions hereinbefore set forth.

CHAPTER 51

(Com. Sub. for S. B. 412 - By Senator Trump)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §7-1-3ff of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-29-1 of said code, all relating to providing that any litter control officer who is trained and certified as a law-enforcement officer and whose certification is active has the same authority as any other law-enforcement officer to enforce all litter laws; and including litter control officers in the definition of the term “law-enforcement officer”.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to regulate unsafe or unsanitary structures and refuse on private land; authority to establish an enforcement agency; county litter control
officers; procedure for complaints; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

(a) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the repair, alteration, or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings, except for buildings used for farm purposes on land actually being used for farming, unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents, or other calamities, lack of ventilation, light or sanitary facilities, or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause the dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(b) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the removal and clean up of any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage located on private lands which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(c) The county commission, in formally adopting ordinances, shall designate an enforcement agency which shall consist of the county engineer (or other technically qualified county employee or consulting engineer), county health officer or his or her designee, a fire chief from a county fire company, the county litter control officer, if the commission chooses to hire one, and two members-at-large selected by the county commission to serve two-year terms. The county sheriff shall serve as an ex officio member of the enforcement agency and the county officer charged with
enforcing the orders of the county commission under this section.

(d) In addition to the powers and duties imposed by this section, county litter control officers shall have authority to issue citations for open dumps, as prohibited by §22-15-10(a) of this code, unlawful disposal of litter, as prohibited by §22-15A-4 of this code, and failure to provide proof of proper disposal of solid waste, as prohibited by §22C-4-10(a) of this code, after completing a training course offered by the West Virginia Department of Environmental Protection: Provided, That any litter control officer who is trained and certified as a law-enforcement officer and whose certification is active has the same authority as any other law-enforcement officer to enforce all litter laws in this code. Nothing in this subsection supersedes the authority or duty of the Department of Environmental Protection or other law-enforcement officers to preserve law and order and enforce the litter control program.

(e) Any ordinance adopted pursuant to the provisions of this section shall provide fair and equitable rules of procedure and any other standards considered necessary to guide the enforcement agency, or its agents, in the investigation of dwelling or building conditions, accumulation of refuse or debris, overgrown vegetation, or toxic spillage or toxic seepage and shall provide for fair and equitable rules of procedure for instituting and conducting hearings in the matters before the county commission. Any entrance upon premises for the purpose of making examinations shall be made in a manner that causes the least possible inconvenience to the persons in possession.

(f) (1) Complaints authorized by this section shall be brought before the county commission. Complaints shall be initiated by citation issued by the county litter control officer or petition of the county engineer (or other technically qualified county employee or consulting engineer) on behalf of and at the direction of the enforcement agency, but only after that agency has
investigated and determined that any dwelling, building, accumulation of refuse or debris, overgrown vegetation, or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare and should be repaired, altered, improved, vacated, removed, closed, cleaned, or demolished.

(2) The county commission shall cause the owner or owners of the private land in question to be served with a copy of the complaint. Service shall be accomplished in the manner provided in rule four of the West Virginia Rules of Civil Procedure.

(3) The complaint shall state the findings and recommendations of the enforcement agency and that unless the owner or owners of the property file with the clerk of the county commission a written request for a hearing within 10 days of receipt of the complaint, an order will be issued by the county commission implementing the recommendations of the enforcement agency.

(4) If the owner or owners of the property file a request for a hearing, the county commission shall issue an order setting this matter down for hearing within 20 days. Hearings shall be recorded by electronic device or by court reporter. The West Virginia Rules of Evidence do not apply to the proceedings, but each party has the right to present evidence and examine and cross-examine all witnesses.

(5) The enforcement agency has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence.

(6) At the conclusion of the hearing, the county commission shall make findings of fact, determinations, and conclusions of law as to whether the dwelling or building: Is unfit for human habitation due to dilapidation; has defects that increase the hazard of fire, accidents, or other calamities; lacks ventilation, light, or sanitary facilities; or any other conditions prevailing in the dwelling or building,
whether used for human habitation or not and whether the result of natural or manmade force or effect, which would cause the dwelling or other building to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; or whether there is an accumulation of refuse or debris, overgrown vegetation, toxic spillage or toxic seepage on private lands which is determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(7) The county commission has authority to order the owner or owners thereof to repair, alter, improve, vacate, remove, close, clean up, or demolish the dwelling or building in question or to remove or clean up any accumulation of refuse or debris, overgrown vegetation, or toxic spillage or toxic seepage within a reasonable time and to impose daily civil monetary penalties on the owner or owners who fail to obey an order.

(8) Appeals from the county commission to the circuit court shall be in accordance with the provisions of §58-3-1 et seq. of this code.

(g) Upon the failure of the owner or owners of the private land to perform the ordered duties and obligations as set forth in the order of the county commission, the county commission may advertise for and seek contractors to make the ordered repairs, alterations, or improvements or the ordered demolition, removal, or clean up. The county commission may enter into any contract with any contractor to accomplish the ordered repairs, alterations, or improvements or the ordered demolition, removal, or clean up.

(h) A civil proceeding may be brought in circuit court by the county commission against the owner or owners of the private land or other responsible party that the subject matter of the order of the county commission to subject the private land in question: (1) To a lien for the amount of the
contractor’s costs in making these ordered repairs, alterations, or improvements or ordered demolition, removal, or clean up, together with any daily civil monetary penalty imposed; (2) to order and decree the sale of the private land in question to satisfy the lien; (3) to order and decree that the contractor may enter upon the private land in question at any and all times necessary to make ordered repairs, alterations, or improvements, or ordered demolition, removal, or clean up; and (4) to order the payment of all costs incurred by the county with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

(i) County commissions may receive and accept grants, subsidies, donations, and services in kind consistent with the objectives of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

For the purposes of this article, unless a different meaning clearly appears in the context:

(1) “Approved law-enforcement training academy” means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

(2) “Chief executive” means the Superintendent of the State Police; the chief natural resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief natural resources police officer of the Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement agency;
(3) “County” means the 55 major political subdivisions of the state;

(4) “Exempt rank” means any noncommissioned or commissioned rank of sergeant or above;

(5) “Governor’s Committee on Crime, Delinquency, and Correction” or “Governor’s committee” means the Governor’s Committee on Crime, Delinquency, and Correction established as a state planning agency pursuant to §15-9-1 of this code;

(6) “Law-enforcement officer” means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of §18B-4-5 of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight-enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws, although those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as county litter control officers charged with enforcing litter laws: Provided, That those persons have been trained and certified as law-enforcement officers and that certification is currently active. The term also includes those persons employed as rangers by resort area districts in accordance with the provisions of §7-25-23 of this code, although no resort area district may be considered a law-enforcement agency: Provided, however, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term “law-enforcement officer” does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special natural resources police officer;
(7) “Law-enforcement official” means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

(8) “Municipality” means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

(9) “Subcommittee” or “law-enforcement professional standards subcommittee” means the subcommittee of the Governor’s Committee on Crime, Delinquency, and Correction created by §30-29-2 of this code; and

(10) “West Virginia law-enforcement agency” means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: Provided, That neither the Public Service Commission nor any state institution of higher education nor any resort area district is a law-enforcement agency.

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CHAPTER 52

(Com. Sub. for S. B. 501 - By Senators Drennan, Cline, Jeffries, Karnes, Maroney, Maynard, Rucker, Smith, Swope, Weld, Woelfel, Boso and Plymale)

[Passed March 10, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §7-14D-2 of the Code of West Virginia, 1931, as amended, relating to the accrued benefit of retirees in the Deputy Sheriff Retirement System.

Be it enacted by the Legislature of West Virginia:
ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) “Accrued benefit” means on behalf of any member two and one-quarter percent of the member’s final average salary multiplied by the member’s years of credited service: Provided, That members who are retired on or retire after July 1, 2018, shall have an accrued benefit of two and one-half percent of the member’s final average salary multiplied by the member’s years of credited service. A member’s accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §7-14D-9(a) of this code.

(b) “Accumulated contributions” means the sum of all amounts deducted from the compensation of a member, or paid on his or her behalf pursuant to §5-10C-1 et seq. of this code, either pursuant to §7-14D-7 of this code or §5-10-29 of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) “Active member” means a member who is active and contributing to the plan.

(d) “Active military duty” means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(e) “Actuarial equivalent” means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: Provided,
That when used in the context of compliance with the 
federal maximum benefit requirements of Section 415 of the 
Internal Revenue Code, “actuarial equivalent” shall be 
computed using the mortality tables and interest rates 
required to comply with those requirements.

(f) “Annual compensation” means the wages paid to the 
member during covered employment within the meaning of 
Section 3401(a) of the Internal Revenue Code, but 
determined without regard to any rules that limit the 
remuneration included in wages based upon the nature or 
location of employment or services performed during the 
plan year plus amounts excluded under Section 414(h)(2) of 
the Internal Revenue Code and less reimbursements or other 
expense allowances, cash, or noncash fringe benefits or 
both, deferred compensation, and welfare benefits. Annual 
compensation for determining benefits during any 
determination period may not exceed the maximum 
compensation allowed as adjusted for cost of living in 
accordance with §5-10D-7 of this code and Section 
401(a)(17) of the Internal Revenue Code.

(g) “Annual leave service” means accrued annual leave.

(h) “Annuity starting date” means the first day of the 
first calendar month following receipt of the retirement 
application by the board or the required beginning date, if 
éarlier: Provided, That the member has ceased covered 
employment and reached early or normal retirement age.

(i) “Base salary” means a member’s cash compensation 
exclusive of overtime from covered employment during the 
last 12 months of employment. Until a member has worked 
12 months, annualized base salary is used as base salary.

(j) “Board” means the Consolidated Public Retirement 
Board created pursuant to §5-10D-1 et seq. of this code.

(k) “County commission” has the meaning ascribed to 
it in §7-1-1 of this code.
“Covered employment” means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; (2) the period of time which active duties are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of this code; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 et seq. of this code: Provided, That the deputy sheriff contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy sheriff’s contribution in §7-14D-7 of this code.

“Credited service” means the sum of a member’s years of service, active military duty, disability service, and annual leave service.

“Deputy sheriff” means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by §7-14-2 of this code.

“Dependent child” means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member’s death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member’s household at the time of the member’s death; or

(2) Any unmarried child under age 23:
(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death; and

(C) Whose relationship with the member is described in subparagraph (A), (B), or (C), paragraph (1) of this subdivision.

(p) “Dependent parent” means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death.

(q) “Disability service” means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this code.

(r) “Early retirement age” means age 40 or over and completion of 20 years of service.

(s) “Employer error” means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(t) “Effective date” means July 1, 1998.

(u) “Final average salary” means the average of the highest annual compensation received for covered employment by the member during any five consecutive
plan years within the member’s last 10 years of service. If
the member did not have annual compensation for the five
full plan years preceding the member’s attainment of
normal retirement age and during that period the member
received disability benefits under §7-14D-14 or §7-14D-15
of this code then “final average salary” means the average
of the monthly salary determined paid to the member during
that period as determined under §7-14D-17 of this code
multiplied by 12.

(v) “Fund” means the West Virginia Deputy Sheriff
Retirement Fund created pursuant to §7-14D-6 of this code.

(w) “Hour of service” means:

(1) Each hour for which a member is paid or entitled to
payment for covered employment during which time active
duties are performed. These hours shall be credited to the
member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to
payment for covered employment during a plan year but
where no duties are performed due to vacation, holiday,
illness, incapacity including disability, layoff, jury duty,
military duty, leave of absence, or any combination thereof
and without regard to whether the employment relationship
has terminated. Hours under this paragraph shall be
calculated and credited pursuant to West Virginia Division
of Labor rules. A member will not be credited with any
hours of service for any period of time he or she is receiving
benefits under §7-14D-14 or §7-14D-15 of this code; and

(3) Each hour for which back pay is either awarded or
agreed to be paid by the employing county commission,
irrespective of mitigation of damages. The same hours of
service shall not be credited both under this paragraph and
paragraph (1) or (2) of this subdivision. Hours under this
paragraph shall be credited to the member for the plan year
or years to which the award or agreement pertains rather
than the plan year in which the award, agreement, or payment is made.

(x) “Member” means a person first hired as a deputy sheriff after the effective date of this article, as defined in subdivision (t) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this code.

(y) “Monthly salary” means the portion of a member’s annual compensation which is paid to him or her per month.

(z) “Normal form” means a monthly annuity which is one twelfth of the amount of the member’s accrued benefit which is payable for the member’s life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(aa) “Normal retirement age” means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of service; (2) while still in covered employment, attainment of at least age 50 years, and when the sum of current age plus years of service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years, and completion of five years of service; or (4) attainment of age 62 years and completion of five or more years of service.

(bb) “Partially disabled” means a member’s inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can
be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(cc) “Public Employees Retirement System” means the West Virginia Public Employees Retirement System created by §5-10-1 et seq. of this code.

(dd) “Plan” means the West Virginia Deputy Sheriff Death, Disability, and Retirement Plan established by this article.

(ee) “Plan year” means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(ff) “Qualified public safety employee” means any employee of a participating state or political subdivision who provides police protection, fire-fighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(gg) “Regular interest” means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(hh) “Required beginning date” means April 1 of the calendar year following the later of: (i) The calendar year in which the member attains age 70 and one half; or (ii) the
calendar year in which he or she retires or otherwise separates from covered employment.

(ii) “Retire” or “retirement” means a member’s withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(jj) “Retirement income payments” means the annual retirement income payments payable under the plan.

(kk) “Spouse” means the person to whom the member is legally married on the annuity starting date.

(ll) “Surviving spouse” means the person to whom the member was legally married at the time of the member’s death and who survived the member.

(mm) “Totally disabled” means a member’s inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) “Physical or mental impairment” is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member’s receipt of Social Security
disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(nn) “Year of service”. — A member shall, except in his or her first and last years of covered employment, be credited with year of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Years of Service Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

During a member’s first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §7-14D-14 or §7-14D-15 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §7-14D-13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.
AN ACT to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to expanding county commissions’ ability to dispose of county or district property; adding the ability of county commissions to dispose of such property to an authority, commission, instrumentality, or agency established by act of the State of West Virginia or any of its political subdivisions; noting that such sales are not required to be made considering the property’s present commercial or market value; setting a minimum value for such sales; revising the requirement that property conveyed to volunteer fire department or volunteer ambulance service, or to an authority, commission, instrumentality, or agency, reverts back to county commission following termination of use; and, to provide that such reversionary right may be disclaimed in a deed by the county commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. COUNTY PROPERTY.

§7-3-3. Sale of county or district property.

1 (a) Except as may be prohibited by law or otherwise, the county commission of a county is authorized by law to sell or dispose of any property, either real or personal, belonging to the county or held by it for the use of any district thereof.  
2 The property shall be sold either at an on-site public auction or by utilizing an Internet-based public auction service, and
such sale shall be conducted by the president of the county commission, but before making any such sale, notice of the time, terms, manner and either the location of the sale or the Internet-based public auction service to be utilized, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county: Provided, That this section shall not apply to the sale of any one item of property of less value than $1,000.

(b) The provisions of subsection (a) of this section concerning sale at public auction shall not apply to a county commission selling or disposing of its property for a public use to:

(1) The United States of America, its instrumentalities, agencies or political subdivisions;

(2) The State of West Virginia, or its political subdivisions, including county boards of education, volunteer fire departments, and volunteer ambulance services; or

(3) Any authority, commission, instrumentality, or agency established by act of the State of West Virginia or any of its political subdivisions.

(4) For all sales made pursuant to this subsection, county commissions are not required to exclusively consider the present commercial or market value of the property; and

(5) A sale under the provisions of this subsection shall not be for less than $1.

(c) For all real property conveyed or sold by a county commission to a volunteer fire department, volunteer ambulance service, or any other authority, commission, instrumentality, or agency, under the provisions of
subsection (b) of this section, such real property shall revert back to the county commission if the volunteer fire department, volunteer ambulance service, authority, commission, instrumentality, or agency proposes to dispose of the property, unless the county commission explicitly disclaims this reversionary right in writing in the deed of conveyance.

CHAPTER 54
(Com. Sub. for S. B. 528 - By Senator Trump)

[Passed March 9, 2018; in effect ninety days from passage.] [Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §51-2-1 of the Code of West Virginia, 1931, as amended, relating to providing for an additional circuit court judge for the nineteenth judicial circuit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

(a) The state shall be divided into the following judicial circuits with the following number of judges:

(1) The counties of Brooke, Hancock, and Ohio shall constitute the first circuit and shall have four judges;

(2) The counties of Marshall, Tyler, and Wetzel shall constitute the second circuit and shall have two judges;
(3) The counties of Doddridge, Pleasants, and Ritchie shall constitute the third circuit and shall have one judge;

(4) The counties of Wood and Wirt shall constitute the fourth circuit and shall have three judges;

(5) The counties of Calhoun, Jackson, Mason, and Roane shall constitute the fifth circuit and shall have two judges: Provided, That effective January 1, 2017, said circuit court shall have three judges; said additional circuit judge to be elected at the regularly scheduled election(s) to be held in the year 2016 and every eighth year thereafter;

(6) The county of Cabell shall constitute the sixth circuit and shall have four judges;

(7) The county of Logan shall constitute the seventh circuit and shall have two judges;

(8) The county of McDowell shall constitute the eighth circuit and shall have two judges;

(9) The county of Mercer shall constitute the ninth circuit and shall have three judges;

(10) The county of Raleigh shall constitute the tenth circuit and shall have three judges: Provided, That effective January 1, 2017, said circuit court shall have four judges; said additional circuit judge to be elected at the regularly scheduled election(s) to be held in the year 2016 and every eighth year thereafter;

(11) The counties of Greenbrier and Pocahontas shall constitute the eleventh circuit and shall have two judges;

(12) The county of Fayette shall constitute the twelfth circuit and shall have two judges;

(13) The county of Kanawha shall constitute the thirteenth circuit and shall have seven judges;
(14) The counties of Braxton, Clay, Gilmer, and Webster shall constitute the fourteenth circuit and shall have two judges;

(15) The county of Harrison shall constitute the fifteenth circuit and shall have three judges;

(16) The county of Marion shall constitute the sixteenth circuit and shall have two judges;

(17) The county of Monongalia shall constitute the seventeenth circuit and shall have three judges;

(18) The county of Preston shall constitute the eighteenth circuit and shall have one judge;

(19) The counties of Barbour and Taylor shall constitute the nineteenth circuit and shall have one judge: Provided, That effective January 1, 2019, said circuit court shall have two judges; said additional circuit judge to be appointed by the Governor and subsequently elected at the next scheduled primary election to be held in 2020 for the unexpired term pursuant to §3-10-3 of this code: Provided, however, That said additional circuit judge shall thereafter be elected at the regularly scheduled election(s) to be held in the year 2024 and every eighth year thereafter;

(20) The county of Randolph shall constitute the twentieth circuit and shall have one judge;

(21) The counties of Grant, Mineral, and Tucker shall constitute the twenty-first circuit and shall have two judges;

(22) The counties of Hampshire, Hardy, and Pendleton shall constitute the twenty-second circuit and shall have two judges;

(23) The counties of Berkeley, Jefferson, and Morgan shall constitute the twenty-third circuit and shall have five judges: Provided, That effective January 1, 2017, said circuit court shall have six judges; said additional circuit
judge to be elected at the regularly scheduled election(s) to be held in the year 2016 and every eighth year thereafter;

(24) The county of Wayne shall constitute the twenty-fourth circuit and shall have two judges;

(25) The counties of Lincoln and Boone shall constitute the twenty-fifth circuit and shall have two judges;

(26) The counties of Lewis and Upshur shall constitute the twenty-sixth circuit and shall have one judge: Provided, That effective January 1, 2017, said circuit court shall have two judges; said additional circuit judge to be elected at the regularly scheduled election(s) to be held in the year 2016 and every eighth year thereafter;

(27) The county of Wyoming shall constitute the twenty-seventh circuit and shall have one judge;

(28) The county of Nicholas shall constitute the twenty-eighth circuit and shall have one judge;

(29) The county of Putnam shall constitute the twenty-ninth circuit and shall have two judges;

(30) The county of Mingo shall constitute the thirtieth circuit and shall have one judge; and

(31) The counties of Monroe and Summers shall constitute the thirty-first circuit and shall have one judge.

(b) The Kanawha County circuit court shall be a court of concurrent jurisdiction with each single judge circuit where the sitting judge in the single judge circuit is unavailable by reason of sickness, vacation, or other reason.

(c) Any judge in office on the effective date of the reenactment of this section shall continue as a judge of the circuit as constituted under prior enactments of this section, unless sooner removed or retired as provided by law, until December 31, 2016.
(d) The term of office of all circuit court judges shall be for eight years. The term of office for all circuit court judges elected during an election conducted in the year 2016 shall commence on January 1, 2017, and end on December 31, 2024.

(e) For election purposes, in every judicial circuit having two or more judges there shall be numbered divisions corresponding to the number of circuit judges in each circuit. Each judge shall be elected at large from the entire circuit. In each numbered division of a judicial circuit, the candidates for nomination or election shall be voted upon, and the votes cast for the candidates in each division shall be tallied separately from the votes cast for candidates in other numbered divisions within the circuit. The candidate receiving the highest number of the votes cast within a numbered division shall be nominated or elected, as the case may be.

(f) Judges serving a judicial circuit comprised of four or more counties with two or more judges shall not be residents of the same county.

(g) The Supreme Court of Appeals shall, by rule, establish the terms of court of circuit judges.

CHAPTER 55

(Com. Sub. for H. B. 4036 - By Delegate Cowles)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §51-2A-6 of the Code of West Virginia, 1931, relating generally to salaries of family court employees; and increasing the maximum salaries of family case coordinators and secretary-clerks.
Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. FAMILY COURTS.


(a) A family court judge is entitled to receive as compensation for his or her services an annual salary of $62,500: Provided, That beginning July 1, 2005, a family court judge is entitled to receive as compensation for his or her services an annual salary of $82,500: Provided, however, That beginning July 1, 2011, the annual salary of a family court judge shall be $94,500.

(b) The secretary-clerk of the family court judge is appointed by the family court judge and serves at his or her will and pleasure. The secretary-clerk of the family court judge is entitled to receive an annual salary of $27,036: Provided, That on and after July 1, 2006, the annual salary of the secretary-clerk shall be established by the administrative director of the Supreme Court of Appeals, but may not exceed $39,000. In addition, any person employed as a secretary-clerk to a family court judge on the effective date of the enactment of this section during the sixth extraordinary session of the Legislature in the year 2001 who is receiving an additional $500 per year up to ten years of a certain period of prior employment under the provisions of the prior enactment of §51-2A-8 of this during the second extraordinary session of the Legislature in the year 1999 shall continue to receive such additional amount. Further, the secretary-clerk will receive such percentage or proportional salary increases as may be provided by general law for other public employees and is entitled to receive the annual incremental salary increase as provided in §5-5-1 et seq. of this code.

(c) The family court judge may employ not more than one family case coordinator who serves at his or her will and pleasure. The annual salary of the family case coordinator
of the family court judge shall be established by the Administrative Director of the Supreme Court of Appeals but may not exceed $36,000: Provided, That on and after July 1, 2006, the annual salary of the family case coordinator of the family court judge may not exceed $51,000. The family case coordinator will receive such percentage or proportional salary increases as may be provided by general law for other public employees and is entitled to receive the annual incremental salary increase as provided in §5-5-1 et seq. of this code.

(d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court judge. The sheriff of each county shall serve or designate persons to serve so as to assure that a bailiff is available when a family court judge determines the same is necessary for the orderly and efficient conduct of the business of the family court.

(e) Disbursement of salaries for family court judges and members of their staffs are made by or pursuant to the order of the Director of the Administrative Office of the Supreme Court of Appeals.

(f) Family court judges and members of their staffs are allowed their actual and necessary expenses incurred in the performance of their duties. The expenses and compensation will be determined and paid by the Director of the Administrative Office of the Supreme Court of Appeals under such guidelines as he or she may prescribe, as approved by the Supreme Court of Appeals.

(g) Notwithstanding any other provision of law, family court judges are not eligible to participate in the retirement system for judges under the provisions of §51-9-1 et seq. of this code.
AN ACT to amend and reenact §61-3-11 of the Code of West Virginia, 1931, as amended, relating to the crime of burglary; eliminating the offense of daytime burglary; making breaking and entering or entering without breaking into a dwelling or outbuilding thereof a felony regardless of time of day; and establishing the criminal penalty for burglary.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-11. Burglary; entry of dwelling or outhouse; penalties.

(a) Any person who breaks and enters, or enters without breaking, a dwelling house or outbuilding adjoining a dwelling with the intent to commit a violation of the criminal laws of this state is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than 15 years.

(b) The term “dwelling house”, as used in §61-3-11(a) of this code, includes, but is not limited to, a mobile home, house trailer, modular home, factory-built home, or self-propelled motor home, used as a dwelling regularly or only from time to time, or any other nonmotorized vehicle primarily designed for human habitation and occupancy and used as a dwelling regularly or only from time to time.
AN ACT to amend and reenact §61-2-13 of the Code of West Virginia, 1931, as amended, relating to the crime of extortion; providing that extorting anything of value, including sexual contact, sexual intercourse, or an image of an intimate body part qualifies as extortion and subjects a person to a criminal penalty; defining terms; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-13. Extortion or attempted extortion by threats; penalties.

(a) A person who threatens injury to the character, person, or property of another person, or to the character, person, or property of his or her spouse or child, or accuses him or her or them of a criminal offense, and thereby obtains anything of value, or other consideration, he or she is guilty of a felony and, upon conviction, shall be confined in a correctional facility not less than one nor more than five years. A person who makes such threat of injury or accusation of an offense as set forth in this section, but fails to obtain anything of value or other consideration, is guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than 12 months and fined not less than $50 nor more than $500.
CHAPTER 58

(Com. Sub. for S. B. 397 - By Senators Sypolt, Facemire, Romano and Cline)

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-15-9, relating to making it a misdemeanor to impersonate a person who is blind or disabled; making it a misdemeanor for a person to fraudulently represent himself or herself to be the owner or trainer of a service animal; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. WHITE CANE LAW.


(a) Any person who falsely represents to another that he or she is a person who is blind or a person with a disability with the intent to obtain any right or privilege protected by the provisions of §5-15-4 of this code is guilty of a misdemeanor and upon conviction thereof shall be fined not more than $200 or confined in jail for not more than 10 days, or both fined and confined.

(b) Any person who falsely represents that an animal is a service animal in order to obtain any right or privilege protected by the provisions of §5-15-4 of this code is guilty of a misdemeanor and, upon conviction, shall be fined not
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3-59, relating to creating the offense of misrepresentation of military status or honors with the intent to obtain money, property, or anything of value; and providing criminal penalties based upon value.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-59. Misrepresentation of past or present military status or military awards to obtain anything of value; penalties.

(a) Any person who misrepresents himself or herself to:
(1) Be a member or veteran of the armed forces of the United States; or

(2) Be a recipient of any military commendation, decoration, or medal awarded to members of the armed forces of the United States or the several states who does so with the intent to obtain money, property, or a thing of value is guilty of the offense of misrepresentation of military status.

(b)(1) Any person violating the provisions of §61-3-59(a) of this code where the value of the money, property, or thing of value is $1,000 or more shall be guilty of a felony and, upon conviction thereof, be fined not more than $5,000, or imprisoned in a state correctional facility for not less than one nor more than 10 years, or both fined and imprisoned.

(2) Any person violating the provisions of §61-3-59(a) of this code where the value of the money, property, or thing of value is $999 or less, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,500, or confined in jail for not more than one year, or both fined and confined.

CHAPTER 60


[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3C-14c, relating to creating the offense of cyberbullying of minors;
setting forth the essential elements of the offense; defining terms; providing exceptions; and establishing criminal penalties.

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

**ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

§61-3C-14c. Cyberbullying or specific acts of electronic harassment of minors; definitions; penalties; exceptions.

(a) It is unlawful for a person to knowingly and intentionally use a computer or computer network, as defined in §61-3C-3, to engage in conduct with the intent to harass, intimidate, or bully a minor, including, but not limited to:

1. Posting, disseminating or encouraging others to post or disseminate private, personal, or sexual information pertaining to a minor on the Internet; or

2. Posting obscene material, as defined in §61-3C-14a of this code, in a real or doctored image of a minor on the Internet;

(b) For the purposes of this section:

1. “Harass, intimidate or bully” means any intentional gesture, or any intentional electronic, written, verbal, or physical act, communication, transmission or threat that:

   (A) A reasonable person under the circumstances should know the act will have the effect of any one or more of the following:

   (i) Physically harming a minor;

   (ii) Damaging a minor’s property;

   (iii) Placing a minor in reasonable fear of harm to his or her person; or
(iv) Placing a minor in reasonable fear of damage to his or her property; or

(B) Is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or emotionally abusive environment for a minor.

(2) “Minor” means an individual under the age of 18 years old.

(c) This section does not apply to a peaceful activity intended to:

(i) Express a political view; or

(ii) Provide information to others with no intent to harass, intimidate, or bully.

(d) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or confined in jail for a period not to exceed one year, or both confined and fined.

CHAPTER 61

(Com. Sub. for H. B. 3005 - By Delegates Fast, Hanshaw, Overington, Kessinger and Gearheart)

[Passed March 7, 2018; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2018.]  

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-16-1 and §61-16-2, all relating to regulation of unmanned aircraft systems; defining terms; creating misdemeanor criminal offense for certain conduct using an unmanned aircraft system and setting penalties therefor; creating felony criminal offense for
operating an unmanned aircraft system equipped with a lethal
weapon, creating an exception thereto for military purposes in
an official capacity; and setting penalties therefor; creating
felony criminal offense for operating an unmanned aircraft
system with the intent to cause damage or disrupt in any way
the flight of a manned aircraft and setting penalties therefor;
and creating an exception for operating an unmanned aircraft
system for commercial purposes that is authorized by the
Federal Aviation Administration in a manner that is consistent
with federal law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. USE OF UNMANNED AIRCRAFT SYSTEMS.

§61-16-1. Definitions.

1 As used in this article:

2 (1) “Aircraft” means any device now known or
3 subsequently invented, used, or designed for flight in the air,
4 including, but not limited to, unmanned aircraft vehicles or
5 systems;

6 (2) “Unmanned aircraft system” or “system” means an
7 aircraft that is operated without direct human intervention
8 from inside or on the aircraft and includes the crewmember,
9 the associated support equipment, the control station, data
10 links, telemetry, communications, and navigation
11 equipment necessary to operate the unmanned aircraft,
12 including, but not limited to, drones;

13 (3) “Unmanned aircraft system operator” or “operator”
14 means a person exercising control over an unmanned
15 aircraft system during flight.

§61-16-2. Prohibited use of an unmanned aircraft system;
criminal penalties.

1 (a) Except as authorized by the provisions of this article,
2 a person may not operate an unmanned aircraft system:
(1) To knowingly and intentionally capture or take photographs, images, video, or audio of another person or the private property of another, without the other person’s permission, in a manner that would invade the individual’s reasonable expectation of privacy, including, but not limited to, capturing, or recording through a window;

(2) To knowingly and intentionally view, follow, or contact another person or the private property of another without the other person’s permission in a manner that would invade the individual’s reasonable expectation of privacy, including, but not limited to, viewing, following, or contacting through a window;

(3) To knowingly and intentionally harass another person;

(4) To violate a restraining order or similar judicial order;

(5) To act with a willful wanton disregard for the safety of persons or property; or

(6) To knowingly and intentionally operate an unmanned aircraft system in a manner that interferes with the official duties of law enforcement personnel or emergency medical personnel.

(b) Any person violating the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 or confined in jail for not more than one year, or both fined and confined.

(c) Any person who equips an unmanned aircraft system with any deadly weapon or operates any unmanned aircraft system equipped with any deadly weapon, other than for military in an official capacity, is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.
(d) Any person who operates an unmanned aircraft system with the intent to cause damage to or disrupt in any way the flight of a manned aircraft is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 imprisoned for not less than one nor more than five years, or both fined and imprisoned.

(e) A person that is authorized by the Federal Aviation Administration to operate unmanned aircraft systems for commercial purposes may operate an unmanned aircraft system in this state for such purposes if the unmanned aircraft system is operated in a manner consistent with federal law.

CHAPTER 62

(Com. Sub. for S. B. 469 - By Senators Weld, Boso, Unger, Ferns, Maroney, Clements and Cline)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §62-15A-1, §62-15A-2, and §62-15A-3 of the Code of West Virginia, 1931, as amended, all relating to converting the Addiction Treatment Pilot Program into a permanent program; placing the program under the control of the Department of Military Affairs and Public Safety; permitting certain funding to come from a combination of sources; and requiring reports to be submitted annually.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. ADDICTION TREATMENT PROGRAM.

As used in this article:

“Addiction service provider” means a person licensed by this state to provide addiction and substance abuse services to persons addicted to opioids.

“Adult drug court judge” means a circuit court judge operating a drug court as defined in §62-15-2 of this code.

“Adult Drug Court Program” means an adult treatment court established by the Supreme Court of Appeals of West Virginia pursuant to this article and §62-15-1 et seq. of this code.

“Authority” means the Regional Jail and Correctional Facility Authority.

“Circuit court” means those courts set forth in §51-2-1 et seq. of this code.

“Court” means the Supreme Court of Appeals of West Virginia.

“Department” means the Department of Military Affairs and Public Safety.

“Division” means the Division of Corrections.

“LS/CMI assessment criteria” means the level of service/case management inventory which is an assessment tool that measures the risk and need factors of adult offenders.

“Medication-assisted treatment” means the use of medications, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.

“Prescriber” means an individual currently licensed and authorized by this state to prescribe and administer prescription drugs in the course of their professional practice.

(a) The Department of Military Affairs and Public Safety Program. –

(1) The secretary of the department shall establish a program to provide addiction treatment, including medication-assisted treatment, to persons who are offenders within the criminal justice system, eligible to participate in a program, and selected under this section to be participants in the program because of their dependence on opioids.

(2) In the case of the medication-assisted treatment provided under the program, a drug may be used only if it has been approved by the United States Food and Drug Administration for use in the prevention of relapse to opioid dependence and in conjunction with psychosocial support, provided as part of the program, appropriate to patient needs.

(3) The department may limit the number of participants.

(b) Court program. –

(1) If the court’s adult drug court program participates in a drug addiction program, the court shall select persons who are participants in the Adult Drug Court program, who have been clinically assessed and diagnosed with opioid addiction. Participants must either be eligible for Medicaid or eligible for a state, federal, or private grant or other funding source or combination of sources that provides for the full or partial payment of the treatment necessary to participate in the program. After being enrolled in the program, participants shall comply with all requirements of the adult drug court program.

(2) Treatment may be provided under this subsection only by a treatment provider who is approved by the court or adult drug court program consistent with the policies and
procedures for adult drug courts developed by the court. In serving as a treatment provider, a treatment services provider shall do all of the following:

(A) Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(B) Conduct any necessary additional professional, comprehensive substance abuse and mental health diagnostic assessments of persons under consideration for selection as pilot program participants to determine whether they would benefit from substance abuse treatment and monitoring;

(C) Determine, based on the assessments described in §62-15A-2(b)(2)(B) of this code the treatment needs of the participants served by the treatment provider;

(D) Develop, for the participants served by the treatment provider, individualized goals and objectives;

(E) Provide access to the non-narcotic, long-acting antagonist therapy included in the pilot program’s medication-assisted treatment; and

(F) Provide other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders.

(c) (1) The Division of Corrections shall select persons, within the custody of the Division of Corrections, who are determined to be at high risk using the LS/CMI assessment criteria to participate in the program. Participants must either be eligible for Medicaid or eligible for a state, federal, or private grant or other funding source or combination of sources that provide for the full or partial payment of the treatment necessary to participate in the program. After being enrolled in the program, a participant shall comply with all requirements of the treatment program.
(2) A participant shall:

(A) Receive treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(B) Submit to professional, comprehensive substance abuse and mental health diagnostic assessments to determine whether the participant would benefit from substance abuse treatment and monitoring;

(C) Receive, based on the assessments described in §62-15A-2(b)(2)(B) of this code, the treatment needs of the participants served by the treatment provider;

(D) Submit to the treatment provider individualized goals and objectives;

(E) Receive the non-narcotic, long-acting antagonist therapy included in the program’s medication-assisted treatment; and

(F) Participate in other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders.

(d) (1) The Regional Jail and Correctional Facility Authority shall select only persons who are serving a sentence for a felony or misdemeanor who are determined to be at high risk using the LS/CMI assessment criteria for the pilot program. Participants must either be eligible for Medicaid or eligible for a state, federal, or private grant or other funding source or combination of sources that provides for the full or partial payment of the treatment necessary to participate in the program. After being enrolled in the program, a participant shall comply with all requirements of the treatment program.

(2) A participant shall:
(A) Receive treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(B) Submit to professional, comprehensive substance abuse and mental health diagnostic assessments to determine whether the person would benefit from substance abuse treatment and monitoring;

(C) Receive, based on the assessments described in §62-15A-2(b)(2)(B) of this code, the treatment needs of the participants served by the treatment provider;

(D) Submit to the treatment provider individualized goals and objectives;

(E) Receive the non-narcotic, long-acting antagonist therapy included in the program’s medication-assisted treatment; and

(F) Participate in other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders.

(3) If a participant begins participation in the treatment pilot program while in the custody of the Commissioner of Corrections, but is confined in a regional jail and transferred to a Division of Corrections facility before completing the treatment program, the Division of Corrections shall ensure that the participant’s treatment under the program will continue and that upon successful completion the participant shall receive credit off his or her sentence as would have occurred had he or she remained in the authority facility until successful completion.


(a) The department and the court shall prepare a report annually.
(b) The report shall include:

1. Number of participants;
2. Number of participants successfully completing the program;
3. Offenses committed or offense convicted of;
4. Recidivism rate;
5. Potential cost saving or expenditures;
6. A statistical analysis which determines the effectiveness of the program; and
7. Any other information the reporting entity finds pertinent.

(c) The department shall submit the report to:

1. The Governor;
2. The Chief Justice of the Supreme Court of Appeals of West Virginia; and
3. The Joint Committee on Government and Finance.

(d) The report shall be submitted by July 1, 2019, and annually thereafter.
CHAPTER 63

(Com. Sub. for H. B. 4276 - By Delegates Canestraro, Hanshaw, Shott, Isner, R. Miller, Robinson and Frich)

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §62-11A-1 of the Code of West Virginia, 1931, as amended, relating to allowing magistrates to grant work release privileges.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.


(a) When a defendant is sentenced or committed for a term of one year or less by a court of record having criminal jurisdiction, the court may in its order grant to the defendant the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

1. To work at his or her employment;
2. To seek employment;
3. To conduct his or her own business or to engage in other self-employment, including housekeeping and attending to the needs of his or her family;
4. To attend an educational institution;
5. To obtain medical treatment;
(6) To devote time to any other purpose approved of or ordered by the court, including participation in the litter control program of the county unless the court specifically finds that this alternative service would be inappropriate.

(b) When a defendant is sentenced or committed for a term of one year or less by a magistrate of the state of West Virginia having criminal jurisdiction, the court may in its order grant to the defendant the privilege of leaving the jail during necessary and reasonable hours to work at his or her employment.

(c) Whenever an inmate who has been granted the privilege of leaving the jail under this section is not engaged in the activity for which the leave is granted, he or she shall be confined in jail.

(d) An inmate sentenced to ordinary confinement may petition the court at any time after sentence for the privilege of leaving jail under this section and may renew his or her petition in the discretion of the court. The court may withdraw the privilege at any time by order entered with or without notice.

(e) If the inmate has been granted permission to leave the jail to seek or take employment, the court’s probation officers or, if none, the jail shall assist him or her in obtaining suitable employment and in making certain that employment already obtained is suitable. Employment shall not be deemed suitable if the wages or working conditions or other circumstances present a danger of exploitation or of interference in a labor dispute in the establishment in which the inmate would be employed.

(f) An inmate who is serving his or her sentence pursuant to this section shall be eligible for a reduction of his or her term for good behavior and faithful performance of duties in the same manner as if he or she had served his or her term in ordinary confinement.
(g) The court shall not make an order granting the privilege of leaving the institution under this section unless it is satisfied that there are adequate facilities for the administration of such privilege in the jail or other institution in which the defendant will be confined.

(h) In every case wherein the defendant has been convicted of an offense, defined in section twelve, article eight, chapter sixty-one of this code or in article eight-b or eight-d of said chapter against a child, the defendant shall not live in the same residence as any minor child, nor exercise visitation with any minor child and shall have no contact with the victim of the offense: Provided, That the defendant may petition the court of the circuit wherein he or she was so convicted for a modification of this term and condition of this probation and the burden shall rest upon the defendant to demonstrate that a modification is in the best interest of the child.

CHAPTER 64

(Com. Sub. for H. B. 4502 - By Delegates Barrett, Kessinger, Moore, Sobonya, R. Miller, Lovejoy, Canestraro and Harshbarger)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §62-1D-8 of the Code of West Virginia, 1931, as amended, relating to including treason, murder, certain degrees of robbery, certain felony sexual offenses, and organized criminal activity to the list of offenses for which a prosecutor may apply for an order authorizing interception of communications.

Be it enacted by the Legislature of West Virginia:
ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.

The prosecuting attorney of any county or duly appointed special prosecutor may apply to one of the designated circuit judges referred to in §62-1D-7 of this code and the judge, in accordance with the provisions of this article, may grant an order authorizing the interception of wire, oral, or electronic communications by an officer of the investigative or law-enforcement agency when the prosecuting attorney or special prosecutor has shown reasonable cause to believe the interception would provide evidence of the commission of: (1) Kidnapping or abduction as defined and prohibited by the provisions of §61-2-14 and §61-2-14a of this code and including threats to kidnap or demand ransom as defined and prohibited by the provisions of §61-2-14c of this code; (2) any offense included and prohibited by §25-4-11 of said code, §61-5-8, §61-5-9 and §61-5-10 or §62-8-1 of this code to the extent that any of said sections provide for offenses punishable as a felony; (3) felony violations of §60A-1-101 et seq. of this code; (4) violations of §61-14-1 et seq. of this code; (5) violations of §61-2-1 of this code; (6) violations of §61-2-12 of this code; (7) felony violations of §61-8B-1 et seq. of this code; (8) violations of §61-1-1 of this code; (9) violations of §61-13-3 of this code; or (10) any aider or abettor to any of the offenses referenced in this section or any conspiracy to commit any of the offenses referenced in this section if any aider, abettor, or conspirator is a party to the communication to be intercepted.
AN ACT to amend and reenact §48-6-301 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-9-205 and §48-9-206 of said code, all relating to domestic relations; removing language related to child support from code section governing the awarding of spousal support and separate maintenance; directing court to consider certain factors to decide amount and duration of spousal support and separate maintenance; removing the 24-month time frame for a description of the allocation of caretaking and other parenting responsibilities performed from the matters contained in permanent parenting plan; clarifying that the court may accommodate the preferences of a child 14 years of age and older if the court determines it is in the best interests of the child; directing court to allocate custodial responsibility so that custodial time spent with each parent achieves certain objectives; directing courts to consider which parent will encourage and accept a positive relationship between child and other parent and which parent is more likely to keep other parent involved in child’s life and activities; and allowing court to consider allocation of custodial responsibility arising from temporary agreements in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. PROPERTY SETTLEMENT OR SEPARATION AGREEMENTS.

PART III. RELIEF IN ABSENCE OF AGREEMENT.
§48-6-301. Factors considered in awarding spousal support and separate maintenance.

(a) In cases where the parties to an action commenced under the provisions of this article have not executed a separation agreement, or have executed an agreement which is incomplete or insufficient to resolve the outstanding issues between the parties, or where the court finds the separation agreement of the parties not to be fair and reasonable or clear and unambiguous, the court shall proceed to resolve the issues outstanding between the parties.

(b) The court shall consider the following factors in determining the amount and duration of spousal support and separate maintenance, if any, to be ordered under the provisions of parts V and VI, §48-5-1 et seq. of this code as a supplement to or in lieu of the separation agreement:

(1) The length of time the parties were married;

(2) The period of time during the marriage when the parties actually lived together as husband and wife;

(3) The present employment income and other recurring earnings of each party from any source;

(4) The income-earning abilities of each of the parties, based upon such factors as educational background, training, employment skills, work experience, length of absence from the job market, and custodial responsibilities for children;

(5) The distribution of marital property to be made under the terms of a separation agreement or by the court under the provisions of §48-7-6 et seq. of this code, insofar as the distribution affects or will affect the earnings of the parties and their ability to pay or their need to receive spousal support and separate maintenance: Provided, That for the purposes of determining a spouse’s ability to pay spousal support, the court may not consider the income
generated by property allocated to the payor spouse in
connection with the division of marital property unless the
court makes specific findings that a failure to consider
income from the allocated property would result in
substantial inequity;

(6) The ages and the physical, mental, and emotional
condition of each party;

(7) The educational qualifications of each party;

(8) Whether either party has foregone or postponed
economic, education, or employment opportunities during
the course of the marriage;

(9) The standard of living established during the
marriage;

(10) The likelihood that the party seeking spousal
support and separate maintenance can substantially increase
his or her income-earning abilities within a reasonable time
by acquiring additional education or training;

(11) Any financial or other contribution made by either
party to the education, training, vocational skills, career, or
earning capacity of the other party;

(12) The anticipated expense of obtaining the education
and training described in §48-6-301(b)(10) of this code;

(13) The costs of educating minor children;

(14) The costs of providing health care for each of the
parties and their minor children;

(15) The tax consequences to each party;

(16) The extent to which it would be inappropriate for a
party, because that party will be the custodian of a minor
child or children, to seek employment outside the home;

(17) The financial need of each party;

(18) The legal obligations of each party to support
himself or herself and to support any other person;
(19) Costs and care associated with a minor or adult child’s physical or mental disabilities; and

(20) Any other factors as the court determines necessary or appropriate to consider in order to arrive at a fair and equitable grant of spousal support and separate maintenance.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

*§48-9-205. Permanent parenting plan.

(a) A party seeking a judicial allocation of custodial responsibility or decision-making responsibility under this article shall file a proposed parenting plan with the court. Parties may file a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably discoverable by the filing party or parties:

(1) The name, address, and length of residence of any adults with whom the child has lived for one year or more, or in the case of a child less than one year of age, any adults with whom the child has lived since the child’s birth;

(2) The name and address of each of the child’s parents and any other individuals with standing to participate in the action under §48-9-103 of this code;

(3) A description of the allocation of caretaking and other parenting responsibilities performed by each person named in §48-9-205(a)(1) and §48-9-205(a)(2) of this code;

(4) A description of the work and child-care schedules of any person seeking an allocation of custodial responsibility and any expected changes to these schedules in the near future;

*NOTE: This section was also amended by H. B. 4020 (Chapter 37), which passed prior to this act.
(5) A description of the child’s school and extracurricular activities;

(6) A description of any of the limiting factors as described in §48-9-209 of this code that are present, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction;

(7) Required financial information; and

(8) A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

The court shall maintain the confidentiality of any information required to be filed under this section when the person giving that information has a reasonable fear of domestic abuse, and disclosure of the information would increase that fear.

(b) The court shall develop a process to identify cases in which there is credible information that child abuse or neglect as defined in §49-1-201 of this code or domestic violence as defined in §48-27-202 of this code has occurred. The process shall include assistance for possible victims of domestic abuse in complying with §48-9-205(a)(6) of this code and referral to appropriate resources for safe shelter, counseling, safety planning, information regarding the potential impact of domestic abuse on children, and information regarding civil and criminal remedies for domestic abuse. The process shall also include a system for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible information that child abuse or domestic abuse has occurred receive the court review that is mandated by §48-9-202(b) of this code.

(c) Upon motion of a party and after consideration of the evidence, the court shall order a parenting plan consistent
with the provisions of §48-9-206 through §48-9-209 of this code, containing:

(1) A provision for the child’s living arrangements and each parent’s custodial responsibility, which shall include either:

(A) A custodial schedule that designates in which parent’s home each minor child will reside on given days of the year; or

(B) A formula or method for determining a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(2) An allocation of decision-making responsibility as to significant matters reasonably likely to arise with respect to the child;

(3) A provision consistent with §48-9-202 of this code for resolution of disputes that arise under the plan and remedies for violations of the plan; and

(4) A plan for the custody of the child should one or both of the parents as a member of the National Guard, a reserve component, or an active duty component be mobilized, deployed, or called to active duty.

(d) A parenting plan may, at the court’s discretion, contain provisions that address matters that are expected to arise in the event of a party’s relocation, or provide for future modifications in the parenting plan if specified contingencies occur.


(a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code or unless harmful to the child, the court shall allocate custodial responsibility so that, except to the extent required under §48-9-209 of this
code, the custodial time the child spends with each parent may be expected to achieve any of the following objectives:

(1) To permit the child to have a meaningful relationship with each parent who has performed a reasonable share of parenting functions;

(2) To accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child who is 14 years of age or older, and with regard to a child under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent, to give that preference the weight warranted by the circumstances;

(3) To keep siblings together when the court finds that doing so is necessary to their welfare;

(4) To protect the child’s welfare when, under an otherwise appropriate allocation, the child would be harmed because of a gross disparity in the quality of the emotional attachments between each parent and the child, or in each parent’s demonstrated ability or availability to meet a child’s needs;

(5) To take into account any prior agreement of the parents that, under the circumstances as a whole, including the reasonable expectations of the parents in the interest of the child, would be appropriate to consider;

(6) To avoid an allocation of custodial responsibility that would be extremely impractical or that would interfere substantially with the child’s need for stability in light of economic, physical, or other circumstances, including the distance between the parents’ residences, the cost and difficulty of transporting the child, the parents’ and child’s daily schedules, and the ability of the parents to cooperate in the arrangement;

(7) To apply the principles set forth in §48-9-403(d) of this code if one parent relocates or proposes to relocate at a
distance that will impair the ability of a parent to exercise
the amount of custodial responsibility that would otherwise
be ordered under this section;

(8) To consider the stage of a child’s development; and

(9) To consider which parent will encourage and accept
a positive relationship between the child and the other
parent, including which parent is more likely to keep the
other parent involved in the child’s life and activities.

(b) The court may consider the allocation of custodial
responsibility arising from temporary agreements made by
the parties after separation if the court finds, by a
preponderance of the evidence, that such agreements were
consensual. The court shall afford those temporary
consensual agreements the weight the court believes the
agreements are entitled to receive, based upon the
evidence. The court may not consider the temporary
allocation of custodial responsibility imposed by a court
order on the parties.

(c) If the court is unable to allocate custodial
responsibility under §48-9-206(a) of this code because the
allocation under §48-9-206(a) of this code would be
harmful to the child, or because there is no history of past
performance of caretaking functions, as in the case of a
newborn, or because the history does not establish a pattern
of caretaking sufficiently dispositive of the issues of the
case, the court shall allocate custodial responsibility based
on the child’s best interest, taking into account the factors
in considerations that are set forth in this section and in §48-
9-209 and §48-9-403(d) of this code and preserving to the
extent possible this section’s priority on the share of past
caretaking functions each parent performed.

(d) In determining how to schedule the custodial time
allocated to each parent, the court shall take account of the
economic, physical, and other practical circumstances such
as those listed in §48-9-206(a)(6) of this code.
AN ACT to amend and reenact §48-2-102 of the Code of West Virginia, 1931, as amended, relating to where marriage license applicants may apply for a marriage license in this state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. MARRIAGES.

§48-2-102. Where an application for a marriage license may be made; when an application may be received and a license issued; application by mail.

(a) Applicants, regardless of their state or county residency, may apply for a license to be issued by the clerk of the county commission in any county in this state.

(b) Applications for licenses may be received and licenses may be issued by the clerk of the county commission when the office of the clerk is officially open for the conduct of business.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-16, relating to establishing the Entrepreneurship and Innovation Investment Fund in the West Virginia Development Office; and setting forth general structure of fund and distribution of funds.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.


(a) The Entrepreneurship and Innovation Investment Fund is hereby created. The fund shall be administered by the West Virginia Development Office and shall consist of all moneys made available for the purposes and from the sources set forth in this section of the code.

(b) The fund consists of moneys received from the following sources:

(1) All appropriations provided by the Legislature;

(2) Any moneys available from external sources; and

(3) All interest and other income earned from investment of moneys in the fund.
(c) The West Virginia Development Office shall use moneys in the fund to support entrepreneurship, creation of business startups, improvements in workforce participation, and attracting individuals to relocate to West Virginia.

(d) Any balance, including accrued interest and any other returns, in the Entrepreneurship and Innovation Investment Fund at the end of each fiscal year shall not expire to the General Revenue Fund but remain in the fund and be expended for the purposes provided by this section.

(e) Fund balances may be invested with the state’s Consolidated Investment Fund. Earnings on the investments shall be used solely for the purposes defined in §5B-2-16(c) of this code.

CHAPTER 68

(S. B. 62 - By Senator Prezioso)

[Passed February 14, 2018; in effect ninety days from passage.]

[Approved by the Governor on February 21, 2018.]

AN ACT to amend and reenact §18-8-3 of the Code of West Virginia, 1931, as amended, relating to school attendance directors; and adjusting requirements for hiring an attendance director.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-3. Employment of county director of school attendance and assistants; qualifications; salary and traveling expenses; removal.
(a) The county board of education of every county, no later than August 1 of each year, shall employ the equivalent of a full-time county director of school attendance if such county has a net enrollment of more than 4,000 pupils, at least a half-time director of school attendance if such county has a net enrollment equal to or less than 4,000 pupils and such assistant attendance directors as deemed necessary. All persons to be employed as attendance directors shall have the written recommendation of the county superintendent.

(b) The county board of education may establish special and professional qualifications for attendance directors and assistants as are deemed expedient and proper and are consistent with regulations of the State Board of Education relating thereto: Provided, That if the position of attendance director has been posted, the county may employ a person who holds full attendance certification or a person who holds a professional administrative certificate.

(c) The attendance director or assistant director shall be paid a monthly salary as fixed by the county board. The attendance director or assistant director shall prepare attendance reports and such other reports as the county superintendent may request.

(d) The county board of education shall reimburse the attendance directors or assistant directors for their necessary traveling expenses upon presentation of a monthly, itemized, sworn statement approved by the county superintendent.
CHAPTER 69

(Com. Sub. for S. B. 244 - By Senators Azinger and Rucker)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to providing that it is unlawful to possess a firearm or other deadly weapon on a school bus, in or on the grounds of any primary or secondary educational facility of any type, or at certain school-sponsored functions; providing exception for in or on the grounds of any private primary or secondary school if the institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds thereof; setting forth the conditions under which a retired law-enforcement officer may possess a firearm or other deadly weapon on a school bus, in or on the grounds of any primary or secondary educational facility of any type, or at certain school-sponsored functions; excluding certain students from the exception that applies to a person specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes; and revising conditions for which certain persons holding a valid concealed handgun permit can possess a concealed handgun in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public school.

Be it enacted by the Legislature of West Virginia:

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.

(a) The Legislature finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending and persons employed by schools in this state and for persons employed by the judicial department of this state. It is for the purpose of providing assurances of safety that §61-7-11a(b), §61-7-11a(g), and §61-7-11a(h), of this code and §61-7-11a(b)(2)(I) of this code are enacted as a reasonable regulation of the manner in which citizens may exercise the rights accorded to them pursuant to section 22, article III of the Constitution of the State of West Virginia.

(b) (1) It is unlawful to possess a firearm or other deadly weapon:

(A) On a school bus as defined in §17A-1-1 of this code;

(B) In or on the grounds of any primary or secondary educational facility of any type: Provided, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the grounds of any private primary or secondary school, if such institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds thereof;

(C) At a school-sponsored function that is taking place in a specific area that is owned, rented, or leased by the West Virginia Department of Education, the West Virginia Secondary Schools Activities Commission, a county school board, or local public school for the actual period of time the function is occurring.

(2) This subsection does not apply to:

(A) A law-enforcement officer employed by a federal, state, county, or municipal law enforcement agency;
(B) Any probation officer appointed pursuant to §62-12-5 or chapter 49 of this code in the performance of his or her duties;

(C) A retired law-enforcement officer who meets all the requirements to carry a firearm as a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U.S.C. §926C(c), carries that firearm in a concealed manner, and has on their person official identification in accordance with that act;

(D) A person, other than a student of a primary and secondary facility, specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes;

(E) A person who, as otherwise permitted by the provisions of this article, possesses an unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;

(F) Programs or raffles conducted with the approval of the county board of education or school which include the display of unloaded firearms;

(G) The official mascot of West Virginia University, commonly known as the Mountaineer, acting in his or her official capacity;

(H) The official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his or her official capacity; or

(I) Any person, 21 years old or older, who has a valid concealed handgun permit may possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public school: Provided, That:
(i) When he or she is occupying the vehicle the person stores the handgun out of view from persons outside the vehicle; or

(ii) When he or she is not occupying the vehicle the person stores the handgun out of view from persons outside the vehicle, the vehicle is locked, and the handgun is in a glove box or other interior compartment, or in a locked trunk, or in a locked container securely fixed to the vehicle.

(3) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than 10 years, or fined not more than $5,000, or both fined and imprisoned.

(c) A school principal subject to the authority of the State Board of Education who discovers a violation of §61-7-11a(b) of this code shall report the violation as soon as possible to:

(1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for making and delivering the reports as required by this subsection; and

(2) The appropriate local office of the State Police, county sheriff or municipal police agency.

(d) In addition to the methods of disposition provided by §49-5-1 et seq. of this code, a court which adjudicates a person who is 14 years of age or older as delinquent for a violation of §61-7-11a(b) of this code may order the Division of Motor Vehicles to suspend a driver’s license or instruction permit issued to the person for a period of time as the court considers appropriate, not to extend beyond the person’s nineteenth birthday. If the person has not been issued a driver’s license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny
the person’s application for a license or permit for a period of time as the court considers appropriate, not to extend beyond the person’s nineteenth birthday. A suspension ordered by the court pursuant to this subsection is effective upon the date of entry of the order. Where the court orders the suspension of a driver’s license or instruction permit pursuant to this subsection, the court shall confiscate any driver’s license or instruction permit in the adjudicated person’s possession and forward to the Division of Motor Vehicles.

(e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this code and if the person does not act to appeal the conviction within the time periods described in §61-7-11a(e)(2) of this code, the person’s license or privilege to operate a motor vehicle in this state shall be revoked in accordance with the provisions of this section.

(2) The clerk of the court in which the person is convicted as described in §61-7-11a(e)(1) of this code shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within 20 days of the sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward a transcript of the judgment of conviction when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the commissioner shall make and enter an order revoking the person’s license or privilege to operate a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person’s twentieth birthday,
whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court’s transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing is for the person requesting the hearing to present evidence that he or she is not the person named in the notice. If the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner’s order resulting from the hearing.

(4) For the purposes of this subsection, a person is convicted when he or she enters a plea of guilty or is found guilty by a court or jury.

(f)(1) It is unlawful for a parent, guardian, or custodian of a person less than 18 years of age who knows that the person is in violation of §61-7-11a(b) of this code or has reasonable cause to believe that the person’s violation of §61-7-11a(b) of this code is imminent to fail to immediately report his or her knowledge or belief to the appropriate school or law-enforcement officials.

(2) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or shall be confined in jail not more than one year, or both fined and confined.

(g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts.
(2) This subsection does not apply to:

(A) A law-enforcement officer acting in his or her official capacity; and

(B) A person exempted from the provisions of this subsection by order of record entered by a court with jurisdiction over the premises or offices.

(3) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or shall be confined in jail not more than one year, or both fined and confined.

(h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts, with the intent to commit a crime.

(2) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than 10 years, or fined not more than $5,000, or both fined and imprisoned.

(i) Nothing in this section may be construed to be in conflict with the provisions of federal law.
Be it enacted by the Legislature of West Virginia:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-11. School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.

(a) In accordance with the provisions of §17B-2-3a and §17B-2-5 of this code, the Division of Motor Vehicles shall deny a license or instruction permit for the operation of a motor vehicle to any person under the age of 18 who does not at the time of application present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state or documentation that the person: (1) Is enrolled and making satisfactory progress in a course leading to a general education development certificate (GED) from a state-approved institution or organization or has obtained the certificate; (2) is enrolled and is making satisfactory academic progress in a secondary school of this state or any other state; (3) is excused from the requirement due to circumstances beyond his or her control; or (4) is enrolled in an institution of higher education as a full-time student in this state or any other state.

(b) The attendance director or chief administrator shall, upon request, provide a driver’s eligibility certificate on a form approved by the Department of Education to any student at least 15 but less than 18 years of age who is properly enrolled and is making satisfactory academic progress in a school under the jurisdiction of the official for
presentation to the Division of Motor Vehicles on application for or reinstatement of an instruction permit or license to operate a motor vehicle: Provided, That a parent or legal guardian of a child who is being educated pursuant to §18-8-1(c) of this code may provide a signed statement in lieu of a driver eligibility certificate issued by the attendance director or chief administrator affirming that the child is being educated in accordance with law, is making satisfactory academic progress, and meets the conditions to be eligible to obtain any permit or license under this section.

(c) Whenever a student at least 15 but less than 18 years of age, except as provided in §18-8-11(g) of this code, withdraws from school, the attendance director or chief administrator shall notify the Division of Motor Vehicles of the student’s withdrawal no later than five days from the date of the withdrawal. Within five days of receipt of the notice, the Division of Motor Vehicles shall send notice to the student that the student’s instruction permit or license to operate a motor vehicle will be suspended under the provisions of §17B-3-6 of this code on the thirtieth day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the Division of Motor Vehicles before that time. The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student’s withdrawal from school was due to a circumstance or circumstances beyond the control of the student. If suspended, the division may not reinstate an instruction permit or license until the student returns to school and shows satisfactory academic progress or until the student attains 18 years of age.

(d) Whenever a student at least 15 but less than 18 years of age is enrolled in a secondary school and fails to maintain satisfactory academic progress, the attendance director or chief administrator shall follow the procedures set out in §18-8-11(c) of this code to notify the Division of Motor Vehicles of the student’s failure to make satisfactory academic progress.
Vehicles. Within five days of receipt of the notice, the Division of Motor Vehicles shall send notice to the student that the student’s instruction permit or license will be suspended under the provisions of §17B-3-6 of this code on the thirtieth day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the Division of Motor Vehicles before that time. The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student’s failure to make satisfactory academic progress was due to a circumstance or circumstances beyond the control of the student. Once suspension is ordered, the division may not reinstate an instruction permit or license until the student shows satisfactory academic progress or until the student attains 18 years of age.

(e) Upon written request of a student, within 10 days of receipt of a notice of suspension as provided by this section, the Division of Motor Vehicles shall afford the student the opportunity for an administrative hearing. The scope of the hearing shall be limited to determining if there is a question of improper identity, incorrect age, or some other clerical error.

(f) For the purposes of this section:

(1) Withdrawal is defined as more than 10 consecutive or 15 total days unexcused absences during a school year, or suspension pursuant to §18A-5-1a(a) and §18A-5-1a(b) of this code.

(2) “Satisfactory academic progress” means the attaining and maintaining of grades sufficient to allow for graduation and course-work in an amount sufficient to allow graduation in five years or by age 19, whichever is earlier.

(3) “Circumstances outside the control of the student” shall include, but not be limited to, medical reasons, familial
responsibilities and the necessity of supporting oneself or another.

(4) Suspension or expulsion from school or imprisonment in a jail or a West Virginia correctional facility is not a circumstance beyond the control of the student.

(g) Whenever the withdrawal from school of the student, the student’s failure to enroll in a course leading to or to obtain a GED or high school diploma, or the student’s failure to make satisfactory academic progress is due to a circumstance or circumstances beyond the control of the student, or the withdrawal from school is for the purpose of transfer to another school as confirmed in writing by the student’s parent or guardian, no notice shall be sent to the Division of Motor Vehicles to suspend the student’s motor vehicle operator’s license and if the student is applying for a license, the attendance director or chief administrator shall provide the student with documentation to present to the Division of Motor Vehicles to excuse the student from the provisions of this section. The school district superintendent (or the appropriate school official of any private secondary school) with the assistance of the county attendance director and any other staff or school personnel shall be the sole judge of whether any of the grounds for denial or suspension of a license as provided by this section are due to a circumstance or circumstances beyond the control of the student.

(h) The state board shall promulgate rules necessary for uniform implementation of this section among the counties and as may otherwise be necessary for the implementation of this section. The rule may not include attainment by a student of any certain grade point average as a measure of satisfactory progress toward graduation.
CHAPTER 71

(Com. Sub. for S. B. 561 - By Senator Jeffries)

[Passed March 5, 2018; in effect ninety days from passage.]  
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §18-5-12 of the Code of West Virginia, 1931, as amended, relating to increasing the minimum contract price that requires the execution of a bond with respect to the building or repairing of school property.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-12. Bond of contractors.

1 Boards shall require all persons contracting for the building or repairing of school property, where the contract exceeds $25,000 to execute a bond, with approved security, in the amount of the contract price.
CHAPTER 72

(Com. Sub. for H. B. 3089 - By Delegates Espinosa, Statler, Higginbotham, Upson, Cooper, Rowan, Harshbarger and Dean)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended; by adding thereto a new section, designated §18-2A-10, relating to the adoption of instructional resources for use in the public schools; providing for transition to new provisions for instructional resources adoption; defining instructional resources; providing for adoption cycle rule; requiring person, firm or corporation desiring to offer instructional resources for use by students to file statement containing and verifying certain information; requiring state board to provide list of vendors to counties; prohibiting county board from adopting or using instructional resources not in compliance; disqualification of person, firm or corporation for failure to honor terms of filing; supplementary resources exempted; requiring necessary instructional resources be furnished to students free of charge, including reasonable access to electronic resources; requiring county board policy on instructional resources adoption and specifying minimum provisions; and prohibiting board of education member or employee from acting as sales agents for person, firm or corporation filing statement with superintendent.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. ADOPTION OF INSTRUCTIONAL RESOURCES.
§18-2A-10. Transition to system of instructional resources adoption at county board level.

(a) The purpose of this section is to provide for a transition to the county board level of the process for review and adoption of instructional resources required to be used in the schools under the jurisdiction of the county board. Notwithstanding any other provision of this article to the contrary, for instructional resources adopted by a county board for use in the school year beginning July 1, 2019, and successive school years, the provisions of sections one, two, three, four, five, six, seven and eight of this article are repealed to the extent that they are in conflict with the provisions of this section: Provided, That nothing in this section limits or prevents a county board from adopting instructional resources approved and included on the state multiple list under those provisions for the duration of the adoption cycle if they choose to do so.

(b) As used in this section, “instructional resources” means print materials, electronic resources and systems, or combinations of such instructional resources which convey information to a student that covers no less than eighty percent the required content and skills approved by the state board for subjects taught in the public schools of the state.

(c) The state board shall set by rule an adoption cycle for instructional resources.

(d) Any person, firm or corporation desiring to offer instructional resources for use by students in the public schools of West Virginia shall, before the instructional resources may be adopted and purchased by any county board, file with the state superintendent, on or before January 1 of each year, a statement containing and verifying the following information:

(1) The instructional resources to be offered for purchase meet the non-negotiable evaluation criteria established by the state board;
(2) The instructional resources to be offered for purchase by the vendor covers no less than eighty percent of the required content and skills for the subject as approved by the state board;

(3) The list wholesale price to county boards in West Virginia for the specified instructional resource will be no more than the lowest list wholesale price available to school districts in any other state; and

(4) The list wholesale price filed for any specified number of electronic files for any print instructional resources the publisher offers with the print instructional resources does not exceed the list wholesale price for the same number of the printed version of the print instructional resources.

(e) The state board shall annually provide to all county boards of education a list of all vendors that have provided a statement in accordance with subsection (d) of this section.

(f) A county board may not adopt or cause to be used in the public schools any instructional resource unless the person, firm or corporation offering the instructional resource for adoption or use has complied with this section, except for the adoption of instructional resources approved and included on the state multiple list as provided in subsection (a) of this section.

(g) If a person, firm or corporation files a statement under subsection (d) of this section and fails or refuses to furnish the instructional resources to any county board in accordance with the terms provided in the statement, the board at once shall notify the state superintendent of the failure or refusal. If the state superintendent finds the failure or refusal to be true, the state superintendent shall disqualify the person, firm or corporation and notify each county board that its instructional resources may not thereafter be adopted.
and purchased by any county board until the person, firm or corporation is requalified.

(h) This section does not apply to the purchase of supplementary instructional resources, including, but not limited to, reading books, library books, reference books, or any other books. These supplementary instructional resources shall be ordered, received, examined, and paid for in the same manner and by the same persons as other supplies and equipment.

(i) Each county board shall furnish, free of charge, the necessary instructional resources to the students attending the public schools in that county. A county board that chooses to furnish electronic instructional resources to its students shall provide reasonable access to the electronic resources and necessary computer equipment to students required to complete homework assignments that require using the resources and equipment and to teachers providing these homework assignments. All instructional resources furnished as provided in this section shall be the property of the county board and loaned to students on terms as each board prescribes.

(j) Every county board shall adopt a policy regarding the adoption of instructional resources which shall include, at a minimum, the following:

(1) The process for reviewing instructional resources to ensure the resources meet the non-negotiable requirements established by the state board and cover no less than eighty percent of the required content and skills for a subject as approved by the state board: Provided, That a county board may rely on an instructional material review completed by the state department of education to fulfill this requirement;

(2) The composition, duties and responsibilities of the county’s instructional resource review committee;
(3) The process for recommending instructional resources that are proposed for adoption;

(4) At a properly noticed meeting, the county board shall determine by a majority vote of all members elected which instructional resources shall be required in the schools under its control; and

(5) The county board shall provide an annual report of the instructional resources adopted to the state board of education.

(k) A board of education member or employee may not act as sales agent, either directly or indirectly, for any person, firm, or corporation that files an instructional resources statement with the state superintendent.

CHAPTER 73

(H. B. 4183 - By Delegates Espinosa, R. Romine, Upson, Higginbotham, Rohrbach, Kelly, Cooper, Westfall and Dean)

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §18-28-3 of the Code of West Virginia, 1931, as amended, relating generally to testing requirements for nonpublic schools; requiring a nationally normed standardized achievement test be administered at the same grade levels and in the same subject areas as required in the public schools; requiring test to be published or normed within the last ten years; requiring the student participation rate on the standardized achievement test be the same as that required in the public schools; removing exemption for nonpublic schools that exclusively teach special education
students or students with learning disabilities from provisions pertaining to accountability for the school’s composite test results falling below the 40th percentile; requiring for those schools assessment to be made of students at the same grade levels and in the same subject areas as required in the public schools; allowing testing in additional subject areas or grade levels at sole discretion of school; and conforming provisions pertaining to accountability for a school’s composite test results falling below the 40th percentile.

Be it enacted by the Legislature of West Virginia:

ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH SCHOOLS, OR SCHOOLS OF A RELIGIOUS ORDER.

§18-28-3. Standardized testing requirements.

(a) Each private, parochial or church school or school of a religious order or other nonpublic school electing to operate under this statute in lieu of the approval requirements set forth as part of §18-8-1(b) of this code, shall administer during each school year a nationally normed standardized achievement test which test shall be selected by the chief administrative officer of each school. The test shall be administered to students at the same grade levels and in the same subject areas as required in the public schools of the state for administration of the state-wide summative assessment. The selected test shall be published or normed within the last ten years and shall be administered under standardized conditions as set forth by the published instructions of the selected test. The student participation rate on the standardized achievement test must be the same as that required in the public schools for a school’s composite score to be considered valid.

(b) Notwithstanding subsection (a) of this section, any private, parochial, church school, school of a religious order or other nonpublic school that exclusively teaches special education students or children with learning disabilities shall academically assess students by one or more of the
following methods: (1) A standardized group achievement test; (2) a standardized individual achievement test; (3) a written narrative of an evaluation of a portfolio of samples of a child’s work; (4) an alternative academic assessment of the child’s proficiency as mutually agreed by the county superintendent, parent(s) or legal guardian(s) and the school. The assessment shall be made of students at the same grade levels and in the same subject areas as required in the public schools of the state for administration of the state-wide summative assessment.

(c) Nothing in this section prohibits a private parochial, church school, school of a religious order or other nonpublic school from administering standardized achievement tests in additional subject areas or at additional grade levels as they may choose at their sole discretion.

(d) Each child’s testing or assessment results and the school composite results shall be made available to the child’s parents or legal guardians. Upon request of a duly authorized representative of the West Virginia Department of Education, the school’s composite results shall be furnished by the school or by a parents organization composed of the parents or guardians of children enrolled in said school to the State Superintendent of Schools.

(e) Each school to which this article applies shall:

(1) Establish curriculum objectives, the attainment of which will enable students to develop the potential for becoming literate citizens.

(2) Provide an instructional program that will make possible the acquisition of competencies necessary to become a literate citizen.

(f) If the school’s composite test results for any single year fall below the fortieth percentile on the selected standardized achievement test or a comparable level established by the state board for assessment methods authorized pursuant to
subsection (b) of this section, the school shall initiate a remedial program to foster achievement above that level. If after two consecutive calendar years school composite test results are not above the fortieth percentile or comparable level, attendance at the school no longer satisfies the compulsory school attendance requirement of §18-8-1(k) of this code, until the percentile standards herein set forth are met.

CHAPTER 74

(H. B. 4402 - By Delegates Espinosa, Statler, Moye, Hornbuckle, Kelly, Rodighiero, Blair, Householder, Higginbotham, Dean and Campbell)

[Passed March 5, 2018; in effect ninety days from passage.] [Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §18-2-41, relating to the education and prevention of sexual abuse of children; mandating that children in grades K-12 receive sexual abuse education at least once during the academic year beginning July 1, 2019; requiring the State Board of Education to promulgate legislative rules to facilitate this process and develop resources by December 31, 2018; providing a list of minimum content for said legislative rules; requiring that the state board promulgate legislative rules for sexual abuse education and prevention training of public school employees by December 31, 2018; providing for an emergency rule, if necessary; providing a list of minimum content for said legislative rules; providing that said training be administered every two years; and providing additional requirements of said training.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.
§18-2-41. Education and Prevention of the Sexual Abuse of Children.

(a) Education of children in grades K-12 — Beginning July 1, 2019, children in grades K-12 shall receive body age-appropriate safety information at least once per academic school year, with a preference for four times per academic year. To facilitate this process and develop resources, the state board shall propose a legislative rule for promulgation, in accordance with §29A-3b-1 et seq. of this code, by December 31, 2018. The rule shall provide for at least the following:

1. Developmentally appropriate education and resources;
2. Social media usage and content;
3. Implementation of best practices;
4. Differing county and school sizes, demographics, etc. relating to implementation strategies;
5. Strategies for dealing with disclosures after student education;
6. Rules informed by family voice;
7. Offender dynamics;
8. Child-on-child scenarios;
9. Rules on development of supplementary materials, including posting of the child abuse hotline, to embed into the school climate;

(b) Training of public school employees. The state board shall propose by December 31, 2018 a legislative rule for promulgation in accordance with §29A-3b-1 et seq. of this code, and if necessary may promulgate an emergency rule in accordance with said article, for the establishment of
standards for training requirements of all public school employees focused on developing skills, knowledge, and capabilities related to preventing child sexual abuse and recognizing and responding to suspected abuse and neglect. The rule shall provide for at least the following:

(1) This required training shall include comprehensive instruction and information to better equip schools and their employees, including how to:

(A) Recognize sexually offending behaviors in adults, questionable behaviors such as boundary violations, and signs in adults that might indicate they pose a sexual risk to children;

(B) Recognize, appropriately respond to, and prevent sexually inappropriate, coercive, or abusive behaviors among children and youth served by schools;

(C) Recognize behaviors and verbal cues that might indicate a child or youth has been a victim of abuse or neglect;

(D) Support the healthy development of children and youth and the building of protective factors to mitigate against their sexual victimization by adults or peers;

(E) Recognize and appropriately respond to student infatuations and flirtations with adults in schools;

(F) Recognize appropriate and inappropriate social media usage by adults and children;

(G) Provide consistent and standard protocols for responding to disclosures of sexual abuse or reports of boundary-violating behaviors by adults or children in a supportive and appropriate manner which meet mandated reporting requirements;

(H) Provide adequate understanding of the age-appropriate, comprehensive, evidence-informed child sexual abuse prevention education which will be offered to their students; and
(I) Reflect the research on Adverse Childhood Experiences (ACEs) and trauma-informed care.

(2) The rule shall contain provisions to ensure public school employees complete the required training every two years.

(A) The required training shall be at least a cumulative four hours (half day) of instruction on the elements identified in this section.

(B) A skills renewal is required every two years thereafter.

(C) The mode of delivery for the trainings may include in-person or e-learning instruction and may include a series of trainings or modules.

(D) The state board shall provide certificates of satisfactory completion for the employee and the employer documenting the employee completed the required training.

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CHAPTER 75

(Com. Sub. for H. B. 4478 - By Delegates Lovejoy, Rohrbach, Hanshaw, Hornbuckle, Williams, Byrd, Canestraro, R. Miller, Robinson, Rowe and Isner)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5D-5, relating to authorizing public schools to distribute excess food to students and others who suffer from food insecurity; making findings and determination; establishing “The Shared Table” initiative; providing for State Board rule; minimum
contents of rule; consistency with health department and Food and Drug Administration requirements and guidelines; compliance and coverage under Good Samaritan Food Donation Act; and requiring county board establishment of program to assist and encourage school participation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5D. WEST VIRGINIA FEED TO ACHIEVE ACT.

§18-5D-5. Shared table initiative.

(a) The Legislature finds and determines that:

(1) In West Virginia, one in four children suffer from food insecurity; however, every day each school has a large percentage of food that is left uneaten and thrown away, and in many cases this food can be reused;

(2) A new initiative called “The Shared Table” encourages schools to collect unused food appropriate for redistribution, and make that food available throughout the day to students who may be hungry, to provide a method for discrete distribution of that food to be taken home by kids with food insecurity, and to donate any unused food to local food pantries and other entities that distribute food to those in need;

(3) This program has begun to catch on nationally and has shown itself to be an effective way to distribute excess school food;

(4) The Shared Table initiative can be as simple as designating a table or location in the school for food to be taken by students through the school day, and can also provide a system of discreetly placing food in containers in student’s lockers each day to take home, and other creative initiatives to promote consumption of unused food already provided by schools to students and others who have food insecurity at home; and
(5) The Shared Table initiative does not require school cafeterias to produce extra food and is only intended to promote the more effective consumption of existing food particularly to students who may otherwise go without. Similar initiatives have been implemented in various states and have been very successful in safely distributing food consistent with U.S. Food and Drug Administration and local health agencies requirements.

Therefore, the purpose of this section is to establish a statewide initiative to facilitate this worthwhile program.

(b) The state board shall promulgate a rule in accordance with §29A-3B-1 et seq. of this code that provides policy guidance to county boards on the management and distribution of excess school food consistent with state and county health department and United States Food and Drug Administration requirements and guidelines for the distribution of excess foods. The guidance policy at a minimum shall provide a list of food products and methodologies for distribution that include, but are not limited to:

(1) The types of foods that may be distributed;

(2) Methods of distribution to make excess food available at other times during the school day;

(3) Methods of distributing excess food to students to consume after school; and

(4) Methods to otherwise donate excess food to persons or organizations providing food to persons or families suffering from food insecurity.

(c) The preparation, safety, and donation of food made available to students during a regular school meal time and donated to a food bank or any other nonprofit charitable organization for distribution, shall comply with and be thereby covered by the Good Samaritan Food Donation Act, §55-7D-1 et seq. of this code.
(d) The methods of distributing excess food to students within a school may include a sharing table where food service staff, students and faculty may return appropriate food items consistent with state board guidelines to make those food items available to students during the school day.

(e) Each county board of education shall establish a program to assist and encourage schools to participate in the Shared Table initiative.

CHAPTER 76

(Com. Sub. for H. B. 4619 - By Delegates Espinosa, Statler, Upson, Folk, Cooper, Rohrbach, Atkinson and Cowles)

[Passed March 2, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §18-9A-10 of the Code of West Virginia, 1931, as amended, relating to supporting implementation of comprehensive systems for teacher and leader induction and professional growth; requiring amount of increase in local share to be added to preceding year appropriation for such purpose; providing factors to be taken into account in making allocations to counties; providing county may not receive less than the 2016-2017 allocation from certain line items; requiring moneys allocated to be used for implementation of comprehensive systems for teacher and leader induction and professional growth; and removing obsolete cross-references.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.
§18-9A-10. Foundation allowance to improve instructional programs, instructional technology, and teacher and leader induction and professional growth.

(a) The total allowance to improve instructional programs and instructional technology is the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by §18-2E-5 of this code, an amount equal to ten percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by §18-2E-5 of this code and approved by the state board.

Up to fifty percent of this allocation for the improvement of instructional programs may be used to employ professional educators and service personnel in the county. Prior to the use of any funds from this subdivision for personnel costs, the county board must receive authorization from the state superintendent. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties in the use of the total local district board budget; and (4) employment of technology
integration specialists to meet the needs for implementation
of the West Virginia Strategic Technology Learning Plan. County boards shall make application for the use of funds for personnel for the next fiscal year by May 1 of each year. On or before June 1, the state superintendent shall review all applications and notify applying county boards of the approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy.

The funds available for personnel under this subdivision may not be used to increase the total number of professional noninstructional personnel in the central office beyond four.

The plan shall be made available for distribution to the public at the office of each affected county board; plus

(2) For the purposes of improving instructional technology, an amount equal to twenty percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional technology programs according to the county board’s strategic technology learning plan.

This allocation for the improvement of instructional technology programs may also be used for the employment
of technology system specialists essential for the technology
systems of the schools of the county to be fully functional
and readily available when needed by classroom teachers.
The amount of this allocation used for the employment of
technology system specialists shall be included and justified
in the county board’s strategic technology learning plan;
plus

(3) One percent of the state average per pupil state aid
multiplied by the number of students enrolled in dual credit,
advanced placement and international baccalaureate
courses, as defined by the state board, distributed to the
counties proportionate to enrollment in these courses in
each county; plus

(4) For the purpose of supporting county-level
implementation of the comprehensive systems for teacher
and leader induction and professional growth pursuant to
§18A-3C-3 of this code, an amount equal to twenty percent
of the increase in the local share amount for the next school
year shall be added to the amount of the appropriation for
this purpose for the immediately preceding school year. The
sum of these amounts shall be allocated to the counties in a
manner established by the State Board which takes into
account the following factors:

(A) The number of full-time-equivalent teachers
employed by the county with zero years of experience;

(B) The total number of full-time-equivalent teachers
employed by the county with one year of experience, with
two years of experience and with three years of experience;

(C) The number of full-time-equivalent principals,
assistant principals and vocational administrators employed
by the county who are in their first or second year of
employment as a principal, assistant principal or vocational
administrator;
(D) The number of full-time-equivalent principals, assistant principals and vocational administrators employed by the county who are in their first year in an assignment at a school with a programmatic level in which they have not previously served as a principal, assistant principal or vocational administrator; and

(E) Needs identified in the strategic plans for continuous improvement of schools and school systems including those identified through the performance evaluations of professional personnel.

Notwithstanding any provision of this subsection to the contrary, no county may receive an allocation for the purposes of this subdivision which is less than the county’s total 2016-2017 allocation from the Teacher Mentor and Principals Mentorship appropriations to the Department of Education. Moneys allocated by this subdivision shall be used for implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code; plus

(5) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994, shall be paid by the Department of Education in accordance with the expenditure schedule approved by the state budget office into the School Building Capital Improvements Fund created by §18-9D-6 of this code and shall be used solely for the purposes of that article. The School Building Capital Improvements Fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the School Building Debt Service Fund have been pledged for repayment pursuant to that section.
(b) Notwithstanding the restrictions on the use of funds pursuant to subdivisions (1) and (2), subsection (a) of this section, a county board may:

(1) Utilize up to twenty-five percent of the allocation for the improvement of instructional programs in any school year for school facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county and school strategic improvement plans or amendments thereto; and

(2) Utilize up to fifty percent of the allocation for improving instructional technology in any school year for school facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county board’s strategic technology learning plan or amendments thereto.

(c) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the State Board of Education shall annually deposit an amount equal to $24,000,000 from the funds allocated in this section into the School Construction Fund created pursuant to the provisions of §18-9D-6 of this code to continue funding school facility construction and improvements.

(d) Any project funded by the School Building Authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the School Building Authority.
AN ACT to amend and reenact §3-1-19 of the Code of West Virginia, 1931, as amended, relating to ballot commissioners; and permitting ballot commissioners to serve while candidates for certain offices.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-19. Ballot commissioners; selection; duties generally; vacancies.

(a) In each county in the state, the Board of Ballot Commissioners shall be comprised of:

(1) The clerk of the county commission while holding office; and

(2) Two other persons as follows:

(A) One person appointed by the county executive committee of the political party that cast the largest number of votes in the state at the last preceding general election; and

(B) One person appointed by the county executive committee of the political party that cast the second largest
number of votes in the state at the last preceding general election.

(b) If the county executive committees do not make the appointments in a timely manner, then the county clerk shall make the appointments.

(c) The county clerk shall serve as chairman.

(d) The county clerk shall notify the chairman of the respective county executive committees of the two parties, at least five days before the time of the making of the appointments.

(e) If at any time after notice is given, and before or on the day so fixed for making appointments, the chairman of each of the committees shall designate, in writing, a member of his or her party as ballot commissioner. Each designee shall be appointed if he or she meets the qualifications of a voter: Provided, That a ballot commissioner cannot be a candidate for any office in any election held during the time he or she is serving as ballot commissioner, other than state, county, or district executive committee or delegate to the national convention of a political party.

(f) Ballot commissioners shall be appointed between January 15 and January 30, in each year in which a general election is to be held, for a term of two years beginning on February 1 next ensuing.

(g) The ballot commissioners shall perform their duties at all general, special, and primary elections held in the county or any magisterial district thereof during their term of office.

(h) A vacancy shall be filled in the same manner as an original appointment, but immediate notice of a vacancy shall, where necessary, be deemed in compliance with the five-day notice provision.
AN ACT to amend and reenact §3-1-44 and §3-1-48 of the Code of West Virginia, 1931, as amended, all relating generally to the conduct of elections; authorizing compensation for election officials be fixed by county commission; requiring all election officials within a classification to be paid the same amount within each county; authorizing Secretary of State to set maximum compensation rates in certain elections where costs are determined to be obligations of the state; declaring compensation above maximum compensation set by Secretary of State in certain elections to be county obligation; permitting State Election Commission, with recommendation from HAVA Grant Board and consistent with legislative rules of the program, approve grant to a county for the purchase of election systems or upgrades from the county assistance voting equipment fund; and directing Secretary of State issue emergency rules setting criteria for issuance of grants.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-44. Compensation of election officials; expenses.

(a) Each ballot commissioner is to be paid a sum, to be fixed by the county commission, for each day he or she serves as ballot commissioner, but in no case may a ballot
commissioner receive allowance for more than 10 days’ 
services for any one primary, general, or special election.

(b) Each commissioner of election and poll clerk is to 
be paid a sum, to be fixed by the county commission, for 
one day’s services for attending the school of instruction for 
election officials if the commissioner or poll clerk provides 
at least one day’s service during an election and a sum for 
his or her services at any one election: Provided, That each 
commissioner of election and poll clerk is to be paid a sum 
for his or her services at any of the three special elections 
described in §3-1-44(g) of this code.

(c) Each alternate commissioner of election and poll 
clerk may be paid a sum, to be fixed by the county 
commission, for one day’s services for attending the school 
of instruction for election officials: Provided, That no 
alternate may be eligible for compensation for election 
training unless the alternate is subsequently appointed as an 
election official or is instructed to attend and actually 
attends training as an alternate and is available to serve on 
election day.

(d) The commissioners of election or poll clerks 
obtaining and delivering the election supplies, as provided 
in §3-1-24 of this code, and returning them, as provided in 
§3-5-1 et seq. and §3-6-1 et seq. of this code, are to be paid 
an additional sum, fixed by the county commission, for his 
or her services pursuant to this subsection at any one 
election. In addition, he or she is to be paid mileage up to 
the rate of reimbursement authorized by the travel 
management rule of the Department of Administration for 
each mile necessarily traveled in the performance of his or 
her services.

(e) The compensation of election officers, cost of 
printing ballots and all other expenses incurred in holding 
and making the return of elections, other than the three 
special elections described in §3-1-44(f) of this code, are to
be audited by the county commission and paid out of the county treasury.

(f) All persons within a class of election officials, as classified in this section, shall be paid the same amount within the county.

(g) The compensation of election officers, cost of printing ballots, and all other reasonable and necessary expenses in holding and making the return of a special election for the purpose of taking the sense of the voters on the question of calling a constitutional convention, of a special election to elect members of a constitutional convention, and of a special election to ratify or reject the proposals, acts, and ordinances of a constitutional convention are obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions, and county commissions of the various counties as agents of the state. All expenses of these special elections are to be audited by the Secretary of State. The Secretary of State shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of these special elections to the Secretary of State. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the Secretary of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the state Treasurer and shall mail the warrants directly to the vendors of the special election services, supplies, and facilities.

(h) Notwithstanding the authority granted to county commissions to set compensation for election officials in this section, the Secretary of State may set maximum rates of compensation of the election officials identified in this section at any election for which the obligations incurred by the ballot commissioners, clerks of the county commissions, and county commissions of the various counties are determined to be obligations of the state.
§3-1-48. Legislative findings; State Election Fund; loans to counties; availability of funds; repayment of loans; grants to counties for election systems.

(a) Legislative findings. — The Help America Vote Act of 2002, PL 107-252, 42 U.S.C. §15301, et seq., provides funding so that all states will be able to implement some form of electronic voting system to replace punch card and lever machines by 2006. The new voting systems must meet several requirements including notifying the voter of over votes and permitting each voter to review his or her ballot and correct errors before casting the vote. The limited, finite funding available to the state will not be sufficient to meet current and future needs for equipment and services as equipment needs to be obtained, repaired, or replaced as technology changes. It is the intent of the Legislature to maximize the available funds by establishing a no-interest loan program to assist any county, regardless of its current voting system, in purchasing necessary electronic voting equipment and services. As the loans are repaid funds will continue to be available to meet future needs. It is not the intent of the Legislature to mandate any technology for voting systems to be utilized in this state and this section is intended only to establish terms and conditions for providing loan assistance to counties in accordance with the provisions of this section.

(b) State Election Fund. — The special revenue account created in the State Treasury and known as the State Election Fund account is continued. Expenditures from the account shall be used by the Secretary of State for the administration of this chapter in accordance with the provisions of 42 U.S.C. §15301, et seq., the Help America Vote Act of 2002, PL 107-252, in accordance with the provisions of §4-11-1 et seq. of this code.

(c) Establishment of special revenue account. — There is created in the State Treasury a special revenue revolving fund account known as the County Assistance Voting Equipment Fund which shall be an interest-bearing account.
The fund shall consist of an initial transfer not to exceed $8,500,000 from the State Election Fund established under §3-1-48(b) of this code pursuant to legislative appropriation; any future funds received from the federal government under the Help America Vote Act of 2002, PL 107-252, 42 U.S.C. §15301, et seq., or subsequent acts providing funds to states to obtain, modify, or improve voting equipment and obtain necessary related services including voting systems, technology, and methods for casting and counting votes; any funds appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal or state law; and any accrued interest or other return on the moneys in the fund. The balance remaining in the fund at the end of each fiscal year shall remain in the fund and not revert to the State General Revenue Fund.

(d) Use of funds. — The money in the fund shall be used only in the manner and for the purposes prescribed in this section. Notwithstanding any provision of law to the contrary, funds in the County Assistance Voting Equipment Fund may not be designated or transferred for any purpose other than those set forth in this section.

(e) Administration of the fund. — The Secretary of State shall administer the fund with the approval of the State Election Commission.

(f) Investment of fund. — The moneys of the fund shall be invested pursuant to §12-6-1 et seq. of this code and in such a manner that sufficient moneys are available as needed for loans authorized under this section.

(g) Loans to counties. — The county assistance voting equipment fund shall be used to make no-interest loans to counties to obtain, modify, or replace voting equipment, software, and necessary related services including voting systems, technology, and methods for casting and counting votes: Provided, That any county commission that purchased an electronic voting system prior to November
13, 2004, is eligible to apply for matching funds under this section to upgrade the system: Provided, however, That matching funds available for an upgrade shall not exceed the amount available under §3-1-48(g)(1) of this code for the purchase of a new electronic voting system under the Secretary of State’s authorized contract. The loans shall be made under the following terms and conditions:

(1) The State Election Commission shall, subject to availability of funds, loan no more than 50 percent of the cost of the voting equipment or services to any county commission: Provided, That a portion or all of the county matching requirement may be waived in limited circumstances as determined by the State Election Commission pursuant to this section.

(2) The county commission shall provide sufficient documentation to establish to the satisfaction of the State Election Commission that the county commission has at least 50 percent of the money necessary to obtain the voting equipment, software, or services for which the loan is sought.

(3) The county commission shall enter into a contract with the State Election Commission for the repayment of the loan over a period not to exceed five years or the length of the contract to obtain the equipment, software, or services, whichever is less.

(4) The county commission shall use the loan for voting equipment and services certified by the State Election Commission pursuant to the provisions of §3-4a-1 et seq. of this code and authorized for use by the Secretary of State.

(5) A county commission may apply for a loan on a form provided by the Secretary of State. The form shall, in addition to requesting information necessary for processing the application, state the deadline for submitting the application and the eligibility requirements for obtaining a loan.
(6) The State Election Commission may waive a portion or all of the matching money required by this subsection for a county commission that can establish that it has exercised due diligence in raising its share of the costs but has been unable to do so. On forms provided by the Secretary of State the county commission shall request a waiver and shall make a full financial disclosure of its assets and liabilities as well as potential for future income when applying for a waiver. The county commission shall demonstrate, to the satisfaction of the State Election Commission, its inability to meet the matching requirements of this subsection and its ability to repay the loan in a timely manner. Notwithstanding the provisions of §3-1-48(g)(3) of this code, the State Election Commission may extend the repayment period on a year-to-year basis for a repayment period not to exceed five additional years.

(h) Application. — An application for a loan shall be approved by the State Election Commission if the requirements of this section have been met.

(i) Rulemaking. — The Secretary of State shall propose for promulgation in accordance with §29A-3-1 et seq. of this code emergency and legislative rules necessary to effectuate the purposes of this section.

(j) Availability of loans. — The State Election Commission may not approve a loan under this section until final standards for electronic voting equipment with a voter verified paper ballot have been established by the Secretary of State or the national institute for standards and technology. The State Election Commission may not approve a loan for the purchase, lease, rental, or other similar transaction to obtain electronic voting equipment, software, or necessary related services unless obtained under a contract authorized by the Secretary of State pursuant to rules promulgated under this section.

(k) Repayment of loans. — The Secretary of State may, by civil action, mandamus, or other judicial or
administrative proceeding, compel performance by a county commission of all the terms and conditions of the loan agreement between the state and that county commission including periodic reduction of any moneys due the county from the state.

(l) Notwithstanding the provisions of this section relating to loan procedures, the State Election Commission may, with a recommendation from the HAVA Grant Board, and consistent with the legislative rules of the program, approve a grant to a county for the purchase of election systems, or election system upgrades, payable from the County Assistance Voting Equipment Fund: Provided, That the Secretary of State shall issue emergency rules setting forth the criteria for the issuance of grants to the counties.

CHAPTER 79

(Com. Sub. for S. B. 582 - By Senators Clements and Maroney)

[Passed March 10, 2018; in effect from passage.] [Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §3-1-28 of the Code of West Virginia, 1931, as amended, relating to eligibility to be appointed or serve as an election official; permitting candidates for district, county, or state political party executive committee to serve as election officials; and permitting the parent, child, sibling, or spouse of a candidate for district, county, or state political party executive committee to serve as election officials.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.
§3-1-28. Election officials; eligibility, suspension of eligibility.

(a) To be eligible to be appointed or serve as an election official in any state, county, or municipal election held in West Virginia, a person:

(1) Must be a registered voter of the county for elections held throughout the county and a registered voter of the municipality for elections held within the municipality: Provided, That if the required number of persons eligible to serve as election officials for a municipal election are not available or are not willing to serve as election officials for a municipal election, a registered voter of the county in which the municipality is located may serve as an election official for elections held within the municipality;

(2) Must be able to read and write the English language;

(3) May not be a candidate on the ballot or an official write-in candidate in the election for any office, other than for district, county, or state political party executive committee;

(4) May not be the parent, child, sibling, or spouse of a candidate on the ballot for any office, other than for district, county, or state political party executive committee, or an official write-in candidate for any office, other than for district, county, or state political party executive committee, in the precinct where the official serves;

(5) May not be a person prohibited from serving as an election official pursuant to any other federal or state statute; and

(6) May not have been previously convicted of a violation of any election law.

(b) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for four years for the following reasons:
(1) Failure to appear at the polling place at the
designated time without proper notice and just cause;

(2) Failure to perform the duties of an election official
as required by law;

(3) Improper interference with a voter casting a ballot or
violating the secrecy of the voter’s ballot;

(4) Being under the influence of alcohol or drugs while
serving as an election official; or

(5) Having anything wagered or bet on an election.

(c) The county commission may, upon majority vote,
suspend the eligibility to serve as an election official in any
election for two years upon petition of 25 registered voters
of the precinct where the official last served and upon
presentation of evidence of any of the grounds set forth in
§31-1-28(b) of this code: Provided, That the petition
requesting the suspension of the election official is filed
with the county commission at least 90 days prior to an
election date. The names of those persons signing the
petition must be kept confidential.

CHAPTER 80

(Com. Sub. for H. B. 3004 - By Delegates Hill, Martin,
Howell, Kessinger, Statler, Shott, McGeehan, and
Espinosa)

[Passed March 1, 2018; in effect ninety days from passage.]

AN ACT to amend and reenact §3-10-3, §3-10-4, §3-10-5, and
§3-10-7 of the Code of West Virginia, 1931, as amended, all
relating generally to filling vacancies in certain offices;
providing that the Governor shall appoint a person to fill a vacancy in an elected state office, choosing from a list of candidates required to be submitted by the executive committee of the political party with which the individual vacating the office was affiliated at the time the vacancy occurred; establishing a deadline for a party executive committee to submit names of qualified persons for vacancies in elected state offices; providing that appointments to elected state offices be made within a time certain; providing that the Governor shall appoint a person, of the same political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in an elected state office when a party executive committee fails to submit names of qualified persons; providing that the Governor shall appoint a person, from a list of qualified persons required to be submitted by the executive committee of the political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in the office of United States Senator; establishing a deadline for an executive committee to submit names of qualified persons for vacancies in the office of United States Senator; providing that appointment to fill vacancies in office of United States Senator be made within a time certain; providing for Governor to appoint a person, of the same political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in United States Senate when the party executive committee fails to submit qualified names of qualified persons; providing for the Governor to appoint a person, of the same political party with which the person holding the office immediately preceding the vacancy was affiliated, to fill a vacancy in the state Legislature; providing for a county commission to select a person to fill a vacancy in the office of county commissioner or county clerk, who, for at least sixty days prior to the time a vacancy occurred, was affiliated with the same political party with which the individual vacating the office was affiliated at the time the vacancy occurred; providing a process by which the two most senior county commissioners may select a person, from a list of candidates required to be submitted by the
executive committee of the political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in the county commission when the commission fails to make a selection; providing for the Governor to appoint a person, from a list of candidates required to be submitted by the executive committee of the political party with which the individual vacating the office was affiliated at the time the vacancy occurred, to fill a vacancy in office of county commissioner if vacancies in the commission prevent a quorum; establishing a deadline for an executive committee to submit names of qualified persons for vacancies in a county commission; clarifying that appointments to county commissions to fill vacancies are for time periods specified by statute; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, justices, judges, and magistrates.

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by §3-10-1 of this code. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day
period, the Governor shall appoint, within five days thereafter, a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred: \textit{Provided}, That the provisions of this subsection do not apply to §3-10-3(b), §3-10-3(c), §3-10-3(d), and §3-10-3(e) of this code.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of a circuit court, or judge of a family court is filled by the Governor of the state by appointment and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code. If an election is required under §3-10-3(d) of this code, the Governor, circuit court, or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by §3-10-1 of this code.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code.

(d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge of the circuit court, judge of a family court, or magistrate occurs after the 84th day before a general election, and the affected term of office ends on December 31 following the succeeding general election two years later, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs before the close of the candidate filing period for the primary election, and if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in the nonpartisan judicial election held concurrently with the primary election and the
appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than 84 days before the general election, and if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

(e) When an election to fill a vacancy is required to be held at the general election, according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for Justice of the Supreme Court of Appeals, judge of a circuit court, judge of the family court, or magistrate shall file a certificate of announcement and pay the filing fee no earlier than the first Monday in August and no later than 77 days before the general election.

§3-10-4. Vacancies in representation in United States Congress.

(a) (1) If there is a vacancy in the representation from this state in the House of Representatives in the Congress of the United States, the Governor shall, within five days after the fact comes to his or her knowledge, issue a proclamation setting dates for a special general election that is not less than 84 nor more than 120 days from the date of the vacancy and requiring nomination of candidates as provided in §3-10-4(a)(2) of this code: Provided, That no such proclamation may be made nor may a special election be held if the vacancy occurs after the 84th day prior to the regularly scheduled general election for a new full term of the office. The election shall follow the requirements of §3-10-1 of this code that are not in conflict with this section.

(2) The party executive committees for the congressional district for which there is a vacancy shall each, within 30 days of the Governor’s proclamation,
nominate a candidate to stand at the general election required by §3-10-4(a)(1) of this code.

(b) If there is a vacancy in the representation from this state in the Senate of the United States Congress, the vacancy shall be filled by the Governor of the state by appointment. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five days thereafter, a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred.

Furthermore,

(1) If the vacancy occurs on or before the primary cutoff date, then an election shall be held pursuant to §3-10-1 of this code; or

(2) If the vacancy occurs after the primary cutoff date, but on or before the general cutoff date, then the Governor shall issue a proclamation providing for: (A) A special filing period; (B) a special primary election to be held in conjunction with the upcoming general election; and (C) a special general election to be held not less than 84 nor more than 120 days following the date of the special primary election. Each election shall follow the requirements of §3-10-1 of this code that are not in conflict with this section.
§3-10-5. Vacancies in state Legislature.

(a) Any vacancy in the office of state senator or member of the House of Delegates shall be filled by appointment by the Governor, from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred.

(b) In the case of a member of the House of Delegates, the list shall be submitted by the party executive committee of the delegate district in which the vacating member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the House of Delegates is for the unexpired term.

(c) In the case of a state senator, the list shall be submitted by the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment. The appointment to fill a vacancy in the state Senate is for the unexpired term, unless §3-10-1 of this code requires a subsequent election to fill the remainder of the term, which shall follow the procedure set forth in said section.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.
(a) Any vacancy in the office of county commissioner or clerk of county commission shall be filled by appointment by the county commission. The appointee must be a person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred: Provided, That at the time of appointment, the appointee must have been a member of that political party for at least 60 days prior to the occurrence of the vacancy.

(b) If a quorum of the county commission fails to make an appointment within 30 days, the county executive committee of the same political party with which the person holding the office preceding the vacancy was affiliated at the time the vacancy occurred, shall submit a list of three legally qualified persons to fill the vacancy. Within 15 days from the date on which the list is received, the county commission shall appoint a candidate from the list to fill the vacancy. If the county commission fails to make the appointment within the specified time, then the county commissioner with the longest tenure shall eliminate one name from the submitted list, followed by the county commissioner with the second-longest tenure then eliminating one name from the submitted list. The name remaining after those two names have been eliminated shall be deemed to be appointed by the county commission to fill the vacancy.

(c) If the number of vacancies in a county commission deprives that body of a quorum, the Governor shall make an appointment to fill any vacancy in the county commission necessary to create a quorum, from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The Governor shall make any appointments necessary, beginning with the vacancy first created, to create a quorum in accordance with the same procedures applicable to county commissions under §3-10-7(a) of this code. Once a quorum of the county
commission is reestablished by gubernatorial appointment, the authority to fill the remaining vacancies shall be filled in the manner prescribed in §3-10-7(a) of this code.

(d) An appointment made pursuant to this section is for the period of time provided in §3-10-1 of this code.

(e) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of clerk of the county commission until the requirements of this section have been met. The temporary successor may serve no more than 30 days from the date of the vacancy.

(f) If an election is necessary under §3-10-1 of this code, the county commission, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by §3-10-1 of this code.

(g) §3-10-1 of this code shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in §3-5-19 of this code, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

(h) If the election for an unexpired term is held at the same time as the election for a full term for county commissioner, the full term shall be counted first and the unexpired term shall be counted second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §1-2-2c, relating to the decennial redistricting of the House of Delegates and providing that following the reapportionment and redistricting of the Legislature following the United States Census in 2020, all delegates shall be elected from one hundred single member districts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-2c. Redistricting.

1 Upon the reapportionment and redistricting of the
2 Legislature following the United States Census in 2020 and
3 in each subsequent reapportionment and redistricting, the
4 House of Delegates shall be composed of one hundred
5 single member districts, with apportionment to meet
6 constitutional standards.
AN ACT to amend and reenact §3-5-23 of the Code of West Virginia, 1931, as amended, to prohibit any person from becoming a candidate for political office by virtue of the nomination-certificate process when he or she, at the time of the filing of the nomination certificate or certificates, is registered and affiliated with a recognized political party as defined in §3-1-8 of this code or when he or she was a candidate for nomination by a recognized political party as defined in §3-1-8 of this code but failed to win the nomination of his or her party.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-23. Certificate nominations; requirements and control; penalties.

(a) Groups of citizens having no party organization may nominate candidates who are not already candidates in the primary election for public office otherwise than by conventions or primary elections. In that case, the candidate or candidates, jointly or severally, shall file a nomination certificate in accordance with the provisions of this section and the provisions of §3-5-24 of this code.

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on the certificate or certificates, may solicit or canvass duly registered voters
residing within the county, district, or other political
division represented by the office sought, but must first
obtain from the clerk of the county commission credentials
which must be exhibited to each voter canvassed or
solicited, which credentials may be in the following form or
effect:

State of West Virginia, County of ..................., ss:

This certifies that the holder of this credential is hereby
authorized to solicit and canvass duly registered voters
residing in .................... (here place the county, district or
other political division represented by the office sought) to
sign a certificate purporting to nominate ....................
(here place name of candidate heading list on certificate) for
the office of ......................... and others, at the general
election to be held on ................., 20......

Given under my hand and the seal of my office this
............... day of ..................., 20......

.........................................................

Clerk, county commission of .................... County.

The clerk of each county commission, upon proper
application made as herein provided, shall issue such
credentials and shall keep a record thereof.

(c) The certificate shall be personally signed by duly
registered voters, in their own proper handwriting or by
their marks duly witnessed, who must be residents within
the county, district, or other political division represented
by the office sought wherein the canvass or solicitation is
made by the person or persons duly authorized. The
signatures need not all be on one certificate. The number of
signatures shall be equal to not less than one percent of the
entire vote cast at the last preceding general election for the
office in the state, district, county, or other political division
for which the nomination is to be made, but in no event shall
the number be less than 25. The number of signatures shall
be equal to not less than one percent of the entire vote cast at the last preceding general election for any statewide, congressional, or presidential candidate, but in no event shall the number be less than 25. Where two or more nominations may be made for the same office, the total of the votes cast at the last preceding general election for the candidates receiving the highest number of votes on each ticket for the office shall constitute the entire vote. A signature on a certificate may not be counted unless it be that of a duly registered voter of the county, district, or other political division represented by the office sought wherein the certificate was presented.

(d) The certificates shall state the name and residence of each of the candidates; that he or she is legally qualified to hold the office; that the subscribers are legally qualified and duly registered as voters and desire to have the candidates placed on the ballot; and may designate, by not more than five words, a brief name of the party which the candidates represent and may adopt a device or emblem to be printed on the official ballot. All candidates nominated by the signing of the certificates shall have their names placed on the official ballot as candidates, as if otherwise nominated under the provisions of this chapter.

The Secretary of State shall prescribe the form and content of the nomination certificates to be used for soliciting signatures.

Offices to be filled by the voters of more than one county shall use separate petition forms for the signatures of qualified voters for each county.

Notwithstanding any other provision of this code to the contrary, a duly registered voter may sign the certificate provided in this section and may vote for candidates of his or her choosing in the corresponding primary election.

(e) The Secretary of State, or the clerk of the county commission, as the case may be, may investigate the
validity of the certificates and the signatures thereon. If, 
upon investigation, there is doubt as to the legitimacy and 
the validity of certificate, the Secretary of State may ask the 
Attorney General of the state, or the clerk of the county 
commission may ask the prosecuting attorney of the county, 
to institute a quo warranto proceeding against the nominee 
by certificate to determine his or her right to the nomination 
to public office and upon request being made, the Attorney 
General or prosecuting attorney shall institute the quo 
warranto proceeding. The clerk of the county commission 
shall, at the request of the Secretary of State or the clerk of 
the circuit court, compare the information from any 
certificate to the county voter registration records in order 
to assist in determining the validity of any certificates.

(f) For the purposes of this section, any person who, at 
the time of the filing of the nomination certificate or 
certificates, is registered and affiliated with a recognized 
political party as defined in §3-1-8 of this code may not 
become a candidate for political office by virtue of the 
nomination-certificate process as set forth in this section.

(g) For the purposes of this section, any person who was 
a candidate for nomination by a recognized political party 
as defined in §3-1-8 of this code may not, after failing to 
win the nomination of his or her political party, become a 
candidate for the same political office by virtue of the 
nomination-certificate process as set forth in this section.

(h) In addition to penalties prescribed elsewhere for 
violation of this chapter, any person violating the provisions 
of this section is guilty of a misdemeanor and, upon 
conviction, shall be fined not more than $1,000, or confined 
in jail not more than one year, or both fined and confined: 
Provided, That a criminal penalty may not be imposed upon 
anyone who signs a nomination certificate and votes in the 
primary election held after the date the certificate was 
signed.
AN ACT to amend and reenact §3-5-7 of the Code of West Virginia, 1931, as amended, relating to the filing of certificates of announcement of candidacy for a political office; requiring that the office of the Secretary of State be open from 9:00 a.m. until 11:59 p.m. on the last day of the period during which a certificate of announcement may be filed; and requiring that the offices of the county clerks of each county be open from 9:00 a.m. until 12:00 p.m. on the last day of the period during which a certificate of announcement may be filed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing certificates of announcements of candidacies; requirements; withdrawal of candidates when section applicable.

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring his or her candidacy for the nomination or election to the office.
(b) The certificate of announcement shall be filed as follows:

(1) Candidates for the House of Delegates, the State Senate, circuit judge, family court judge, and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State.

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates, State Senate, circuit judge or family court judge, shall file a certificate of announcement with the clerk of the county commission.

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January before the primary election day and not later than the last Saturday in January before the primary election day and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour. This includes the offices of justice of the Supreme Court of Appeals, circuit court judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis at the primary election: Provided, That on the final day of a political filing period, the office of the Secretary of State shall be open from 9:00 a.m. until 11:59 p.m. The offices of the County Clerk in all counties of the state shall be open on that final day of a political filing period from 9:00 a.m. until 12:00 p.m.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other
officer authorized to administer oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in §3-5-13 of this code;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state, and zip code;

(6) For partisan elections, the name of the candidate’s political party and a statement that the candidate: (A) Is a member of and affiliated with that political party as evidenced by the candidate’s current registration as a voter affiliated with that party; and (B) has not been registered as a voter affiliated with any other political party for a period of sixty days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or a statement that the candidate prefers to remain “uncommitted”; 

(8) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;
(9) The words “subscribed and sworn to before me this ______ day of _____________, 20____” and a space for the signature of the officer giving the oath.

(e) The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter’s registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the sixty days immediately preceding the filing of the certificate:

Provided, That unless a signed formal complaint of violation of this section and the certified copy of the voter’s registration record of the candidate are filed with the officer receiving that candidate’s certificate of announcement no later than ten days following the close of the filing period, the candidate may not be refused certification for this reason.

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with §3-9-3 of this code.

(g) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter received by the Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate’s committee on his or her behalf may file a list of approved or rejected candidates for delegate and the Secretary of State shall list as “uncommitted” any candidate for delegate who is disapproved by the presidential candidate.
(h) A person may not be a candidate for more than one office or office division at any election: Provided, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention: Provided, however, That an unsuccessful candidate for a nonpartisan office in an election held concurrently with the primary election may be appointed under the provisions of section nineteen of this article to fill a vacancy on the general ballot.

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the close of the filing period may not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

CHAPTER 84

(Com. Sub. for S. B. 146 - By Senator Trump)

[Passed March 2, 2018; in effect from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §22-15-10 of the Code of West Virginia, 1931, as amended, relating to correcting technical errors within the Solid Waste Management Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.


(a) Open dumps are prohibited and it is unlawful for any person to create, contribute to, or operate an open dump or
for any landowner to allow an open dump to exist on the landowner’s property unless that open dump is under a compliance schedule approved by the director. The compliance schedule shall contain an enforceable sequence of actions leading to compliance and shall not exceed two years. Open dumps operated prior to April 1, 1988, by a landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his or her residence or farm, are not a violation of this section, if the open dump was not a violation of law on January 1, 1988, and unauthorized dumps which were created by unknown persons are not a violation of this section: Provided, That a person may not contribute additional solid waste to any such dump after April 1, 1988, except that the landowners on which unauthorized dumps have been or are being made are not liable for the unauthorized dumping unless the landowners refuse to cooperate with the division in stopping the unauthorized dumping.

(b) It is unlawful for any person, unless the person holds a valid permit from the division to install, establish, construct, modify, operate, or abandon any solid waste facility. All approved solid waste facilities shall be installed, established, constructed, modified, operated, or abandoned in accordance with §22-15-1 et seq. of this code, plans, specifications, orders, instructions, and rules in effect.

(c) Any permit issued under §22-15-1 et seq. of this code shall be issued in compliance with the requirements of §22-15-1 et seq. of this code, its rules and §22-11-1 et seq. of this code and the rules, promulgated under §22-11-1 et seq. of this code, so that only a single permit is required of a solid waste facility under those two articles. Each permit issued under §22-15-1 et seq. of this code shall have a fixed term not to exceed five years: Provided, That the director may administratively extend a permit beyond its five-year term, if the approved solid waste facility is in compliance with §22-15-1 et seq. of this code, its rules, and §22-11-1 et seq. of this code and the rules promulgated under §22-11-1 et seq. of this code: Provided, however, That the
administrative extension may not be for more than one year. Upon expiration of a permit, the division may issue renewal permits in compliance with rules promulgated by the director.

(d) For existing solid waste facilities which formerly held division of health permits which expired by law and for which complete permit applications for new permits pursuant to §22-15-1 et seq. of this code were submitted as required by law, the division may enter an administrative order to govern solid waste activities at the facilities, which may include a compliance schedule, consistent with the requirements of the division’s solid waste management rules, to be effective until final action is taken to issue or deny a permit for the facility pursuant to §22-15-1 et seq. of this code, or until further order of the division.

(e) A person may not dispose of any solid waste in this state in a manner which endangers the environment or the public health, safety, or welfare as determined by the director: Provided, That the carcasses of dead animals may be disposed of in any solid waste facility or in any other manner as provided for in this code. Upon request by the director, the Commissioner of the Bureau for Public Health shall provide technical advice concerning the disposal of solid waste or carcasses of dead animals within the state.

(f) A commercial solid waste facility shall not discriminate in favor of or against the receipt of any waste otherwise eligible for disposal at the facility based on its geographic origin.

(g) In addition to all the requirements of §22-15-1 et seq. of this code and the rules promulgated under §22-15-1 et seq. of this code, the division may not issue a permit to construct a new commercial solid waste facility or to expand the spatial area of an existing facility, unless the Public Service Commission has granted a certificate of need, as provided in §24-2-1c of this code. If the director approves a permit or permit modification, the certificate of need shall
become a part of the permit and all conditions contained in
the certificate of need shall be conditions of the permit and
may be enforced by the division in accordance with the
provisions of §22-15-1 *et seq.* of this code: *Provided, That*
the provisions of this subsection do not apply to materials
recovery facilities or mixed waste processing facilities as
defined by §22-15-2 of this code, except within a 35-mile
radius of a facility sited in a karst geological region and
which has been permitted by the West Virginia Department
of Environmental Protection as a mixed waste processing
facility and has received a certificate of need by July 1,
2016.

(h) The director shall propose legislative rules for
promulgation pursuant to §29A-3-1 *et seq.* of this code
which reflect the purposes as set forth in this section.

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**CHAPTER 85**

*(Com. Sub. for S. B. 290 - By Senators Smith,
Azinger, Boso, Clements and Cline)*

[Passed March 8, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §22-11-6 of the Code of West
Virginia, 1931, as amended, relating to standards of water
quality and effluent limitations; providing that the secretary
may issue water pollution control permits that contain water
quality-based effluent limits that are adjusted to reflect credit
for pollutants in the permittee’s intake water; providing that
the secretary may not set benchmarks for substances in, or
conditions of, discharges of stormwater that are more
restrictive than the acute aquatic life water quality criterion,
the federal benchmark, the chronic aquatic life water quality
criterion, or the ambient aquatic life advisory concentration;
providing that the secretary shall establish effluent limits for stormwater that are developed in accordance with mixing zones that are appropriate for relevant conditions, upon request by a permit applicant; and providing that the secretary shall promptly develop guidance for determining how benchmarks in permits demonstrate the adequacy of stormwater best management practices.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

(a) All persons affected by rules establishing water quality standards and effluent limitations shall promptly comply with the rules: Provided, That:

1. Where necessary and proper, the secretary may specify a reasonable time for persons not complying with the standards and limitations to comply with the rules and, upon the expiration of that period of time, the secretary shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes, or other wastes into the waters of this state which result in reduction of the quality of the waters below the standards and limitations established therefor by rules of the board or secretary;

2. For purposes of both this article and sections 309 and 505 of the federal Water Pollution Control Act, compliance with a permit issued pursuant to this article shall be considered compliance for purposes of both this article and sections 301, 302, 303, 306, 307, and 403 of the federal Water Pollution Control Act and with all applicable state and federal water quality standards, except for any standard imposed under section 307 of the federal Water Pollution Control Act for a toxic pollutant injurious to human health. Notwithstanding any provision of this code or rule or permit condition to the contrary, water quality standards
themselves shall not be considered effluent standards or limitations for the purposes of both this article and sections 309 and 505 of the federal Water Pollution Control Act and may not be independently or directly enforced or implemented except through the development of terms and conditions of a permit issued pursuant to this article. Nothing in this section, however, prevents the secretary from modifying, reissuing, or revoking a permit during its term. The provisions of this section addressing compliance with a permit are intended to apply to all existing and future discharges and permits without the need for permit modifications; and

(3) The Legislature finds that there are concerns within West Virginia regarding the applicability of the research underlying the federal selenium criteria to a state such as West Virginia which has high precipitation rates and free-flowing streams, and that the alleged environmental impacts that were documented in applicable federal research have not been observed in West Virginia and, further, that considerable research is required to determine if selenium is having an impact on West Virginia streams, to validate or determine the proper testing methods for selenium, and to better understand the chemical reactions related to selenium mobilization in water.

(4) The Legislature finds that the EPA has been contemplating a revision to the federally recommended criteria for several years, but has yet to issue a revised standard.

(5) Because of the uncertainty regarding the applicability of the current selenium standard, the secretary is hereby directed to develop within six months of the effective date of this subdivision an implementation plan for the current selenium standard that will include, at minimum, the following:

(A) Implementing the criteria as a threshold standard;
(B) A monitoring plan that will include chemical speciation of any selenium discharge;

(C) A fish population survey and monitoring plan that will be implemented at a representative location to assess any possible impacts from selenium discharges if the threshold criteria are exceeded; and

(D) The results of the monitoring will be reported to the department for use in the development of state-specific selenium criteria.

(6) Within 24 months of the effective date of this subdivision, the secretary shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code which establish a state-specific selenium standard that protects aquatic life. Concurrent with proposing a legislative rule, the secretary shall also submit the proposed standard and supporting documentation to the administrator of the Environmental Protection Agency. The secretary shall also consult with and consider research and data from the West Virginia Water Research Institute at West Virginia University, the regulated community, and other appropriate groups in developing the state-specific selenium standard.

(7) Within 30 days of the effective date of this section, the secretary shall promulgate an emergency rule revising the statewide aluminum water quality criteria for the protection of aquatic life to incorporate aluminum criteria values using a hardness-based equation. Concurrent with issuing an emergency rule, the secretary shall also submit the proposed revisions and supporting documentation to the administrator of the Environmental Protection Agency.

(8) The secretary shall, within 90 days of receipt of any completed request for a site-specific water quality criterion, approve or deny the request. Any denial or approval of an application shall detail the specific basis for the denial or approval and any revisions needed to the application. Any denial or approval of a request may be appealed to the environmental quality board pursuant to §22-11-21 of this code.
(b) The secretary may issue water pollution control permits that contain water quality-based effluent limits that are adjusted to reflect credit for pollutants in the permittee’s intake water (net limits).

(c) The secretary may not set benchmarks for substances in, or conditions of, discharges of stormwater that are more restrictive than the acute aquatic life water quality criterion, the federal benchmark, the chronic aquatic life water quality criterion, or the ambient aquatic life advisory concentration.

(d) Upon request by an applicant for a permit issued in accordance with this article, the secretary shall establish effluent limits for stormwater that are developed in accordance with mixing zones that are appropriate for relevant conditions.

(e) The secretary shall promptly develop guidance for determining how benchmarks in permits issued pursuant to this article demonstrate the adequacy of stormwater best management practices.

CHAPTER 86

(Com. Sub. for S. B. 360 - By Senator Clements)

[Passed March 2, 2018; in effect ninety days from passage.] [Approved by the Governor on March 9, 2018.]

AN ACT to amend and reenact §22-6-8 of the Code of West Virginia, 1931, as amended, relating to flat well royalty leases generally; modifying the permit issuance prohibition from one-eighth interest of the total amount paid to or received at the well head for oil and gas extracted to not less than one-eighth of the gross proceeds free from any deduction for post-production expenses; and providing that a permit applicant
may file with its application an affidavit which certifies that the affiant is authorized by the owner of the working interest in the well to tender to the owner of the oil or gas a certain royalty of the gross proceeds, free from certain deductions, received at the first point of sale to an unaffiliated third-party purchaser in an arm’s length transaction.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-8. Permits not to be on flat well royalty leases; legislative findings and declarations; permit requirements.

(a) The Legislature hereby finds and declares:

(1) That a significant portion of the oil and gas underlying this state is subject to development pursuant to leases or other continuing contractual agreements wherein the owners of such oil and gas are paid upon a royalty or rental basis known in the industry as the annual flat well royalty basis, in which the royalty is based solely on the existence of a producing well, and thus is not inherently related to the volume of the oil and gas produced or marketed;

(2) That continued exploitation of the natural resources of this state in exchange for such wholly inadequate compensation is unfair, oppressive, works an unjust hardship on the owners of the oil and gas in place, and unreasonably deprives the economy of the State of West Virginia of the just benefit of the natural wealth of this state;

(3) That a great portion, if not all, of such leases or other continuing contracts based upon or calling for an annual flat well royalty, have been in existence for a great many years and were entered into at a time when the techniques by which oil and gas are currently extracted, produced or marketed, were not known or contemplated by the parties, nor was it contemplated by the parties that oil and gas would
be recovered or extracted or produced or marketed from the depths and horizons currently being developed by the well operators;

(4) That while being fully cognizant that the provisions of Section 10, Article I of the United States Constitution and of section 4, article III of the Constitution of West Virginia, proscribe the enactment of any law impairing the obligation of a contract, the Legislature further finds that it is a valid exercise of the police powers of this state and in the interest of the State of West Virginia and in furtherance of the welfare of its citizens, to discourage as far as constitutionally possible the production and marketing of oil and gas located in this state under the type of leases or other continuing contracts described above.

(b) In the light of the foregoing findings, the Legislature hereby declares that it is the policy of this state, to the extent possible, to prevent the extraction, production or marketing of oil or gas under a lease or leases or other continuing contract or contracts providing a flat well royalty or any similar provisions for compensation to the owner of the oil and gas in place, which is not inherently related to the volume of oil or gas produced or marketed, and toward these ends, the Legislature further declares that it is the obligation of this state to prohibit the issuance of any permit required by it for the development of oil or gas where the right to develop, extract, produce, or market the same is based upon such leases or other continuing contractual agreements.

(c) In addition to any requirements contained in this article with respect to the issuance of any permit required for the drilling, redrilling, deepening, fracturing, stimulating, pressuring, converting, combining, or physically changing to allow the migration of fluid from one formation to another, no such permit shall be hereafter issued unless the lease or leases or other continuing contract or contracts by which the right to extract, produce or market the oil or gas is filed with the application for such permit. In lieu of filing the lease or leases or other continuing contract
or contracts, the applicant for a permit described herein may file the following:

(1) A brief description of the tract of land including the district and county wherein the tract is located;

(2) The identification of all parties to all leases or other continuing contractual agreements by which the right to extract, produce or market the oil or gas is claimed;

(3) The book and page number wherein each such lease or contract by which the right to extract, produce or market the oil or gas is recorded; and

(4) A brief description of the royalty provisions of each such lease or contract.

(d) Unless the provisions of §22-6-8(e) of this code are met, no such permit shall be hereafter issued for the drilling of a new oil or gas well, or for the redrilling, deepening, fracturing, stimulating, pressuring, converting, combining, or physically changing to allow the migration of fluid from one formation to another, of an existing oil or gas production well, where or if the right to extract, produce, or market the oil or gas is based upon a lease or leases or other continuing contract or contracts providing for flat well royalty or any similar provision for compensation to the owner of the oil or gas in place which is not inherently related to the volume of oil and gas so extracted, produced, and marketed.

(e) To avoid the permit prohibition of §22-6-8(d) of this code, the applicant may file with such application an affidavit which certifies that the affiant is authorized by the owner of the working interest in the well to state that it shall tender to the owner of the oil or gas in place not less than one eighth of the gross proceeds, free from any deductions for post-production expenses, received at the first point of sale to an unaffiliated third-party purchaser in an arm’s length transaction for the oil or gas so extracted, produced
or marketed before deducting the amount to be paid to or set
aside for the owner of the oil or gas in place, on all such oil
or gas to be extracted, produced or marketed from the well.
If such affidavit be filed with such application, then such
application for permit shall be treated as if such lease or
leases or other continuing contract or contracts comply with
the provisions of this section.

(f) The owner of the oil or gas in place shall have a cause
of action to enforce the owner’s rights established by this
section.

(g) The provisions of this section shall not affect or
apply to any lease or leases or other continuing contract or
contracts for the underground storage of gas or any well
utilized in connection therewith or otherwise subject to the
provisions of §22-9-1 et seq. of this code.

(h) The director shall enforce this requirement
irrespective of when the lease or other continuing contract
was executed.

(i) The provisions of this section shall not adversely
affect any rights to free gas.

CHAPTER 87

(Com. Sub. for S. B. 395 - By Senators Trump and
Boso)

[Passed March 6, 2018; in effect from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §22B-1-9 of the Code of West
Virginia, 1931, as amended; to amend and reenact §22B-2-3
of said code; to amend and reenact §22B-3-3 of said code; and
to amend and reenact §22B-4-3 of said code, all relating to the
general provisions for judicial review of final orders of
various environmental boards; requiring petition be filed
within 30 days of entry of the final order; providing that
appeal does not automatically stay any final order or action
approved by a board; authorizing the chief or director to
employ outside legal counsel without approval of the Attorney
General; providing that decisions of the Air Quality Board,
Environmental Quality Board, and Surface Mine Board
denying an application for a permit, or approving or
modifying the terms and conditions of a permit, may be
directly appealed to the Supreme Court of Appeals; and
providing for exceptions to this right of direct appeal.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL POLICY AND PURPOSE.


(a) Any person, or the secretary, as the case may be,
adversely affected by an order made and entered by a board
after an appeal hearing, held in accordance with the
provisions of this chapter, is entitled to judicial review
thereof. All of the provisions of §29A-5-4 of this code apply
to and govern the review with like effect as if the provisions
of §29A-5-4 of this code were set forth in extenso in this
section, with the modifications or exceptions set forth in this
chapter: Provided, That the exceptions set forth in §22B-2-
3, §22B-3-3, and §22B-4-3 of this code apply.

(b) The filing of a petition of appeal under the
provisions of this chapter does not automatically stay or
suspend the effectiveness or execution of the order, permit,
or official action pending appeal. The board shall file with
the clerk of the court wherein the petition for appeal is filed
all papers, documents, evidence, and other records
comprising the complete record in the case, or certified
copies thereof, as were before the board at the time of the
entry of the order from which the appeal is taken.
(c) Notwithstanding any provisions of this code to the contrary, the secretary may employ in-house legal counsel to perform all legal services for the department and secretary or any director, chief, or division therein in all proceedings made under the provisions of this chapter, including those in any administrative proceeding or before any state or federal court. Additionally, the secretary may call upon the Attorney General for any legal assistance and representation as provided by law.

ARTICLE 2. AIR QUALITY BOARD.


All of the provisions of §22B-1-9 of this code apply to and govern such review with like effect as if the provisions of §22B-1-9 of this code were set forth in extenso in this section, with the following modifications or exceptions:

(a) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition for review shall be filed in the Supreme Court of Appeals within 30 days of the board’s order: Provided, That, if all parties consent to it, the proceedings may continue in the Circuit Court of Kanawha County; and

(b) As to all other cases, the petition shall be filed in the circuit court of the county wherein the alleged statutory air pollution complained of originated or in Kanawha County upon agreement between the parties.

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-3. Judicial review.

All of the provisions of §22B-1-9 of this code apply to and govern such review with like effect as if the provisions of §22B-1-9 of this code were set forth in extenso in this section, with the following modifications or exceptions:
(a) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition shall be filed in the Supreme Court of Appeals within 30 days of the board’s order: Provided, That, if all parties consent to it, the proceedings may continue in the Circuit Court of Kanawha County;

(b) As to cases involving an order revoking or suspending a permit, the petition shall be filed in the circuit court of Kanawha County; and

(c) As to cases involving an order directing that any and all discharges or deposits of solid waste, sewage, industrial wastes, or other wastes, or the effluent therefrom, determined to be causing pollution be stopped or prevented or else that remedial action be taken, the petition shall be filed in the circuit court of the county in which the establishment is located or in which the pollution occurs.

ARTICLE 4. SURFACE MINE BOARD.

§22B-4-3. Judicial review.

All of the provisions of §22B-1-9 of this code apply to and govern such review with like effect as if the provisions of §22B-1-9 of this code were set forth in extenso in this section, with the following modifications or exceptions: (a) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition shall be filed in the Supreme Court of Appeals within 30 days of the board’s order: Provided, That, if all parties consent to it, the proceedings may continue in the Circuit Court of Kanawha County;

(b) As to all other cases, the petition shall be filed in the Circuit Court of Kanawha County or in the county wherein the surface mining operation is located.
CHAPTER 88
(Com. Sub. for H. B. 4424 - By Delegates Miley, Speaker Mr. Shott, Fleischauer, Lane, Rowe, Hanshaw, Boggs, Hamilton, Caputo and Campbell)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §6B-2-5 of said code, all relating to providing that the West Virginia Governmental Ethics Act applies to public servant volunteers; defining terms; and providing that the requirements of the West Virginia Governmental Ethics Act apply to a person who is granted or vested with powers, privileges or authorities ordinarily reserved to public officials or who performs services, without compensation, on behalf of a public official.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

§6B-1-3. Definitions.

1 As used in this chapter, unless the context in which used clearly requires otherwise:

3 (a) “Review Board” means the Probable Cause Review Board created by §6B-2-2a of this code.

(b) “Business” means any entity through which business for-profit is conducted including a corporation, partnership,
proprietorship, franchise, association, organization, or self-employed individual.

(c) “Compensation” means money, thing of value, or financial benefit. The term “compensation” does not include reimbursement for actual reasonable and necessary expenses incurred in the performance of one’s official duties.

(d) “Employee” means any person in the service of another under any contract of hire, whether express or implied, oral, or written, where the employer or an agent of the employer or a public official has the right or power to control and direct such person in the material details of how work is to be performed and who is not responsible for the making of policy nor for recommending official action.

(e) “Ethics Commission” or “commission” means the West Virginia Ethics Commission.

(f) “Immediate family”, with respect to an individual, means a spouse with whom the individual is living as husband and wife and any dependent child or children, dependent grandchild or grandchildren, and dependent parent or parents.

(g) “Ministerial functions” means actions or functions performed by an individual under a given state of facts in a prescribed manner in accordance with a mandate of legal authority, without regard to, or without the exercise of, the individual’s own judgment as to the propriety of the action being taken.

(h) “Person” means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club, or other organization or group of persons, irrespective of the denomination given such organization or group.
(i) “Political contribution” means and has the same definition as is given that term under the provisions of §3-8-1 *et seq.* of this code.

(j) “Public employee” means any full-time or part-time employee of any state, county or municipal governmental body or any political subdivision thereof, including county school boards.

(k) “Public official” means any person who is elected to, appointed to, or given the authority to act in any state, county, or municipal office or position, whether compensated or not, and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to: (1) Contracting for, or procurement of, goods or services; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating, or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person. The term “public official” includes a public servant volunteer.

(l) “Public servant volunteer” means any person who, without compensation, performs services on behalf of a public official and who is granted or vested with powers, privileges, or authorities ordinarily reserved to public officials.

(m) “Relative” means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law.

(n) “Respondent” means a person who is the subject of an investigation by the commission or against whom a complaint has been filed with the commission.

(o) “Thing of value”, “other thing of value,” or “anything of value” means and includes: (1) Money, bank
bills, or notes, United States treasury notes and other bills, bonds or notes issued by lawful authority and intended to pass and circulate as money; (2) goods and chattels; (3) promissory notes, bills of exchange, orders, drafts, warrants, checks, bonds given for the payment of money, or the forbearance of money due or owing; (4) receipts given for the payment of money or other property; (5) any right or chose in action; (6) chattels real or personal or things which savor of realty and are, at the time taken, a part of a freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the severing and the taking away thereof; (7) any interest in realty, including, but not limited to, fee simple estates, life estates, estates for a term or period of time, joint tenancies, cotenancies, tenancies in common, partial interests, present or future interests, contingent or vested interests, beneficial interests, leasehold interests, or any other interest or interests in realty of whatsoever nature; (8) any promise of employment, present or future; (9) donation or gift; (10) rendering of services or the payment thereof; (11) any advance or pledge; (12) a promise of present or future interest in any business or contract or other agreement; or (13) every other thing or item, whether tangible or intangible, having economic worth. “Thing of value”, “other thing of value” or “anything of value” shall not include anything which is de minimis in nature nor a lawful political contribution reported as required by law.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) Persons subject to section. — The provisions of this section apply to all public officials and public employees,
whether full or part-time and whether compensated or not, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain. — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: Provided, That the official’s or employee’s participation in such program, or acquisition of such points, does not result in additional costs to the government.

(3) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Those persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to
their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person’s employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(4) A public official or public employee may not show favoritism or grant patronage in the employment or working conditions of his or her relative or a person with whom he or she resides: Provided, That as used in this subdivision, “employment or working conditions” shall only apply to government employment: Provided, however, That government employment includes only those governmental entities specified in subsection (a) of this section.

(c) Gifts. — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit
enforced upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;
(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural, or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter 29A of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when:

(A) That official is a part-time elected public official;

(B) The fee is not related to the official’s public position or duties;

(C) The fee is for services provided by the public official that are related to the public official’s regular, nonpublic trade, profession, occupation, hobby, or avocation; and

(D) The honorarium is not provided in exchange for any promise or action on the part of the public official.
(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The Governor or his designee may, in the name of the State of West Virginia, accept and receive gifts from any public or private source. Any gift so obtained shall become the property of the state and shall, within 30 days of the receipt thereof, be registered with the commission and the Division of Culture and History.

(6) Upon prior approval of the Joint Committee on Government and Finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the Joint Committee on Government and Finance authorizes payment of dues or other membership fees for the Legislature’s participation and which assist this and other State Legislatures and their staff through any of the following:

(A) Advancing the effectiveness, independence, and integrity of Legislatures in the states of the United States;

(B) Fostering interstate cooperation and facilitating information exchange among State Legislatures;

(C) Representing the states and their Legislatures in the American federal system of government;

(D) Improving the operations and management of State Legislatures and the effectiveness of legislators and legislative staff, and to encourage the practice of high standards of conduct by legislators and legislative staff;

(E) Promoting cooperation between State Legislatures in the United States and Legislatures in other countries.
The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the Joint Committee on Government and Finance and with the Secretary of State for publication in the State Register as provided in §29A-2-1 et seq. of this code, copies of letters, brochures, and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:

“This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature’s Joint Committee on Government and Finance, and with the Secretary of State and are available for public review.”

(7) Upon written notice to the commission, any member of the board of Public Works may solicit donations for a regional or national organization conference or other function related to the office of the member to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. The solicitations may only be made in writing. The organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the office of the Board of Public Works member may not be used in conjunction with the fund raising or solicitation effort. The organization for which solicitations are being made shall file with the Joint Committee on Government and Finance, with the
Secretary of State for publication in the State Register as provided in §29A-2-1 et seq. of this code and with the commission, copies of letters, brochures, and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a member of the board of Public Works shall contain the following disclaimer: “This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. Copies of all solicitations are on file with the West Virginia Legislature’s Joint Committee on Government and Finance, with the West Virginia Secretary of State and with the West Virginia Ethics Commission and are available for public review.” Any moneys in excess of those donations needed for the conference or function shall be deposited in the Capitol Dome and Capitol Improvement Fund established in §5A-4-2 et seq. of this code.

(d) Interests in public contracts. — (1) In addition to the provisions of §61-10-15 of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on
the contract and has fully disclosed the extent of his or her interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder, or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed $1,000 in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than $5,000.

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

(4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board, or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.
(e) **Confidential information.** — No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) **Prohibited representation.** — No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client’s interests are materially adverse to the interests of the government agency, without the consent of the government agency: Provided, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which the professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on July 1, 1989, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) **Limitation on practice before a board, agency, commission or department.** — Except as otherwise provided
in §8A-2-3, §8A-2-4, or §8A-2-5 of this code: (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;
(B) To support or oppose a proposed rule;
(C) To support or contest the issuance or denial of a license or permit;
(D) A rate-making proceeding; and
(E) To influence the expenditure of public funds.

(2) As used in this subsection, “represent” includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: Provided, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal, or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the
Legislature, a county commission, city or town council, or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution, or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the one year prohibition against appearing in a representative capacity, when the person’s education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall, by legislative rule, establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) Employment by regulated persons and vendors. —

(1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding 12 months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public
employee, or a subordinate of the official or public
employee, exercises authority or control over a public
contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;
(ii) Recommending selection of the vendor;
(iii) Conducting inspections or investigations;
(iv) Approving the method or manner of payment to the
vendor;
(v) Providing legal or technical guidance on the
formation, implementation or execution of the contract; or
(vi) Taking other nonministerial action which may
affect the financial interests of the vendor.

Within the meaning of this section, the term
“employment” includes professional services and other
services rendered by the public official or public employee,
whether rendered as employee or as an independent
contractor; “seek employment” includes responding to
unsolicited offers of employment as well as any direct or
indirect contact with a potential employer relating to the
availability or conditions of employment in furtherance of
obtaining employment; and “subordinate” includes only
those agency personnel over whom the public official or
public employee has supervisory responsibility.

A full-time public official or full-time public
employee who would be adversely affected by the
provisions of this subsection may apply to the Ethics
Commission for an exemption from the prohibition
contained in subdivision (1) of this subsection.

(A) The Ethics Commission shall, by legislative rule,
establish general guidelines or standards for granting an
exemption, but shall decide each application on a case-by-
case basis;
(B) A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a legislative rule.

(C) The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not personally participate in a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection, or other substantial exercise of nonministerial administrative discretion involving a vendor with whom he or she is seeking employment or has an agreement concerning future employment.

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) Members of the Legislature required to vote. — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.
(j) Limitations on voting. — (1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past 12 months: Provided, That this limitation only applies if the total amount of the loan or loans exceeds $15,000.

(C) The employment or working conditions of the public official’s relative or person with whom the public official resides.

(D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by, or a compensated officer or board member of, the nonprofit: Provided, That if the public official or immediate family member is an uncompensated officer or board member of the nonprofit, then the public official shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or award of contract to the nonprofit: Provided, however, That for purposes of this
paragraph, public disclosure shall mean disclosure of the public official’s, or his or her immediate family member’s, relationship to the nonprofit (i) on the agenda item relating to the appropriation or award contract, if known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the minutes of the meeting.

(2) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

(B) If the matter affects a publicly traded company when:

(i) The public official, or dependent family members individually or jointly own less than five percent of the issued stock in the publicly traded company and the value of the stocks individually or jointly owned is less than $10,000; and

(ii) Prior to casting a vote the public official discloses his or her interest in the publicly traded company.

(3) For a public official’s recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

(k) Limitations on participation in licensing and rate-making proceedings. — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as
defined in §6B-1-3 of this code, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or his or her immediate family owns or controls more than 10 percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined §6B-1-3 of this code, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than 10 percent, has sold goods or services totaling more than $1,000 during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency’s proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to §30-3-1 et seq., §30-8-1 et seq., §30-14-1 et seq., §30-14A-1 et seq., §30-15-1 et seq., §30-16-1 et seq., §30-20-1 et seq., §30-21-1 et seq., or §30-31-1 et seq. of this code.

(l) *Certain compensation prohibited.* — (1) A public employee may not receive additional compensation from another publicly-funded state, county, or municipal office or employment for working the same hours, unless:

(A) The public employee’s compensation from one public employer is reduced by the amount of compensation received from the other public employer;

(B) The public employee’s compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;
(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once every pay period, showing the hours that the public employee did, in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a publicly-funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(m) Certain expenses prohibited. — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(n) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting, or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee’s
department supervisor or the president of the institution by which the faculty or staff member is employed.

(o) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular, or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(p) The commission may, by legislative rule promulgated in accordance with chapter 29A of this code, define further exemptions from this section as necessary or appropriate.
AN ACT to amend and reenact §6B-2B-1, §6B-2B-2, §6B-2B-3, and §6B-2B-4 of the Code of West Virginia, 1931, as amended, all relating to the use of a public official’s name or likeness on items or in materials produced using public funds; defining terms; providing that a public official’s name or likeness may be included in certain educational materials and press releases produced using public funds; providing that a public official’s name or likeness may appear on an agency’s website or social media for certain purposes; and clarifying that items or materials that are paid for by a public official’s campaign funds are not subject to restrictions on items or materials produced using public funds.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. LIMITATIONS ON A PUBLIC OFFICIAL FROM USING HIS OR HER NAME OR LIKENESS.

§6B-2B-1. Definitions.

1 As used in this article:

2 (a) “Advertising” means publishing, distributing, disseminating, communicating, or displaying information to the public through audio, visual, or other media tools with the purpose of promoting the public official or a political party. “Advertising” may include, but is not limited to,
billboard, radio, television, mail, electronic mail, publications, banners, table skirts, magazines, social media, websites, and other forms of publication, dissemination, display, or communication.

(b) “Agent” means any volunteer or employee, contractual or permanent, serving at the discretion of a public official or public employee.

(c) “Educational materials” means publications, guides, calendars, handouts, pamphlets, reports, or booklets intended to provide information about the public official or governmental office. It includes information or details about the office, services the office provides to the public, updates on laws and services, and other informational items that are intended to educate the public.

(d) “Instructional material” means written instructions explaining or detailing steps for completion of a governmental agency document or form.

(e) “Likeness” means a photograph, drawing, or other depiction of an individual.

(f) “Mass media communication” means communication through audio, visual, or other media tools, including U.S. mail, electronic mail, and social media, intended for general dissemination to the public. Examples include mass mailing by U.S. mail, list-serve emails and streaming clips on websites. It does not include: (i) Regular responses to constituent requests or questions during the normal course of business; or (ii) communications that are authorized or required by law to be publicly disseminated, such as legal notices.

(g) “Press release” means a written, audio, or video communication issued by an official or agency to the public or to members and organizations of the news media to report specific but brief information about an event, circumstance, or other happening.
(h) “Public employee” means any full-time or part-time employee of any state, or political subdivision of the state, and their respective boards, agencies, departments, and commissions, or in any other regional or local governmental agency.

(i) “Public official” means any person who is elected or appointed to any state, county, or municipal office or position, including boards, agencies, departments, and commissions, or in any other regional or local governmental agency.

(j) “Public payroll” means payment of public moneys as a wage or salary from the state, or political subdivision of the state, or any other regional or local governmental agency, whether accepted or not.

(k) “Social media” means forms of electronic communication through which users create online communities to share information, ideas, personal messages, and other content. It includes web and mobile-based technologies which are used to turn communication to interactive dialogue among organizations, communities, and individuals. Examples include, but are not limited to, Facebook, Myspace, Twitter, and YouTube.

(l) “Trinkets” means items of tangible personal property that are not vital or necessary to the duties of the public official’s or public employee’s office, including, but not limited to, the following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files, matches, and bags.

§6B-2B-2. Limitations on a public official from using his or her name or likeness.

(a) Trinkets. – Public officials, their agents, or anyone on public payroll may not place the public official’s name or likeness on trinkets paid for with public funds: Provided, that when appropriate and reasonable, public officials may
expend a minimal amount of public funds for the purchase of pens, pencils, or other markers to be used during ceremonial signings.

(b) Advertising. – (1) Public officials, their agents, or anyone on public payroll may not use public funds, including funds of the office held by the public official, public employees, or public resources to distribute, disseminate, publish, or display the public official’s name or likeness for the purpose of advertising to the public.

(2) Notwithstanding the prohibitions in subdivision (1) of this subsection, the following conduct is not prohibited:

(A) A public official’s name and likeness may be used in a public announcement or mass media communication when necessary, reasonable, and appropriate to relay specific public safety, health, or emergency information.

(B) A public official’s name and likeness may appear on an agency’s social media and website if it complies with §6B-2B-3 of this code.

(3) Banners and table skirts are considered advertising and may not include the public official’s name or likeness.

(4) Nothing in this article shall be interpreted as prohibiting public officials from using public funds to communicate with constituents in the normal course of their duties as public officials if the communications do not include any reference to voting in favor of the public official in an election.

(c) Vehicles. – Public officials, their agents, or any person on public payroll may not use or place the public official’s name or likeness on any publicly owned vehicles.

(d) Educational Materials. –

A public official’s name or likeness may be placed on any educational material, that is paid for with public funds,
so long as the primary purpose of the material is to provide information about the processes, operations, structure, functions, or history of an agency, agencies, or branch of government, or to provide lists of contact information or other identifying information about a public official. Educational materials in which the name and likeness of an official may appear include, but are not limited to: directories; reports; reference books; and legislative publications, such as the West Virginia Blue Book and the Legislative Manual.

(e) Press releases. – Notwithstanding any other provision of law, the name and likeness of a public official may be included in a press release, produced with public funds and which is disseminated by any means, if that press release is intended for a legitimate news or informational purpose and, considered as a whole, does not feature or present the public official in a form, manner, or context which is intended to promote the official. A press release produced with public funds may not request, solicit, or promote voting for any official or political party.

§6B-2B-3. Use of public official’s name or likeness on agency website or social media.

(a) A public official’s name and likeness may appear on a public agency’s website and on the agency’s social media accounts or pages in any of the following circumstances:

(1) The public official’s name and likeness appears on the agency’s website or social media accounts or pages for the purpose of providing biographical information regarding the public official;

(2) The public official’s name and likeness appears in educational materials posted or otherwise shared on the agency’s website or social media accounts or pages, so long as the educational materials comply with the requirements of §6B-2B-2(d) of this code;
(3) The public official’s name and likeness appears in a press release posted or otherwise shared on the agency’s website or social media accounts or pages, so long as the press release complies with the requirements of §6B-2B-2(e) of this code; or

(4) The public official’s name and likeness appears on the agency’s website or social media accounts or pages for any other purpose that is reasonable, incidental, appropriate, and has a primary purpose to promote the agency’s mission and services rather than to promote the public official.

(b) The requirements of this section do not apply to a public official’s personal or non-public agency social media accounts.

(c) A public agency’s website or social media may not provide links or reference to a public official’s or public employee’s personal or campaign social media or website.

§6B-2B-4. Exceptions to use of name or likeness.

(a) A public official may use his or her name or likeness on any official record or report, letterhead, document, or certificate or instructional material issued in the course of his or her duties as a public official: Provided, That other official documents used in the normal course of the agency, including, but not limited to, facsimile cover sheets, press release headers, office signage, and envelopes may include the public official’s name: Provided, however, That when official documents are reproduced for distribution or dissemination to the public as educational material, the items are subject to the prohibitions in §6B-2B-2(d) of this code.

(b) When appropriate and reasonable, the West Virginia Division of Tourism may use a public official’s name and likeness on material used for tourism promotion.

(c) The prohibitions contained in this article do not apply to any person who is employed as a member of the faculty, staff, administration, or president of a public
institution of higher education and who is engaged in
teaching, research, consulting, coaching, recruiting, or
publication activities: Provided, That the activity is
approved as a part of an employment contract with the
governing board of the institution of higher education or has
been approved by the employee’s department supervisor or
the president of the institution by which the faculty or staff
member is employed.

(d) The prohibitions contained in §6B-2B-2 of this code
do not apply to items paid for from the public official’s
campaign funds.

(e) The prohibitions contained in §6B-2B-2 of this code
do not apply to items paid for with the public official’s
personal money.

(f) The prohibitions contained in §6B-2B-2 of this code
do not apply to items or materials required by law to contain
the public official’s name or likeness.

CHAPTER 90

(Com. Sub. for S. B. 71 - By Senators Weld, Prezioso
and Cline)

[Passed February 22, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 6, 2018.]

AN ACT to amend and reenact §59-1-2a of the Code of West
Virginia, 1931, as amended, relating to defining the term
“veteran” as that term pertains to veteran-owned businesses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. FEES AND ALLOWANCES.
§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

(a) Definitions. – As used in this section:

(1) “Annual report fee” means the fee described in §59-1-2a(c) of this code that is to be paid to the Secretary of State each year by corporations, limited partnerships, domestic limited liability companies, and foreign limited liability companies. After June 30, 2008, any reference in this code to a fee paid to the Secretary of State for services as a statutory attorney in fact shall mean the annual report fee described in this section.

(2) “Business activity” means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, but does not mean any of the activities of foreign corporations enumerated in §31D-15-1501(b) of this code, except for the activity of conducting affairs in interstate commerce when activity occurs in this state, nor does it mean any of the activities of foreign limited liability companies enumerated in §31B-10-1003(a) of this code, except for the activity of conducting affairs in interstate commerce when activity occurs in this state.

(3) “Corporation” means a “domestic corporation”, a “foreign corporation”, or a “nonprofit corporation”.

(4) “Deliver or delivery” means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery, and electronic transmission.

(5) “Domestic corporation” means a corporation for profit which is not a foreign corporation incorporated under or subject to chapter 31D of this code.

(6) “Domestic limited liability company” means a limited liability company which is not a foreign limited
liability company under or subject to chapter 31B of this code.

(7) “Foreign corporation” means a for-profit corporation incorporated under a law other than the laws of this state.

(8) “Foreign limited liability company” means a limited liability company organized under a law other than the laws of this state.

(9) “Limited partnership” means a partnership as defined by §47-9-1 of this code.

(10) “Nonprofit corporation” means a nonprofit corporation as defined by §31E-1-150 of this code.

(11) “Registration fee” means the fee for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in §59-1-2(a)(2) of this code. The term “initial registration” also means the date upon which the registration fee is paid.

(12) “Veteran” means any person who has served as an active member of the armed forces of the United States, the National Guard, or a reserve component as described in 38 U. S. C. §101. Notwithstanding any provision in this code to the contrary, a veteran must be honorably discharged or under honorable conditions as described in 38 U. S. C. §101.

(13) “Veteran-owned business” means a business that meets the following criteria:

(A) Is at least 51 percent unconditionally owned by one or more veterans; or

(B) In the case of a publicly owned business, at least 51 percent of the stock is unconditionally owned by one or more veterans.
(b) **Required payment of annual report fee and filing of annual report.** – After June 30, 2008, no corporation, limited partnership, domestic limited liability company, or foreign limited liability company may engage in any business activity in this state without paying the annual report fee and filing the annual report as required by this section.

(c) **Annual report fee.** – After June 30, 2008, each corporation, limited partnership, domestic limited liability company, and foreign limited liability company engaged in or authorized to do business in this state shall pay an annual report fee of $25 for the services of the Secretary of State as attorney-in-fact for the corporation, limited partnership, domestic limited liability company, or foreign limited liability company and for such other administrative services as may be imposed by law upon the Secretary of State. The fee is due and payable each year after the initial registration of the corporation, limited partnership, domestic limited liability company, or foreign limited liability company with the annual report described in §59-1-2a(d) of this code on or before the dates specified in §59-1-2a(e) of this code. The fee is due and payable each year with the annual report from corporations, limited partnerships, domestic limited liability companies, and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in §59-1-2a(e) of this code. The annual report fees received by the Secretary of State pursuant to this subsection shall be deposited by the Secretary of State in the general administrative fees account established by §59-1-2 of this code.

(d) **Annual report.** –

(1) After June 30, 2008, each corporation, limited partnership, domestic limited liability company, and foreign limited liability company engaged in or authorized to do business in this state shall file an annual report. The report is due each year after the initial registration of the corporation, limited partnership, domestic limited liability
company, or foreign limited liability company with the annual report fee described in §59-1-2a(c) of this code on or before the dates specified in §59-1-2a(e) of this code. The report is due each year from corporations, limited partnerships, domestic limited liability companies, and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in §59-1-2a(e) of this code.

(2) (A) The annual report shall be filed with the Secretary of State on forms provided by the Secretary of State for that purpose. The annual report shall, in the case of corporations, contain: (i) The address of the corporation’s principal office; (ii) the names and mailing addresses of its officers and directors; (iii) the name and mailing address of the person on whom notice of process may be served; (iv) the name and address of the corporation’s parent corporation and of each subsidiary of the corporation licensed to do business in this state; (v) in the case of limited partnerships, domestic limited liability companies, and foreign limited liability companies, similar information with respect to their principal or controlling interests as determined by the Secretary of State or otherwise required by law to be reported to the Secretary of State; (vi) the county or county code in which the principal office address or mailing address of the company is located; (vii) business class code; and (viii) any other information the Secretary of State considers appropriate.

(B) Notwithstanding any other provision of law to the contrary, the Secretary of State shall, upon request of any person, disclose, with respect to corporations: (i) The address of the corporation’s principal office; (ii) the names and addresses of its officers and directors; (iii) the name and mailing address of the person on whom notice of process may be served; (iv) the name and address of each subsidiary of the corporation and the corporation’s parent corporation; (v) the county or county code in which the principal office address or mailing address of the company is located; and
(vi) the business class code. The Secretary of State shall provide similar information with respect to information in its possession relating to limited partnerships, domestic limited liability companies, and foreign limited liability companies, similar information with respect to their principal or controlling interests.

(e) Annual reports and fees due July 1. – Each domestic and foreign corporation, limited partnership, limited liability company, and foreign limited liability company shall file with the Secretary of State the annual report and pay the annual report fee by July 1 of each year.

(f) Deposit of fees. – The annual report fees received by the Secretary of State pursuant to this section shall be deposited by the Secretary of State in the general administrative fees account established by §59-1-2 of this code.

(g) (1) Duty to pay. – It shall be the duty of each corporation, limited partnership, limited liability company, and foreign limited liability company required to pay the annual report fees imposed under this article to remit them with a properly completed annual report to the Secretary of State, and if it fails to do so it shall be subject to the late fees prescribed in §59-1-2a(h) of this code and dissolution or revocation, pursuant to this code: Provided, That before dissolution or revocation for failure to pay fees may occur, the Secretary of State shall notify the entity by certified mail, return receipt requested, of its failure to pay, all late fees or bad check fees associated with the failure to pay, and the date upon which dissolution or revocation will occur if all fees are not paid in full. The certified mail required by this subdivision shall be postmarked at least thirty days before the dissolution or revocation date listed in the notice.

(2) Bad check fee. – If any corporation, limited partnership, limited liability company, or foreign limited liability company submits payment by check or money order for the annual report fee imposed under this article and
the check or money order is rejected because there are insufficient funds in the account or the account is closed, the Secretary of State shall assess a bad check fee to the corporation, limited partnership, limited liability company, or foreign limited liability company that is equivalent to the service charge paid by the Secretary of State due to the rejected check or money order. The bad check fee assessed under this subdivision shall be deposited into the account or accounts from which the Secretary of State paid the service charge.

(h) Late fees. –

(1) The following late fees shall be in addition to any other penalties and remedies available elsewhere in this code:

(A) Administrative late fee. – The Secretary of State shall assess upon each corporation, limited partnership, limited liability company, and foreign limited liability company delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $50.

(B) Administrative late fees for nonprofit corporations. – The Secretary of State shall assess each nonprofit corporation delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $25.

(2) The Secretary of State shall deposit the first $25,000 of fees collected under this subsection into the General Administrative Fees Account established in §59-1-2(h) of this code and shall deposit any additional fees collected under this section into the General Revenue Fund of the state.

(i) Reports to Tax Commissioner; suspension, cancellation or withholding of business registration certificate. –
(1) The Secretary of State shall, within 20 days after the close of each month, make a report to the Tax Commissioner for the preceding month, in which he or she shall set out the name of every business entity to which he or she issued a certificate to conduct business in the State of West Virginia during that month. The report shall set out the names and addresses of all corporations, limited partnerships, limited liability companies, and foreign limited liability companies to which he or she issued certificates of change of name or of change of location of principal office, dissolution, withdrawal, or merger. If the Secretary of State fails to make the report, it shall be the duty of the Tax Commissioner to report such failure to the Governor. A writ of mandamus shall lie for correction of such failure.

(2) Notwithstanding any other provisions of this code to the contrary, upon receipt of notice from the Secretary of State that a corporation, limited partnership, limited liability company, and foreign limited liability company is more than 30 days delinquent in the payment of annual report fees or in the filing of an annual report required by this section, the Tax Commissioner may suspend, cancel or withhold a business registration certificate issued to or applied for by the delinquent corporation, limited partnership, limited liability company, or foreign limited liability company until the same is paid and filed in the manner provided for the suspension, cancellation or withholding of business registration certificates for other reasons under §11-12-1 et seq. of this code.

(j) Purchase of data. – The Secretary of State will provide electronically, for purchase, any data maintained in the Secretary of State’s Business Organizations Database. For the electronic purchase of the entire Business Organizations Database, the cost is $12,000. For the purchase of the monthly updates of the Business Organizations Database, the cost is $1,000 per month. The fees received by the Secretary of State pursuant to this
subsection shall be deposited by the Secretary of State in the
general administrative fees account established by §59-1-2
of this code.

(k) The Secretary of State is authorized to collect the
service fee per transaction, if any, charged for an online
service from any customer who purchases data or conducts
transactions through an online service.

(l) Rules. – The Secretary of State may propose rules for
legislative approval, in accordance with the provisions of
§29A-3-1 et seq. of this code, to implement this article.

(m) A veteran-owned business, as defined in §59-1-2a(a)(13) of this code, commenced on or after July 1, 2015,
is exempt from paying the annual report fee, required by this
section, for the first four years after its initial registration:
Provided, That a veteran-owned business is not exempt
from any filing deadlines or other fees required by this
section.

CHAPTER 91

(S. B. 365 - By Senators Weld, Ferns, Unger, Plymale,
Baldwin, Cline and Boso)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §59-1-2c of the Code of West
Virginia, 1931, as amended, relating to the Young
Entrepreneur Reinvestment Act; and eliminating sunset date
for expiration of fee waivers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. FEES AND ALLOWANCES.
§59-1-2c. Young Entrepreneur Reinvestment Act; certain fees waived.

Beginning on July 1, 2016, a person who is under the age of 30 who resides within West Virginia is exempt from paying the fees provided in section two of this article for filing:

1. Articles of incorporation of a domestic, for profit corporation, for which he or she is an incorporator;
2. Articles of incorporation of a domestic, nonprofit corporation for which he or she is an incorporator;
3. Articles of organization of a domestic limited liability company, for which he or she is a member;
4. Agreement of a domestic general partnership, for which he or she is a partner; or
5. Certificate of a domestic limited partnership, for which he or she is a partner.

CHAPTER 92
(Com. Sub. for S. B. 102 - By Senator Trump)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]
19, all relating to the Uniform Power of Attorney Act and the West Virginia Uniform Fiduciary Access to Digital Assets Act; providing that an agent under power of attorney may exercise authority over the content of electronic communications sent or received by the principal; clarifying the ability of an agent under a power of attorney to take self-benefitting actions; providing code references and additional language to the statutory form for power of attorney; creating the West Virginia Uniform Fiduciary Access to Digital Assets Act; providing a short title; defining certain terms; setting forth to whom the article applies; providing for user direction for disclosure of assets with or without an online tool; addressing terms of service agreements; setting forth procedure for disclosing digital assets by custodian; allowing custodian to assess reasonable administrative charges; allowing custodian or fiduciary to seek court order when request imposes an undue burden; providing for disclosure of content of electronic communications and other digital assets of deceased users and setting forth required documentation; providing for disclosure of content of electronic communications and digital assets of a principal by custodian and setting forth required documentation; addressing disclosure of digital assets held in trust when the trustee is an original owner or user; addressing disclosure of contents of electronic communications held in trust and other digital assets when trustee is not an original owner or user and setting forth required documentation; addressing disclosure of digital assets to conservator of a protected person and setting forth required documentation; setting forth fiduciary’s duties and authority; providing for custodian’s compliance and immunity; setting time frame for compliance by custodian; authorizing application for court order for noncompliance; allowing custodian to notify user, deny a request, or receive a court order; providing for uniformity of application and construction of article; addressing relation of article to Electronic Signatures in Global and National Commerce Act; and providing for severability of article.

Be it enacted by the Legislature of West Virginia:
CHAPTER 39B. UNIFORM POWER OF ATTORNEY ACT.

ARTICLE 2. AUTHORITY.

*§39B-2-101. Authority that requires specific grant; grant of general authority.

(a) An agent under a power of attorney may do the following on behalf of the principal or with the principal’s property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject to:

(1) Create, amend, revoke, or terminate an inter vivos trust;

(2) Make a gift;

(3) Create or change rights of survivorship;

(4) Create or change a beneficiary designation;

(5) Delegate authority granted under the power of attorney;

(6) Waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(7) Exercise fiduciary powers that the principal has authority to delegate;

(8) Disclaim property, including a power of appointment; or

(9) Exercise authority over the content of electronic communications, as defined in 18 U.S.C. Section 2510(12) sent or received by the principal.

*NOTE: This section was also amended by H. B. 4320 (Chapter 176), which passed subsequent to the act.
(b) Notwithstanding a grant of authority to do an act described in this section, unless the power of attorney otherwise provides, an agent may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal’s property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(c) Subject to §39B-2-101(a), §39B-2-101(b), §39B-2-101(d), and §39B-2-101(e) of this code, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in §39B-2-104 through §39B-2-116 of this code.

(d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to the provisions of §39B-2-117 of this code.

(e) Subject to §39B-2-101(a), §39B-2-101(b), §39B-2-101(d), and §39B-2-101(e) of this code, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(f) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(g) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal’s successors in interest as if the principal had performed the act.

ARTICLE 3. STATUTORY FORMS.

§39B-3-101. Statutory form power of attorney.
A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this act.

STATE OF WEST VIRGINIA

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, §39B-1-101 et seq. of this code.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent’s authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the special instructions. This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions. If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.
If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I __________________________ name the following person as my agent:

(Name of Principal)

Name of Agent:__________________________________________

Agent’s Address:________________________________________

Agent’s Telephone Number:_____________________

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent:_______________________

Successor Agent’s Address:______________________

Successor Agent’s Telephone Number:_____________

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent:________________

Second Successor Agent’s Address:________________

Second Successor Agent’s Telephone Number:_______

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, §39B-1-101 et seq. of this code:
INITIAL each subject you want to include in the agent’s general authority. If you wish to grant general authority over all of the subjects you may initial “All Preceding Subjects” instead of initialing each subject.)

___ Real Property

___ Tangible Personal Property

___ Stocks and Bonds

___ Commodities and Options

___ Banks and Other Financial Institutions

___ Operation of Entity or Business

___ Insurance and Annuities

___ Estates, Trusts, and Other Beneficial Interests

___ Claims and Litigation

___ Personal and Family Maintenance

___ Benefits from Governmental Programs or Civil or Military Service

___ Retirement Plans

___ Taxes

___ All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your
property is distributed at your death. INITIAL ONLY the
specific authority you WANT to give your agent.)

(____) Create, amend, revoke, or terminate an inter vivos trust

(____) Make a gift, subject to the limitations of the West Virginia Uniform Power of Attorney Act and any special instructions in this power of attorney

(____) Create or change rights of survivorship

(____) Create or change a beneficiary designation

(____) Authorize another person to exercise the authority granted under this power of attorney

(____) Waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan

(____) Exercise fiduciary powers that the principal has authority to delegate

(____) Disclaim or refuse an interest in property, including a power of appointment

(____) Access the content of electronic communications

LIMITATION ON AGENT’S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

____________________________________________
_____________________________________________
_____________________________________________

____________________________________________
_____________________________________________
_____________________________________________
EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the special instructions.

NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)

If it becomes necessary for a court to appoint a [conservator or guardian] of my estate or [guardian] of my person, I nominate the following person(s) for appointment:

Name of Nominee for [conservator or guardian] of my estate:

Nominee’s Address:
Nominee’s Telephone Number:

Name of Nominee for [guardian] of my person:

Nominee’s Address:
Nominee’s Telephone Number:

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid. Unless expressly stated otherwise, this power of attorney is durable and shall remain valid if I become incapacitated.

SIGNATURE AND ACKNOWLEDGMENT
AGENT’S DUTIES

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

1. Do what you know the principal reasonably expects you to do with the principal’s property or, if you do not know the principal’s expectations, act in the principal’s best interest; act in good faith;
(2) Do nothing beyond the authority granted in this power of attorney; and

(3) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as “agent” in the following manner:

___________________by_______________________

(Principal’s Name) (Your Signature) as Agent

Unless the special instructions in this power of attorney state otherwise, you must also:

(1) Act loyally for the principal’s benefit;

(2) Avoid conflicts that would impair your ability to act in the principal’s best interest;

(3) Act with care, competence, and diligence;

(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal’s expectations, to act in the principal’s best interest; and attempt to preserve the principal’s estate plan if you know the plan and preserving the plan is consistent with the principal’s best interest.

**TERMINATION OF AGENT’S AUTHORITY**

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

(1) Death of the principal;
(2) The principal’s revocation of the power of attorney or your authority;

(3) The occurrence of a termination event stated in the power of attorney;

(4) The purpose of the power of attorney is fully accomplished; or

(5) If you are married to the principal, a legal action is filed with a court to end your marriage or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

**LIABILITY OF AGENT**

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, §39B-1-101 et seq. of this code. If you violate the Uniform Power of Attorney Act, as set forth in §39B-1-101 et seq. of this code, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

**CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.**

**ARTICLE 5B. WEST VIRGINIA UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.**

§44-5B-1. Short title.

This article may be cited as the West Virginia Uniform Fiduciary Access to Digital Assets Act.

§44-5B-2. Definitions.

In this article:
“Account” means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user;

“Agent” means an attorney-in-fact granted authority under a durable or nondurable power of attorney;

“Carries” means engages in the transmission of an electronic communication;

“Catalogue of electronic communications” means information that identifies each person with whom a user has had an electronic communication, the time and date of the communication, and the electronic address of the person;

“Conservator” means a person appointed by a court to manage the estate and financial affairs of a protected person. The term includes a limited conservator and temporary conservator;

“Content of an electronic communication” means information concerning the substance or meaning of the communication which:

(1) Has been sent or received by a user;

(2) Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(3) Is not readily accessible to the public;

“Court” means the circuit court of the county having jurisdiction over the fiduciary or designated recipient;

“Custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of a user;
“Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user;

“Digital asset” means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability, unless the asset or liability is itself an electronic record;

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

“Electronic communication” has the meaning set forth in 18 U.S.C. § 2510(12);

“Electronic communication service” means a custodian that provides to a user the ability to send or receive an electronic communication;

“Fiduciary” means an original, additional or successor personal representative, conservator, agent, or trustee;

“Information” means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like;

“Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person;

“Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity;

“Personal representative” means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this article;
“Power of attorney” means a record that grants an agent authority to act in the place of a principal;

“Principal” means an individual who grants authority to an agent in a power of attorney;

“Protected person” means an individual for whom a conservator has been appointed. The term includes an individual for whom an application for the appointment of a conservator is pending;

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

“Remote computing service” means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. § 2510(14);

“Terms of service agreement” means an agreement that controls the relationship between a user and a custodian;

“Trustee” means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee;

“User” means a person that has an account with a custodian; and

“Will” includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

§44-5B-3. Applicability.

(a) This article applies to:

(1) A fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this article;
§44-5B-4. User direction for disclosure of digital assets.

(a) A user may use an online tool to direct the custodian to disclose or not to disclose to a designated recipient some or all of the user’s digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(b) If a user has not used an online tool to give direction under §44B-5B-3(a) of this code or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user’s digital assets, including the content of electronic communications sent or received by the user.

(c) A user’s direction under §44-5B-4(a) or §44-5B-4(b) of this code overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user’s assent to the terms of service.
§44-5B-5. Terms of service agreement.
(a) This article does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.
(b) This article does not give a fiduciary or a designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.
(c) A fiduciary’s or a designated recipient’s access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under §44-5B-4 of this code.

§44-5B-6. Procedure for disclosing digital assets.
(a) When disclosing digital assets of a user under this article, the custodian may at its sole discretion:
(1) Grant a fiduciary or designated recipient full access to the user’s account;
(2) Grant a fiduciary or designated recipient partial access to the user’s account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or
(3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.
(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this article.
(c) A custodian need not disclose under this article a digital asset deleted by a user.
(d) If a user directs or a fiduciary requests a custodian to disclose under this article some, but not all, of the user’s digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

1. A subset limited by date of the user’s digital assets;
2. All of the user’s digital assets to the fiduciary or designated recipient;
3. None of the user’s digital assets; or
4. All of the user’s digital assets to the court for review in camera.

§44-5B-7. Disclosure of content of electronic communications of deceased user.

If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

1. A written request for disclosure in physical or electronic form;
2. A certified copy of the death certificate of the user;
3. A certified copy of the letter of appointment of the representative;
4. Unless the user provided direction using an online tool, a copy of the user’s will, trust, power of attorney or other record evidencing the user’s consent to disclosure of the content of electronic communications; and
5. If requested by the custodian:
(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user’s account;

(2) Evidence linking the account to the user; or

(3) A finding by the court that:

(A) The user had a specific account with the custodian, identifiable by the information specified in §44-5B-7(e)(1) of this code;

(B) Disclosure of the content of electronic communications of the user would not violate 18 U.S.C. § 2701 et seq., 47 U.S.C. § 222, or other applicable law;

(C) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(D) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

§44-5B-8. Disclosure of other digital assets of deceased user.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications of the user, if the personal representative gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the death certificate of the user;

(c) A certified copy of the letter of appointment of the representative; and
(d) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user’s account;

(2) Evidence linking the account to the user;

(3) An affidavit stating that disclosure of the user’s digital assets is reasonably necessary for administration of the estate; or

(4) A finding by the court that:

(A) The user had a specific account with the custodian, identifiable by the information specified in §44-5B-8(d)(1) of this code; or

(B) Disclosure of the user’s digital assets is reasonably necessary for administration of the estate.


To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(d) If requested by the custodian:
(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal’s account; or

(2) Evidence linking the account to the principal.

§44-5B-10. Disclosure of other digital assets of principal.

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(d) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal’s account; or

(2) Evidence linking the account to the principal.

§44-5B-11. Disclosure of digital assets held in trust when trustee is original user.

Unless otherwise ordered by the court or provided in a trust instrument, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications sent or received by the principal.
communications of the trustee and the content of electronic communications.

§44-5B-12. Disclosure of contents of electronic communications held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust instrument, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the trust instrument or a certification of the trust under §44D-10-1013 of this code that includes consent to disclose the content of electronic communications to the trustee;

(c) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(d) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust’s account; or

(2) Evidence linking the account to the trust.

§44-5B-13. Disclosure of other digital assets held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an
original or successor user and stored, carried, or maintained
by the custodian in an account of the trust and any digital
assets, other than the content of electronic communications,
in which the trust has a right or interest if the trustee gives
the custodian:

(1) A written request for disclosure in physical or
electronic form;

(2) A certified copy of the trust instrument or a
certification of the trust under §44D-10-1013 of this code;

(3) A certification by the trustee, under penalty of
perjury, that the trust exists and the trustee is a currently
acting trustee of the trust; and

(4) If requested by the custodian:

(A) A number, username, address, or other unique
subscriber or account identifier assigned by the custodian to
identify the trust’s account; or

(B) Evidence linking the account to the trust.

§44-5B-14. Disclosure of digital assets to conservator of
protected person.

(a) After an opportunity for a hearing under §44A-1-1
et seq. of this code, the court may grant a conservator access
to the digital assets of a protected person.

(b) Unless otherwise ordered by the court or directed by
the user, a custodian shall disclose to a conservator the
catalogue of electronic communications sent or received by
a protected person and any digital assets, other than the
content of electronic communications, in which the
protected person has a right or interest if the conservator
gives the custodian:

(1) A written request for disclosure in physical or
electronic form;
(2) A certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and

(3) If requested by the custodian:

(A) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(B) Evidence linking the account to the protected person.

(c) A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator authority over the protected person’s property.

§44-5B-15. Fiduciary duty and authority.

(a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(1) The duty of care;

(2) The duty of loyalty; and

(3) The duty of confidentiality.

(b) A fiduciary’s or designated recipient’s authority with respect to a digital asset of a user:

(1) Except as otherwise provided in §44-5B-4 of this code, is subject to the applicable terms of service;

(2) Is subject to other applicable law, including copyright law;
(3) In the case of a fiduciary, is limited by the scope of the fiduciary’s duties; and

(4) May not be used to impersonate the user.

c) A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

d) A fiduciary acting within the scope of the fiduciary’s duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including the provisions of §61-3C-1 et seq. of this code.

e) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal, or settlor:

(1) Has the right to access the property and any digital asset stored in it; and

(2) Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including the provisions of §61-3C-1 et seq. of this code.

f) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

g) A fiduciary of a user may request a custodian to terminate the user’s account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:
(1) If the user is deceased, a certified copy of the death certificate of the user;

(2) A certified copy of the letter of appointment of the representative, court order, power of attorney, or trust instrument giving the fiduciary authority over the account; and

(3) If requested by the custodian:

(A) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user’s account;

(B) Evidence linking the account to the user; or

(C) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in §44-5B-15(g)(1) of this code.

§44-5B-16. Custodian compliance and immunity.

(a) Not later than 60 days after receipt of the information required under §44-5B-7 through §44-5B-15 of this code, a custodian shall comply with a request under this article from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(b) An order under §44-5B-16(a) of this code directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. §2702.

(c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this article.

(d) A custodian may deny a request under §44-5B-1 et seq. of this code from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the
(e) This article does not limit a custodian’s ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under §44-5B-16 et seq. of this code to obtain a court order which:

1. Specifies that an account belongs to the protected person or principal;
2. Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and
3. Contains a finding required by law other than this article.

(f) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this article.

§44-5B-17. Uniformity of application and construction.

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

§44-5B-18. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U. S. C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U. S. C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U. S. C. Section 7003(b).
§44-5B-19. Severability.

If any provision of §44-5B-1 et seq. of this code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

CHAPTER 93

(Com. Sub. for S. B. 133 - By Senators Gaunch, Blair, Swope, Baldwin, Jeffries, Boso and Ojeda)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-3c, relating to exempting certain contracts related to recovery from a declared state of emergency from purchasing requirements; clarifying exemption from purchasing requirements for certain contracts entered into during a declared state of emergency; exempting from purchasing requirements renewals of certain contracts entered into during a declared state of emergency; clarifying that with respect to the renewal of certain contracts entered into during a declared state of emergency, recovery does not include permanent reconstruction after the initial state of emergency has ended; exempting from purchasing requirements the purchase of goods or services from the federal government or an agency thereof if the purchase of those goods and services is directly and solely related to the recovery from a declared state of emergency; requiring the Director of the Division of Homeland Security and Emergency Management to certify eligibility for exemption; setting forth record-keeping
requirements; and defining the term “directly and solely related”.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3c. Exemptions from purchasing requirements for contracts entered into as part of recovery from a declared state of emergency.

(a) The provisions of this article do not apply to contracts entered into during a state of emergency declared by the Governor pursuant to §15-5-6 of this code, so long as the contract is directly and solely related to the recovery from the declared state of emergency.

(b) The provisions of this article do not apply to the renewal of a contract entered into during a state of emergency declared pursuant to §15-5-6 of this code, if the contract is directly and solely related to the recovery from the declared state of emergency during which the contract was initially entered. For purposes of this subsection, recovery does not include permanent reconstruction after the initial state of emergency has ended.

(c) The provisions of this article do not apply to the purchase of goods or services from the federal government, or an agency thereof, if the purchase of those goods and services is directly and solely related to the recovery from a state of emergency declared pursuant to §15-5-6 of this code.

(d) To qualify for the exemption contained in this section, the Director of the Division of Homeland Security and Emergency Management must certify that the contract or purchase is directly and solely related to the recovery from a declared state of emergency and attach a copy of the proclamation issued by the Governor’s office to the certification. Such certifications shall be maintained by the Division of Homeland Security and Emergency
Management until the contracts or purchase agreements have been fully executed.

(e) For purposes of this section, “directly and solely related” means that the goods or services being purchased or contracted for will be used for recovery from the state of emergency only, and will not be used for any other purpose.

CHAPTER 94

(Com. Sub. for S. B. 271 - By Senators Carmichael (Mr. President) and Prezioso) [By Request of the Executive]

[Passed March 10, 2018; in effect ninety days from passage.] [Approved by the Governor on March 21, 2018.]

AN ACT to amend and reenact §5A-2-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5A-2B-1, §5A-2B-2, §5A-2B-3, and §5A-2B-4, all relating to creating the Shared Services Section within the Finance Division of the Department of Administration; authorizing the appointment of a deputy director; setting qualifications for the deputy director; authorizing the hiring of necessary personnel; setting minimum services to be provided by Shared Services Section; authorizing reasonable fees to be charged; requiring development of cost-performance assessment; providing for reporting of certain information by spending units to the Shared Services Section; providing for reports to the Governor and Joint Committee on Government and Finance; providing legislative and emergency rule-making authority; requiring certain spending units to enter into agreement with Shared Services Section for provision of accounting and financial services; permitting certain spending units to enter into agreement with Shared Services Section for provision of
accounting and financial services; providing for probationary period and corrective action plan for certain spending units; granting deputy director authority to decline to enter into agreement for provision of services under certain circumstances; authorizing spending unit to cancel agreement with Shared Services Section under certain circumstances; and creating a new special revenue fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. FINANCE DIVISION.

§5A-2-1. Finance Division created; director; sections; powers and duties.

(a) The Finance Division of the Department of Administration is continued. The Finance Division shall be under the supervision and control of a director, who shall be appointed by the secretary. There shall be in the Finance Division a Shared Services Section and a Financial Accounting and Reporting Section.

(b) The Shared Services Section shall have the duties conferred upon it by this article, §5A-2B-1 et seq. of this code, and by the secretary, including, but not limited to, general financial accounting, payroll, accounts payable, and accounts receivable for the spending units that have entered into agreements with the Shared Services Section.

(c) The Financial Accounting and Reporting Section shall establish and maintain the centralized accounting system required by §5A-2-24 of this code and issue annual general purpose financial statements in accordance with generally accepted accounting principles and with this article.

ARTICLE 2B. SHARED SERVICES.

§5A-2B-1. Shared Services Section created; purpose; deputy director.
(a) There is hereby created within the Finance Division the Shared Services Section for the purpose of establishing centralized accounting and financial reporting services for state spending units.

(b) The Shared Services Section shall be under the supervision of a deputy director, who shall be appointed by the Secretary of the Department of Administration and who shall, at a minimum, have:

1. A bachelor’s degree from an accredited four-year college or university;
2. Six years of full-time experience in finance or accounting, with two years of experience as an administrator or supervisor; and

(c) The Shared Services Section is authorized to employ necessary personnel, including, but not limited to, accountants, auditors, and procurement officers, to discharge the duties of this article.

(d) The Shared Services Section shall provide, at a minimum, accounting, financial reporting, and budgeting services to spending units who enter into agreements pursuant to §5A-2B-3 of this code. The deputy director may charge a reasonable fee to spending units for the accounting and financial reporting services provided to agencies.


(a) On or before July 1, 2018, the Department of Administration shall develop a cost-performance assessment for use by each state spending unit to measure costs of that spending unit providing its own accounting and financial reporting services.
(b) Beginning April 1, 2019, and each year thereafter, all state spending units shall report annually to the Shared Services Section information related to costs of providing accounting and financial reporting services based upon the metrics identified by the Shared Services Section in the cost-performance assessment. The deputy director shall evaluate the cost information provided by spending units to determine if the same services could be provided by the Shared Services Section at a lower cost and in a more efficient manner.

(c) On or before July 1, 2019, the deputy director shall report to the Governor and the Joint Committee on Government and Finance the results of the cost-performance assessment documenting the amount each state spending unit incurs for accounting services, and make recommendations for providing the services through the Shared Services Section.

(d) The deputy director shall report annually, on or before December 31 of each year, to the Governor and the Joint Committee on Government and Finance the cost savings and efficiencies resulting from providing accounting and financial reporting services by the Shared Services Section.

(e) The Department of Administration is authorized to promulgate legislative rules, including emergency rules, to develop the assessment, any forms necessary for reporting costs, and any other information necessary pursuant to §29A-3-1 et seq. of this code.


(a) Those spending units with a cost-performance assessment greater than the baseline cost set by the Shared Services Section, as determined by the provisions set forth in §5A-2B-2 of this code, shall enter into an agreement with the Shared Services Section for the provision of accounting and financial services.
(b) Any spending unit seeking accounting and financial reporting services may voluntarily request an agreement for the provision of accounting and financial reporting services by the Shared Services Section.

(c) Those spending units with one full-time equivalent position or less dedicated to providing accounting and financial reporting services shall enter into an agreement with the deputy director of the Shared Services Section for the provision of accounting and financial reporting services, provided the deputy director determines the implementation of the agreement would be feasible and documents that the agreement will result in cost savings or efficiencies to the state.

(d) Those spending units that fail to provide any required report or information to the Department of Administration necessary for the completion of any required federal report, including the single audit required by the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156, as well as any subsequent amendments, by the deadlines established by the Department of Administration will be given a one-year probationary period with a plan of corrective action defined by the Department of Administration.

(1) The plan of corrective action shall include defined benchmarks for completing all reports or information necessary for the consolidated annual financial report by the deadline in the next fiscal year.

(2) If a spending unit fails to meet established deadlines by the end of the probationary period, the spending unit shall, at the deputy director’s discretion, enter into an agreement for the provision of accounting and financial reporting services by the Shared Services Section.

(e) The deputy director may decline to enter into an agreement under this section only upon a determination that the complexities of providing accounting, financial reporting, and budgeting services to the spending unit exceed the expertise of the Shared Services Section and that
developing that expertise would outweigh any potential cost savings to the state.

(f) When a spending unit has entered into an agreement with the Shared Services Section for the provision of accounting and financial reporting services pursuant to subsection (a) of this section, the spending unit may cancel the agreement at the end of the fiscal year when documentation showing the spending unit can provide the services at a lower cost to the state is approved by the deputy director.

§5A-2B-4. Special revenue fund; payments into fund; disbursements.

There is created in the State Treasury a special revenue fund designated the Shared Services Section Fund. The fund consists of appropriations by the Legislature, funds received for services provided pursuant to this article, and any gifts, grants, or donations received. Expenditures from the fund shall be made by the deputy director for the purposes set forth in this article, and are not authorized from collections, but are to be made only in accordance with appropriation from the Legislature and in §12-3-1 et seq. of this code, and upon the fulfillment of the provisions of §11-2B-1 et seq. of this code.

CHAPTER 95

(S. B. 282 - By Senators Gaunch, Baldwin, Blair, Jeffries, Swope, Boso and Cline)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §5A-3-3 of the Code of West Virginia, 1931, as amended, relating to exempting the State Conservation Committee and the Conservation Agency from the Purchasing Division requirements for contracts related to
natural disaster recovery activities and joint funding agreements with the United States Geological Survey.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3. Powers and duties of Director of Purchasing.

1 The director, under the direction and supervision of the secretary, is the executive officer of the Purchasing Division and has the power and duty to:

2 (1) Direct the activities and employees of the Purchasing Division;

3 (2) Ensure that the purchase of or contract for commodities and services are based, whenever possible, on competitive bid;

4 (3) Purchase or contract for, in the name of the state, the commodities, services, and printing required by the spending units of the state government;

5 (4) Apply and enforce standard specifications established in accordance with §5A-3-5 of this code as hereinafter provided;

6 (5) Transfer to or between spending units or sell commodities that are surplus, obsolete, or unused as hereinafter provided;

7 (6) Have charge of central storerooms for the supply of spending units as the director considers advisable;

8 (7) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose as hereinafter provided as the director considers advisable;

9 (8) Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that the
vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director;

(9) Examine the provisions and terms of every contract entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve the contract as to such provisions and terms; and the duty of examination and approval herein set forth does not supersede the responsibility and duty of the Attorney General to approve the contracts as to form: Provided, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the Division of Highways of the Department of Transportation or to construction or reclamation contracts entered into by the Department of Environmental Protection: Provided, however, That the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into by the University of West Virginia Board of Trustees or by the board of directors of the state college system, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision: Provided further, That the provisions of this subdivision do not apply to the West Virginia State Police and the West Virginia Office of Laboratory Services: And provided further, That the provisions of this subdivision shall not apply to contracts for any natural disaster recovery activities entered into by the West Virginia State Conservation Committee or the West Virginia Conservation Agency;

(10) Assure that the specifications and descriptions in all solicitations are prepared so as to provide all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure that the specifications and descriptions do not favor a particular brand or vendor. If the director determines that any such specifications or descriptions as written favor a particular brand or vendor or if it is decided, either before or after the
bids are opened, that a commodity or service having
different specifications or quality or in different quantity
can be bought, the director may rewrite the solicitation and
the matter shall be rebid; and

(11) Issue a notice to cease and desist to a spending unit
when the director has credible evidence that a spending unit
has violated competitive bidding or other requirements
established by this article and the rules promulgated
hereunder. Failure to abide by the notice may result in
penalties set forth in §5A-3-17 of this code.

CHAPTER 96

(Com. Sub. for S. B. 283 - By Senators Carmichael
(Mr. President) and Prezioso)
[By Request of the Executive]

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §5-22-1 of the Code of West
Virginia, 1931, as amended; to amend and reenact §5A-3-10b,
§5A-3-10c, §5A-3-10e, §5A-3-33d, §5A-3-33f, §5A-3-37,
and §5A-3-45 of said code; to amend said code by adding
thereto a new section, designated §5A-3-61; to amend and
reenact §5G-1-3 and §5G-1-4 of said code; to amend and
reenact §6D-1-1 of said code; and to amend and reenact §18B-
5-4 of said code, all relating generally to procurement by state
agencies; defining terms; authorizing competitive bidding of
certain open-ended repair and maintenance contracts;
modifying use and consideration of alternates in solicitations;
prohibiting alternates from being accepted out of order;
modifying criteria to be considered in best value procurement
awards; eliminating sole source procurement; establishing
direct award procurement requirements; establishing
prequalification agreements and their requirements and procedures; authorizing agency delegated prequalification bidding and its procedure; increasing certain cost limits from $50,000 to $1 million; authorizing awarding contracts without competitive bidding if certain requirements are met; eliminating master contracts and direct ordering process; expanding the scope of those who may be debarred; eliminating preferences for resident vendors, vendors employing state residents, and veteran residents; establishing the concept of “reciprocal preference” for an in-state vendor over an out-of-state vendor from any state that gives or requires a preference to bidders from that state and setting forth its requirements; providing certain preferences for purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects; modifying the value determination of certain motor vehicles that are to be sold; permitting funds from sale of surplus property be deposited in alternate fund if original fund no longer exists; permitting spending units to use a standardization process to purchase commodities and setting forth its requirements; permitting an architectural or engineering firm to be selected without bidding if certain conditions exist; increasing the cost of projects under which Division of Highways is permitted to procure services of architectural and engineering firms under certain provisions; increasing certain contract limits from $100,000 to $1 million for purposes of disclosure; modifying provisions requiring disclosure of interested parties; requiring certain reporting; removing preference requirements for higher education; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE, AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.
ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.

(a) This section and the requirements in this section may be referred to as the West Virginia Fairness in Competitive Bidding Act.

(b) As used in this section:

1. “Lowest qualified responsible bidder” means the bidder that bids the lowest price and that meets, at a minimum, all the following requirements in connection with the bidder’s response to the bid solicitation. The bidder shall certify that it:

   A. Is ready, able, and willing to timely furnish the labor and materials required to complete the contract;

   B. Is in compliance with all applicable laws of the State of West Virginia; and

   C. Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.

2. “The state and its subdivisions” means the State of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities, and all county boards of education.

3. “State spending unit” means a department, agency, or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

4. “Alternates” means any additive options or alternative designs included in a solicitation for competitive
bids that are different from and priced separately from what is included in a base bid.

(5) “Construction project” means a specifically identified scope of work involving the act, trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure, facility, road, or highway. Repair and maintenance of existing public improvements that are recurring or ongoing in nature and that are not fully identified or known at any one time shall be considered a construction project and procured according to this article on an open-ended basis, so long as the work to be performed under the contract falls into a generally accepted single class, or type, and bidders are notified of the open-ended nature of the work in the solicitation: Provided, That no open-ended repair or maintenance contract may exceed $500,000.

(c) The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding $25,000 in total cost.

(1) If a solicitation contains a request for any alternates, the alternates shall be listed numerically in the order of preference in the solicitation.

(2) A vendor who has been debarred pursuant to §5A-3-33b through §5A-3-33f of this code, may not bid on or be awarded a contract under this section.

(d) All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the State of West Virginia or its subdivisions.

(e) Following the solicitation of bids, the construction contract shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and
payment bond. The state and its subdivisions may reject all bids and solicit new bids on the project.

(f) Any solicitation of bids shall include no more than five alternates. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Any unaccepted alternate contained within a bid shall expire 90 days after the date of the opening of bids for review.

Determination of the lowest qualified responsible bidder shall be based on the sum of the base bid and any alternates accepted.

(g) The apparent low bidder on a contract valued at more than $250,000 for the construction, alteration, decoration, painting, or improvement of a new or existing building or structure with a state spending unit shall submit a list of all subcontractors who will perform more than $25,000 worth of work on the project including labor and materials. This section does not apply to other construction projects such as highway, mine reclamation, water, or sewer projects. The list shall include the names of the bidders and the license numbers as required by §21-11-1 et seq. of this code. This information shall be provided to the state spending unit within one business day of the opening of bids for review prior to the awarding of a construction contract. If the apparent low bidder fails to submit the subcontractor list, the spending unit shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the subcontractor list within one business day of the request. Failure to submit the subcontractor list within one business day of receiving the request shall result in disqualification of the bid. A subcontractor list may not be required if the bidder provides notice in the bid submission or in response to a request for a subcontractor list that no subcontractors who will perform more than $25,000 worth of work will be used to complete the project.
(h) Written approval must be obtained from the state spending unit before any subcontractor substitution is permitted. Substitutions are not permitted unless:

(1) The subcontractor listed in the original bid has filed for bankruptcy;

(2) The state spending unit refuses to approve a subcontractor in the original bid because the subcontractor is under a debarment pursuant to §5A-3-33d of this code or a suspension under §5A-3-32 of this code; or

(3) The contractor certifies in writing that the subcontractor listed in the original bill fails, is unable, or refuses to perform the subcontract.

(i) The contracting public entity may not award the contract to a bidder which fails to meet the minimum requirements set out in this section. As to a prospective low bidder which the contracting public entity determines not to have met one or more of the requirements of this section or other requirements as determined by the public entity in the written bid solicitation, prior to the time a contract award is made, the contracting public entity shall document in writing and in reasonable detail the basis for the determination and shall place the writing in the bid file. After the award of a bid under this section, the bid file of the contracting public agency and all bids submitted in response to the bid solicitation shall be open and available for public inspection.

(j) The contracting public entity shall not award a contract pursuant to this section to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. Any governmental entity may submit to the Division of Purchasing information which identifies vendors that qualify as being in default on a monetary obligation to the
entity. The contracting public entity shall take reasonable steps to verify whether the lowest qualified bidder is in default pursuant to this subsection prior to awarding a contract.

(k) A public official or other person who individually or together with others knowingly makes an award of a contract under this section in violation of the procedures and requirements of this section is subject to the penalties set forth in §5A-3-29 of this code.

(l) No officer or employee of this state or of a public agency, public authority, public corporation, or other public entity and no person acting or purporting to act on behalf of an officer or employee or public entity may require that a performance bond, payment bond, or surety bond required or permitted by this section be obtained from a particular surety company, agent, broker, or producer.

(m) All bids shall be open in accordance with the provisions of §5-22-2 of this code, except design-build projects which are governed by §5-22A-1 et seq. of this code and are exempt from these provisions.

(n) Nothing in this section applies to:

(1) Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;

(2) Prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when the use is a part of the student’s training program;

(3) Emergency repairs to building components, systems, and public infrastructure. For the purpose of this subdivision, the term “emergency repairs” means repairs that if not made immediately will seriously impair the use of building components, systems, and public infrastructure or cause danger to persons using the building components, systems, and public infrastructure; and
(4) A situation where the state or subdivision thereof reaches an agreement with volunteers, or a volunteer group, in which the governmental body will provide construction or repair materials, architectural, engineering, technical, or other professional services, and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10b. Best value procurement.

(a) The director may utilize best value procurement to enter into a contract when he or she determines in writing that it is advantageous to the state.

(b) A solicitation for bids under best value procurement shall be made in the same manner as provided in §5A-3-10 of this code.

(c) Best value procurement awards shall be based on criteria set forth in the solicitation and information contained in the proposals submitted in response to the solicitation. Those criteria include, but are not limited to, price and the total cost of acquiring, operating, maintaining, and supporting a commodity or service over its projected lifetime, as well as technical criteria. The technical criteria may include, but are not limited to, the evaluated technical merit of the bidder’s bid or proposal, the bidder’s past performance, the degree to which a proposal exceeds other proposals in technical merit, the utility of any novel or unrequested items in the proposal, and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the business objectives set forth in the solicitation.

(d) The award must be made to the highest scoring responsive and responsible bidder whose bid is determined,
in writing, to be most advantageous to the state, taking into consideration all evaluation factors set forth in the best value solicitation.

(e) The director may not use best value procurement to enter into government construction contracts, including, but not limited to, those set forth in §5-22-1 et seq. of this code.

§5A-3-10c. Direct award procurement.

(a) The director may make a direct award of a contract without competitive bidding if:

(1) The spending unit requests a direct award in writing;

(2) The spending unit provides written justification showing that the direct award is in the best interest of the state;

(3) The spending unit provides written confirmation that competition is not available because there is no other source for the commodity or service, or that no other source would be willing or able to replace the existing source without a detrimental effect on the spending unit, the existence of a detrimental effect being determined by the director in his or her sole discretion;

(4) The director publicly advertises a notice of intent to make a direct award without competition in the state’s official bid notification system, as well as any other public advertisement that the director deems appropriate, for no less than 10 business days; and

(5) No other vendor expresses an interest in providing the commodity or service in question.

(b) If a vendor expresses an interest in providing the commodity or service described in the notice of intent to make a direct award, then the spending unit must convert the direct award to a competitive bid, unless the director determines that the interest expressed by a vendor is
unreasonable. The competitive bid may, at the discretion of the director, be either a request for quotation or request for proposal.

(c) The notice of intent to make a direct award shall contain the following information:

1. A description of the commodity or service for which a direct award will be made;
2. A time period by which delivery must be made or performance must occur;
3. The price that will be paid for the commodity or service;
4. Any limitations that a competing vendor would need to satisfy;
5. An invitation to all vendors interested in providing the commodity or service to make that interest known; and
6. Contact information for the director or his or her designee, and instructions to submit a statement of interest to the director or his or her designee.

(d) The director may refuse a spending unit’s request to utilize a direct award procurement if the commodities or services have previously been obtained through competitive bidding.

(e) On or before December 1, 2018, and annually thereafter, the director shall report to the Governor and the Joint Committee on Government and Finance on the spending units that have requested a direct award for their commodities or services, the type of commodity or service, and results of the direct award process.

§5A-3-10e. Prequalification agreement; agency-delegated bidding.

(a) Subject to the limitations of this section, the director may permit spending units to procure commodities from a
preapproved vendor through a prequalification agreement and delegated prequalification bidding if the director determines the process is fair, economical, and in the best interests of the state.

(b) Definitions. — For purposes of this section:

(1) “Information technology” means hardware and software related to electronic processing, and storage, retrieval, transmittal, and manipulation of data.

(2) “Prequalification agreement” means an agreement, having a term of no more than three years, between the Purchasing Division and at least two prequalified vendors authorizing a spending unit to purchase a commodity on a recurrent basis through the delegated prequalification bidding process defined in the prequalification agreement.

(3) “Prequalified vendor” means a “vendor”, as that term is defined in §5A-1-1 of this code, that has entered into a prequalification agreement with the Purchasing Division and may participate in the delegated prequalification bidding subject to the terms and conditions of the prequalification agreement.

(4) “Delegated prequalification bidding” means the competitive bidding process whereby the prequalified vendors that are parties to a prequalification agreement may submit sealed bids directly to spending units to provide a commodity identified in the prequalification agreement subject to the limitations set forth in this section.

(c) Prequalification agreement. —

(1) For each prequalification agreement, the director shall set forth the requirements, technical or otherwise, under which a vendor may be qualified to supply a commodity through the delegated prequalification bidding. For each prequalification agreement, the director shall follow the notice and advertising requirements set forth in §5A-3-10 of this code.
(2) A prequalification agreement may authorize the delegated prequalification bidding for only one type of commodity.

(3) A vendor may submit information to the director to establish that it meets the requirements set forth in the prequalification agreement.

(4) If the director determines that a vendor meets the requirements set forth in the prequalification agreement, the vendor may enter into the prequalification agreement as a prequalified vendor.

(d) Delegated prequalification bidding procedures. —

(1) A spending unit may commence the delegated prequalification bidding process by issuing a request for a commodity identified in the prequalification agreement stating in the request the quantity of the commodity to be procured.

(2) The prequalified vendor that submits the lowest bid in response to the request shall be awarded the procurement.

(3) The delegated prequalification bidding may not be utilized for any request for commodities anticipated to cost more than $1 million, unless approved in writing by the Director of Purchasing. The state may not issue a series of orders each anticipated to cost less than $1 million to circumvent the monetary limitation in this subsection. The limit expressed herein applies to each delegated prequalification bid conducted pursuant to the prequalification agreement and not to total spending under the prequalification agreement.

(e) Rule-making authority. — The Director of the Purchasing Division shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to implement this section, including, but not limited to, provisions to establish procedures for the solicitation and authorization of prequalification
agreements, prequalification of vendors, and implementation of delegated prequalification bidding.

§5A-3-33d. Grounds for debarment.

(a) Grounds for debarment are:

(1) Conviction of an offense involving fraud or a felony offense related to obtaining or attempting to obtain a public contract or subcontract;

(2) Conviction of any federal or state antitrust statute relating to the submission of offers;

(3) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property related to the performance of a contract;

(4) Conviction of a felony offense demonstrating a lack of business integrity or business honesty that affects the present responsibility of the vendor or subcontractor;

(5) Default on obligations owed to the state, including, but not limited to, obligations owed to the workers’ compensation funds, as defined in §23-2C-1 et seq. of this code, and obligations under the West Virginia Unemployment Compensation Act and West Virginia state tax and revenue laws. For purposes of this subdivision, a vendor is in default when, after due notice, the vendor fails to submit a required payment, interest thereon, or penalty, and has not entered into a repayment agreement with the appropriate agency of the state or has entered into a repayment agreement but does not remain in compliance with its obligations under the repayment agreement. In the case of a vendor granted protection by order of a federal bankruptcy court or a vendor granted an exemption under any rule of the Bureau of Employment Programs or the Insurance Commission, the director may waive debarment under §5A-3-33f of this code: Provided, That in no event may debarment be waived with respect to any vendor who
has not paid all current state obligations for at least the four most recent calendar quarters, excluding the current calendar quarter, or with respect to any vendor who is in default on a repayment agreement with an agency of the state;

(6) The vendor is not in good standing with a licensing board, in that the vendor is not licensed when licensure is required by the law of this state, or the vendor has been found to be in violation of an applicable licensing law after notice, opportunity to be heard, and other due process required by law;

(7) The vendor is an active and knowing participant in dividing or planning procurements to circumvent the $25,000 threshold requiring a sealed bid or otherwise avoiding the use of a sealed bid;

(8) Violation of the terms of a public contract or subcontract for:

(A) Willful failure to substantially perform in accordance with the terms of one or more public contracts;

(B) Performance in violation of standards established by law or generally accepted standards of the trade or profession amounting to intentionally deficient or grossly negligent performance on one or more public contracts;

(C) Use of substandard materials on one or more public contracts or defects in construction in one or more public construction projects amounting to intentionally deficient or grossly negligent performance, even if discovery of the defect is subsequent to acceptance of a construction project and expiration of any warranty thereunder; or

(D) A repeated pattern or practice of failure to perform so serious and compelling as to justify debarment; or

(9) Any other cause of a serious and compelling nature amounting to knowing and willful misconduct of the vendor
that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of causing, serious harm to the public.

(b) For the purposes of this section, the term “conviction” includes, but may not be limited to, the entering of a deferred prosecution agreement or a plea of guilty or nolo contendere, including pleading to a lesser or related offense in exchange for some form of prosecutorial leniency.

§5A-3-33f. Effects of debarment.

(a) Unless the director determines in writing that there is a compelling reason to do otherwise, the state and its subdivisions may not solicit offers from, award contracts to, nor consent to subcontract with a debarred vendor during the debarment period.

(b) The contracting officer may not exercise an option to renew or otherwise extend a current contract with a debarred vendor, nor a contract which is being performed in any part by a debarred subcontractor, unless the director approves the action in writing, based on compelling reasons for exercise of the option or extension.

(c) The debarment decision may extend to all commodities and services of the vendor, or may be limited to specific commodities or services, as the director specifically finds, in the debarment procedure under §5A-3-33e of this code, to be in the public interest based on the substantial record.

(d) The director may extend the debarment to include a related party of the vendor. The director shall follow the same procedure, and afford the affiliate like notice, hearing, and other rights, for extending the debarment to the affiliate as provided for under §5A-3-33e of this code for the debarment of the vendor. For purposes of this section, a “related party” may include:
(1) Spouses, parents, children, siblings, grandparents, or grandchildren of a debarred vendor or individual;

(2) Any individual or entity that partially or completely owns, controls, or influences, or is partially or completely owned, controlled, or influenced by the actions of a debarred vendor or individual;

(3) Entities that are related under common ownership or control with a debarred vendor; or

(4) A business entity or individual that has contracted with or employed a debarred vendor or individual to perform work on one or more public contracts.

(e) The director may reduce the period or extent of debarment, upon the vendor’s request supported by documentation, for the following reasons:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which debarment was based;

(3) Elimination of the causes for which the debarment was imposed; or

(4) Other good cause shown, including evidence that the vendor has become responsible.

(f) The director may extend the debarment period for an additional period if the director determines that the extension is necessary to protect the interests of the state. Upon the expiration of a debarment period, the director shall extend the debarment period for any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, exempting the current calendar quarter, and for any vendor who is in default on a repayment agreement with an agency of the state, until such time as the cause for the extended debarment is removed. If the director extends the debarment period, the director shall follow the
same procedures, and afford the vendor like notice, hearing, and other rights for extending the debarment, as provided for debarment under §5A-3-33e of this code.

(g) A debarment under this article may be waived by the director with respect to a particular contract if the director determines the debarment of the vendor would severely disrupt the operation of a governmental entity to the detriment of the general public or would not be in the public interest.

§5A-3-37. Reciprocal preference; preference for resident vendors for certain contracts.

(a) For purposes of this section, a vendor shall be deemed to be a resident of this state if such vendor:

(1) Is registered in accordance with §11-12-1 et seq. of this code to transact business within the State of West Virginia;

(2) Maintains its headquarters or principal place of business in the state;

(3) Has actually paid, and not just applied to pay, personal property taxes imposed by chapter 11 of this code on equipment used in the regular course of supplying services or commodities of the general type offered; and

(4) Has actually paid, and not just applied to pay, all required business taxes imposed by chapter 11 of this code.

(b) Except as provided in §5A-3-37(c) of this code, in any instance that a purchase of commodities or printing by the director or by a state spending unit is required under the provisions of this article to be made upon competitive bids, preference shall only be given to resident vendors of West Virginia against a nonresident vendor from any state that gives or requires a preference to bidders from that state. The amount of the preference shall be equal to the amount of the
preference given or required by the state of the nonresident vendor for that particular supply.

(c)(1) In any instance that a purchase of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects by the director or by a state department is required under the provisions of this article to be made upon competitive bids, the successful bid shall be determined as provided in this subsection.

(2) For purposes of this subsection, a successful bid shall be determined and accepted as follows:

(A) From an individual resident vendor who has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted or from a partnership, association, corporation resident vendor, or from a corporation nonresident vendor which has an affiliate or subsidiary which employs a minimum of 100 state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for four years immediately preceding the date on which the bid is submitted, if the vendor’s bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted: Provided, That for purposes of this paragraph, any partnership, association, or corporation resident vendor of this state which does not meet the requirements of this paragraph solely because of the continuous four-year residence requirement, shall be considered to meet the requirement if at least 80 percent of the ownership interest of the resident vendor is held by another individual, partnership, association, or corporation resident vendor who otherwise meets the requirements of this paragraph, including the continuous four-year residency requirement: Provided, however, That the Purchasing Division shall promulgate rules relating to attribution of
ownership among several resident vendors for purposes of determining the 80 percent ownership requirement; or

(B) From a resident vendor, if, for purposes of producing or distributing the motor vehicles or the construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor’s bid and continuously over the entire term of the contract, on average at least 75 percent of the vendor’s employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years, and the vendor’s bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(C) From a nonresident vendor, which employs a minimum of 100 state residents or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and which employs a minimum of 100 state residents, if, for purposes of producing or distributing the motor vehicles or the construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor’s bid and continuously over the entire term of the contract, on average at least 75 percent of the vendor’s employees or the vendor’s affiliate’s or subsidiary’s employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor’s bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(D) From a vendor who meets either the requirements of both §5A-3-37(c)(2)(A) and §5A-3-37(c)(2)(B) of this
code or §5A-3-37(c)(2)(A) and §5A-3-37(c)(2)(C) of this
code, if the bid does not exceed the lowest qualified bid
from a nonresident vendor by more than five percent of the
latter bid, and if the vendor has certified the residency
requirements above and made written claim for the
preference at the time the bid was submitted; or

(E) From an individual resident vendor who is a veteran
of the United States armed forces, the reserves or the
National Guard and has resided in West Virginia
continuously for the four years immediately preceding the
date on which the bid is submitted, if the vendor’s bid does
not exceed the lowest qualified bid from a nonresident
vendor by more than three and one-half percent of the latter
bid, and if the vendor has made written claim for the
preference at the time the bid was submitted; or

(F) From a resident vendor who is a veteran of the
United States armed forces, the reserves or the National
Guard, if, for purposes of producing or distributing motor
vehicles or construction and maintenance equipment and
machinery used in highway and other infrastructure projects
which are the subject of the vendor’s bid and continuously
over the entire term of the contract, on average at least 75
percent of the vendor’s employees are residents of West
Virginia who have resided in the state continuously for the
two immediately preceding years and the vendor’s bid does
not exceed the lowest qualified bid from a nonresident
vendor by more than three and one-half percent of the latter
bid, and if the vendor has certified the residency
requirements of this paragraph and made written claim for
the preference, at the time the bid was submitted; or

(G) Notwithstanding any provisions of §5A-3-
37(c)(2)(A), §5A-3-37(c)(2)(B), §5A-3-37(c)(2)(C), §5A-
3-37(c)(2)(D), §5A-3-37(c)(2)(E), or §5A-3-37(c)(2)(F) of
this code to the contrary, if any nonresident vendor that is
bidding on the purchase of motor vehicles or construction
and maintenance equipment and machinery used in highway
and other infrastructure projects by the director or by a state
department is also certified as a small-, women-, or
minority-owned business pursuant to §5A-3-59, the
nonresident vendor shall be provided the same preference
made available to any resident vendor under the provisions
of this subdivision.

(3) If any of the requirements or provisions set forth in
this section jeopardize the receipt of federal funds, then the
requirement or provisions are void and of no force and effect
for that specific project.

(4) The Purchasing Division shall promulgate any rules
necessary to: (A) Determine that vendors have met the
residence requirements described in this section; (B)
establish the procedure for vendors to certify the residency
requirements at the time of submitting their bids; (C)
establish a procedure to audit bids which make a claim for
preference permitted by this section and to reject
noncomplying bids; and (D) otherwise accomplish the
objectives of this subsection.

(d) If the Purchasing Division determines under any
audit procedure that a vendor who received a preference
under this section fails to continue to meet the requirements
for the preference at any time during the term of the contract
for which the preference was received the Purchasing
Division may: (1) Reject the vendor’s bid; or (2) assess a
penalty against the vendor of not more than five percent of
the vendor’s bid on the contract.

(e) Political subdivisions of the state including county
boards of education may grant the same preferences to any
vendor of this state who has made a written claim for the
preference at the time a bid is submitted, but for the
purposes of this subsection, in determining the lowest bid,
any political subdivision shall exclude from the bid the
amount of business occupation taxes which must be paid by
a resident vendor to any municipality within the county
comprising or located within the political subdivision as a
result of being awarded the contract which is the object of
the bid; in the case of a bid received by a municipality, the
municipality shall exclude only the business and occupation
taxes as will be paid to the municipality: Provided, That
prior to soliciting any competitive bids, any political
subdivision may, by majority vote of all its members in a
public meeting where all the votes are recorded, elect not to
exclude from the bid the amount of business and occupation
taxes as provided in this subsection.

§5A-3-45. Disposition of surplus state property; semiannual
report; application of proceeds from sale.

(a) The state agency for surplus property has the
exclusive power and authority to make disposition of
commodities or expendable commodities now owned or in
the future acquired by the state when the commodities are
or become obsolete or unusable or are not being used or
should be replaced.

(b) The agency shall determine what commodities or
expendable commodities should be disposed of and make
disposition in the manner which will be most advantageous
to the state. The disposition may include:

(1) Transferring the particular commodities or
expendable commodities between departments;

(2) Selling the commodities to county commissions,
county boards of education, municipalities, public service
districts, county building commissions, airport authorities,
parks and recreation commissions, nonprofit domestic
corporations qualified as tax exempt under Section
501(c)(3) of the Internal Revenue Code of 1986, as
amended, or volunteer fire departments in this state when
the volunteer fire departments have been held exempt from
taxation under Section 501(c) of the Internal Revenue Code
1986, as amended;

(3) Trading in the commodities as a part payment on the
purchase of new commodities;
(4) Cannibalizing the commodities pursuant to procedures established under §5A-3-45(g) of this code;

(5) Properly disposing of the commodities as waste;

(6) Selling the commodities to the general public at the posted price or to the highest bidder by means of public auctions or sealed bids, after having first advertised the time, terms, and place of the sale as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code. The publication area for the publication is the county in which the sale is to be conducted. The sale may also be advertised in other advertising media that the agency considers advisable. The agency may sell to the highest bidder or to any one or more of the highest bidders, if there is more than one, or, if the best interest of the state will be served, reject all bids; or

(7) Selling the commodities to the highest bidder by means of an Internet auction site approved by the director, as set forth in a legislative rule pursuant to the provisions of chapter 29A of this code.

(c) Upon the sale to the general public or transfer of commodities or expendable commodities between departments, or upon the sale of commodities or expendable commodities to an eligible organization, the agency shall set the price to be paid by the receiving eligible organization, with due consideration given to current market prices.

(d) The agency may sell expendable, obsolete, or unused motor vehicles owned by the state to an eligible organization, other than volunteer fire departments. In addition, the agency may sell expendable, obsolete, or unused motor vehicles owned by the state with a gross weight in excess of 4,000 pounds to an eligible volunteer fire department. The agency, with due consideration given to fair market value as determined by an independent automotive pricing guide, shall set the price at a fair market price to be paid by the receiving eligible organization for
motor vehicles sold pursuant to this provision. The fair
market value shall be based on a thorough inspection of the
vehicle by an employee of the agency who shall consider
the mileage of the vehicle and the condition of the body,
engine, and tires as indicators of its fair market value. If no
fair market value is available, the agency shall set the price
to be paid by the receiving eligible organization with due
consideration given to current market prices. The duly
authorized representative of the eligible organization, for
whom the motor vehicle or other similar surplus equipment
is purchased or otherwise obtained, shall cause ownership
and proper title to the motor vehicle to be vested only in the
official name of the authorized governing body for whom
the purchase or transfer was made. The ownership or title,
or both, shall remain in the possession of that governing
body and be nontransferable for a period of not less than one
year from the date of the purchase or transfer. Resale or
transfer of ownership of the motor vehicle or equipment
prior to an elapsed period of one year may be made only by
reason of certified unserviceability.

(e) The agency shall report to the Legislative Auditor,
semiannually, all sales of commodities or expendable
commodities made during the preceding six months to
eligible organizations. The report shall include a description
of the commodities sold, the price paid by the eligible
organization which received the commodities, and to whom
each commodity was sold.

(f) The proceeds of the sales or transfers shall be
deposited in the State Treasury to the credit on a pro rata
basis of the fund or funds out of which the purchase of the
particular commodities or expendable commodities was
made: Provided, That the agency may charge and assess
fees reasonably related to the costs of care and handling with
respect to the transfer, warehousing, sale, and distribution
of state property disposed of or sold pursuant to the
provisions of this section. Notwithstanding §5A-3-45(e) of
this code, if the fund or funds out of which the purchase was
made no longer exist, the spending unit may designate an alternate fund within which the proceeds must be deposited.

(g)(1) For purposes of this section, “cannibalization” means the removal of parts from one commodity to use in the creation or repair of another commodity.

(2) The Director of the Purchasing Division shall propose for promulgation legislative rules to establish procedures that permit the cannibalization of a commodity when it is in the best interests of the state. The procedures shall require the approval of the director prior to the cannibalization of the commodity under such circumstances as the procedures may prescribe.

(3)(A) Under circumstances prescribed by the procedures, state agencies shall be required to submit a form, in writing or electronically, that, at a minimum, elicits the following information for the commodity the agency is requesting to cannibalize:

(i) The commodity identification number;

(ii) The commodity’s acquisition date;

(iii) The commodity’s acquisition cost;

(iv) A description of the commodity;

(v) Whether the commodity is operable and, if so, how well it operates;

(vi) How the agency will dispose of the remaining parts of the commodity; and

(vii) Who will cannibalize the commodity and how the person is qualified to remove and reinstall the parts.

(B) If the agency has immediate plans to use the cannibalized parts, the form shall elicit the following information for the commodity or commodities that will receive the cannibalized part or parts:
(i) The commodity identification number;
(ii) The commodity’s acquisition date;
(iii) The commodity’s acquisition cost;
(iv) A description of the commodity;
(v) Whether the commodity is operable;
(vi) Whether the part restores the commodity to an operable condition; and
(vii) The cost of the parts and labor to restore the commodity to an operable condition without cannibalization.

(C) If the agency intends to retain the cannibalized parts for future use, it shall provide information justifying its request.

(D) The procedures shall provide for the disposal of the residual components of cannibalized property.

(h)(1) The Director of the Purchasing Division shall propose for promulgation legislative rules to establish procedures that allow state agencies to dispose of commodities in a landfill, or by other lawful means of waste disposal, if the value of the commodity is less than the benefit that may be realized by the state by disposing of the commodity using another method authorized in this section. The procedures shall specify circumstances where the state agency for surplus property shall inspect the condition of the commodity prior to authorizing the disposal and those circumstances when the inspection is not necessary prior to the authorization.

(2) Whenever a state agency requests permission to dispose of a commodity in a landfill, or by other lawful means of waste disposal, the state agency for surplus property has the right to take possession of the commodity
and to dispose of the commodity using any other method authorized in this section.

(3) If the state agency for surplus property determines, within 15 days of receiving a commodity, that disposing of the commodity in a landfill or by other lawful means of waste disposal would be more beneficial to the state than disposing of the commodity using any other method authorized in this section, the cost of the disposal is the responsibility of the agency from which it received the commodity.

§5A-3-61. Standardization.

(a) Notwithstanding any provision in this article to the contrary, a spending unit may utilize the process described in this section to standardize purchases of commodities used by the spending unit on a repeated basis. Such standardization may result in a determination that only a specific brand name for the commodity in question will be used.

(b) Standardization is limited to commodities that represent a core function of the spending unit’s mission; would yield a savings of time and money if standardized; and either require testing or evaluation to determine accuracy or consistency or require interoperability in a larger system or network. Savings of time and money must be shown without considering the traditional procurement process or the standardization process.

(c) Any standardization established under this section shall be valid for no more than four years. Upon expiration, the spending unit establishing the standardization may either take no action, which would allow the standardization to end, or undertake the process outlined in this section to establish a new standard.

(d) A spending unit desiring to establish a standard must use the following procedure:
(1) The head of the spending unit must identify the commodity to be standardized and request approval from the director to establish a standard. The head of the spending unit shall provide to the director written certification and supporting evidence verifying that the requirements for standardization have been met.

(2) The spending unit must identify the individual or individuals that will be evaluating the commodity for standardization. Each individual must certify that he or she has no conflict of interest and can evaluate the information used to standardize without favoritism or bias. At least one individual involved in the standardization evaluation must be the spending unit’s procurement officer. If the spending unit has no procurement officer, the individual responsible for the spending unit’s procurement must participate in the evaluation.

(3) The spending unit must advertise the intent to standardize as a request for information in the system used at that time to solicit competitive bids. The spending unit should also identify all known entities that would have an interest in providing a commodity for evaluation and ensure that they receive notice of the request for information. The request for information must be advertised and allow for responses for no less than 30 calendar days. The request for information must notify the vendor community of the following:

(A) That the spending unit is attempting to standardize state procurements for the commodity in question;

(B) That any entity interested in having its products considered for standardization should provide information on the benefits and drawbacks of that entity’s products;

(C) Any evaluation criteria that the spending unit will use in the standardization decision;
(D) The date and time by which documentation must be provided; and

(E) The approximate date and time by which a decision will be made.

(4) If the spending unit desires to conduct product testing, it must notify vendors in the request for information and establish a time period during which tests will be performed. Vendors may provide commodities for demonstration, testing, and evaluation so long as such items are provided at no cost and no risk to the state. A written record describing the nature of the testing performed and a written record of the results of that testing shall be produced pursuant to any testing conducted on all the commodities being considered. The written record of testing and results shall be provided to the Purchasing Division and preserved.

(5) The spending unit will evaluate the information received in response to the request for information, information the spending unit has obtained from its own research, the results of any product testing, and anything else the spending unit finds relevant to establish a pending standardization.

(6) The spending unit must advertise the pending standardization as a request for information in the system used at that time to solicit competitive bids for a minimum of 15 calendar days. The request for information must notify the vendor community and any vendor who has participated in the standardization evaluation process of the following:

(A) The pending decision to standardize, including any brand name that has been tentatively selected the standard;

(B) The rationale for the selection made in the pending standardization;

(C) That comments may be submitted for review for a period of 15 calendar days from the date of the advertisement;
(D) The date and time by which a final decision will be made, which will be no less than three days after the comment period has ended; and

(E) The location where the final decision will be posted.

(7) The spending unit must review the comments submitted in response to the pending standardization advertisement and make any adjustments that it deems necessary.

(8) The head of the spending unit shall notify the director of a selection of the standard commodity, and the director shall post the results of the standardization decision on the Purchasing Division’s website. The spending unit shall also specifically notify any vendor who participated in the standardization evaluation process of the results in writing, within five business days of the final standardization selection.

(e) Any vendor that participated in the standardization process may appeal the standardization decision to the head of the spending unit. The head of the spending unit shall consider the appeal in accordance with the administrative procedures established in chapter 29A of this code.

(f) Once a standard has been established, the Purchasing Division is authorized to solicit competitive bids on behalf of the spending unit in the form of a request for quotation for the standardized commodity.

(g) The director may develop any necessary forms and reporting templates for use in standardization approval, testing, reporting, or any other forms necessary to carry out the provisions of this section. Such forms and reports shall be maintained by the Purchasing Division.

CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES BY STATE AND ITS SUBDIVISIONS.

ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.
§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost $250,000 or more.

In the procurement of architectural and engineering services for projects estimated to cost $250,000 or more, the director of purchasing shall encourage firms engaged in the lawful practice of the profession to submit an expression of interest, which shall include a statement of qualifications and performance data, and may include anticipated concepts and proposed methods of approach to the project. All jobs shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code. A committee of three to five representatives of the agency initiating the request shall evaluate the statements of qualifications and performance data and other material submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service: Provided, That if such circumstances exist, such that seeking competition could result in a compromise to public safety, significantly increase costs, or an extended interruption of essential services, the agency may, with the prior approval of the director of purchasing, select a firm on the basis of previous satisfactory performance and knowledge of the agency’s facilities and needs: Provided, however, That on projects funded, wholly or in part, by School Building Authority moneys, in accordance with §18-9D-15 and §18-9D-16 of this code, two of said three firms shall have had offices within this state for a period of at least one year prior to submitting an expression of interest regarding a project funded by School Building Authority moneys. Interviews with each firm selected shall be conducted and the committee shall conduct discussions regarding anticipated concepts and proposed methods of approach to the assignment. The committee shall then rank, in order of preference, no less than three professional firms deemed to be the most highly qualified to provide the services required, and shall commence scope of service and price
negotiations with the highest qualified professional firm for architectural or engineering services or both. Should the agency be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second most qualified professional firm, the committee shall undertake price negotiations with the third most qualified professional firm. Should the agency be unable to negotiate a satisfactory contract with any of the selected professional firms, it shall select additional professional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached: Provided further, That county boards of education may either elect to start the selection process over in the original order of preference, or it may select additional professional firms in order of their competence and qualifications, and it shall continue negotiations in accordance with this section until an agreement is reached: And provided further, That for any water or wastewater construction project the engineering design and construction inspection costs may not exceed the amount calculated pursuant to the compensation curves for consulting engineering services based upon project construction costs published by the American Society of Civil Engineers manual of practice, unless granted a variance by the Infrastructure and Jobs Development Council established pursuant to §31-15A-1 et seq. of this code.

§5G-1-4. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost less than $250,000; division of highways procurements.

(a) In the procurement of architectural and engineering services for projects estimated to cost less than $250,000, competition shall be sought by the agency. The agency shall conduct discussions with three or more professional firms
solicited on the basis of known or submitted qualifications
for the assignment prior to the awarding of any contract:
Provided, That if a judgment is made that special
circumstances exist and that seeking competition is not
practical, the agency may, with the prior approval of the
director of purchasing, select a firm on the basis of previous
satisfactory performance and knowledge of the agency’s
facilities and needs. After selection, the agency and firm
shall develop the scope of services required and negotiate a
contract.

(b) The Division of Highways may procure the services
of architectural and engineering firms under the provisions
of this section in an amount not to exceed $750,000 for the
services per project.

Chapter 6d. public contracts.

§6D-1-1. Definitions.

For purposes of this article:

(a) “Applicable contract” means a contract of a state
agency that has an actual or estimated value of at least $1
million: Provided, That this shall include a series of related
contracts or orders in which the cumulative total exceeds $1
million.

(b) “Business entity” means any entity recognized by
law through which business is conducted, including, but not
limited to, a sole proprietorship, partnership, limited
liability company, or corporation. For purposes of this
article, “business entity” does not include publicly traded
companies listed on a national or international stock
exchange.

(c) “Disclosure” shall mean a form prescribed and
approved by the Ethics Commission pursuant to §6D-1-3 of
this code.
(d) “Interested party” or “interested parties” means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including subcontractors; (2) any person who has an ownership interest equal to or greater than 25 percent in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: Provided, That §6D-1-1(d)(3) of this code shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.

(e) “State agency” means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government, including publicly funded institutions of higher education: Provided, That for purposes of this article, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of this article.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services, and printing.

(a) The council, commission, and each governing board shall purchase or acquire all materials, supplies, equipment, services, and printing required for their respective needs: Provided, That the governing boards under the jurisdiction of the commission, including the exempted schools, are subject to §18B-5-4(d) of this code.

(b) The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with this section: Provided, That these rules do
not apply to the exempted schools and the governing boards of the exempted schools shall adopt their own rules consistent with this section: Provided, however, That the joint rules shall provide for appropriate deference to the value judgments of governing boards under the jurisdiction of the commission. The rules shall ensure that the following procedures are followed:

(1) No person is precluded from participating and making sales thereof to the council, commission, or governing board except as otherwise provided in §18B-5-5 of this code. Providing consulting services such as strategic planning services does not preclude or inhibit the governing boards, council, or commission from considering a qualified bid or response for delivery of a product or a commodity from the individual providing the services;

(2) Specifications are established and prescribed for materials, supplies, equipment, services, and printing to be purchased;

(3) Purchase order, requisition, or other forms as may be required are adopted and prescribed;

(4) Purchases and acquisitions in such quantities, at such times and under contract, are negotiated for and made in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law;

(5) Bids are advertised on all purchases exceeding $50,000 and made by means of sealed or electronically submitted bids and competitive bidding or advantageous purchases effected through other accepted governmental methods and practices. Competitive bids are not required for purchases of $50,000 or less;

(6) Notices for acquisitions and purchases for which competitive bids are being solicited are posted either in the purchasing office of the specified institution involved in the
purchase or by electronic means available to the public at
least five days prior to making the purchases. The rules shall
ensure that the notice is available to the public during
business hours;

(7) Purchases are made in the open market;

(8) Vendors are notified of bid solicitation and
emergency purchasing; and

(9) No fewer than three bids are obtained when bidding
is required, except if fewer than three bids are submitted, an
award may be made from among those received.

(c) When a state institution of higher education submits
a contract, agreement, or other document to the Attorney
General for approval as to form as required by this chapter,
the following conditions apply:

(1) “Form” means compliance with the Constitution and
statutes of the State of West Virginia;

(2) The Attorney General does not have the authority to
reject a contract, agreement, or other document based on the
substantive provisions in the contract, agreement, or
document or any extrinsic matter as long as it complies with
the Constitution and statutes of this state;

(3) Within 15 days of receipt, the Attorney General shall
notify the appropriate state institution of higher education in
writing that the contract, agreement, or other document is
approved or disapproved as to form. If the contract,
agreement, or other document is disapproved as to form, the
notice of disapproval shall identify each defect that supports
the disapproval; and

(4) If the state institution elects to challenge the
disapproval by filing a writ of mandamus or other action and
prevails, then the Attorney General shall pay reasonable
attorney fees and costs incurred.
(d) Pursuant to this subsection, the governing boards under the jurisdiction of the commission, including the exempted schools, respectively, may carry out the following actions:

1. Purchase or acquire all materials, supplies, equipment, services, and printing required for the governing board without approval from the commission or the Vice Chancellor for Administration and may issue checks in advance to cover postage as provided in §18B-5-4(f) of this code;

2. Purchase from cooperative buying groups, consortia, the federal government or from federal government contracts, or from West Virginia public institution of higher education contracts, if the materials, supplies, services, equipment, or printing to be purchased is available from these groups and if this would be the most financially advantageous manner of making the purchase;

3. Select and acquire by contract or lease all grounds, buildings, office space, or other space, and capital improvements, including equipment, if the rental is necessarily required by the governing board; and

4. Use purchase cards.

(e) The governing boards shall adopt sufficient accounting and auditing procedures and promulgate and adopt appropriate rules subject to §18B-1-6 of this code to govern and control acquisitions, purchases, leases, and other instruments for grounds, buildings, office, or other space, and capital improvements, including equipment, or lease-purchase agreements.

(f) The council, commission, or each governing board may issue a check in advance to a company supplying postage meters for postage used by that board, the council, or commission and by the state institutions of higher education under their jurisdiction.
(g) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards, council, or commission and delivery terms.

(h) The governing boards, council, and commission shall maintain a purchase file, which shall be a public record and open for public inspection.

(1) After the award of the order or contract, the governing boards, council, and commission shall indicate upon the successful bid the following information:

(A) Designation as the successful bid;

(B) The reason any bids were rejected; and

(C) The reason for rejection, if the mathematical low vendor was not awarded the order or contract.

(2) A record in the purchase file may not be destroyed without the written consent of the Legislative Auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the written consent of the Legislative Auditor.

(3) All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

(i) The commission and council, also jointly, shall promulgate rules to prescribe qualifications to be met by any person who is to be employed as a buyer at a state college and university or community and technical college pursuant to this section. These rules shall require that a person may
not be employed as a buyer unless that person, at the time of employment, has one of the following qualifications:

(1) Is a graduate of an accredited college or university;

or

(2) Has at least four years’ experience in purchasing for any unit of government or for any business, commercial, or industrial enterprise.

(j) Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of $50,000, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with this section and sections five through eight, inclusive, of this article and the rules of the governing board and the council and commission. In lieu of separate bonds for these buyers, a blanket surety bond may be obtained. The bond shall be filed with the Secretary of State and the cost of the bond shall be paid from funds appropriated to the applicable governing board or the council or commission.

(k) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of §5A-2-1 et seq. of this code relating to expenditure schedules and quarterly allotments of funds. Notwithstanding any other provision of this code to the contrary, only those purchases exceeding the dollar amount for competitive sealed bids in this section are required to be encumbered. Such purchases may be entered into the state’s centralized accounting system by the staff of the commission, council, or governing boards to satisfy the requirements of §5A-2-1 et seq. of this code to determine whether the amount of the purchase is within the quarterly allotment of the commission, council, or governing board, is in accordance with the approved expenditure schedule.
and otherwise conforms to the article: *Provided, That,* notwithstanding the foregoing provisions of this subsection or any other provision of this code to the contrary, purchases by exempted schools are not required to be encumbered.

(l) The governing boards, council, or commission may make requisitions upon the State Auditor for a sum to be known as an advance allowance account, not to exceed five percent of the total of the appropriations for the governing board, council, or commission, and the State Auditor shall draw a warrant upon the Treasurer for those accounts. All advance allowance accounts shall be accounted for by the applicable governing board or the council or commission once every 30 days or more often if required by the State Auditor.

(m) Contracts entered into pursuant to this section shall be signed by the applicable governing board or the council or commission in the name of the state and shall be approved as to form by the Attorney General. A contract which requires approval as to form by the Attorney General is considered approved if the Attorney General has not responded within 15 days of presentation of the contract. A contract or a change order for that contract and notwithstanding any other provision of this code to the contrary, associated documents such as performance and labor/material payments, bonds, and certificates of insurance which use terms and conditions or standardized forms previously approved by the Attorney General and do not make substantive changes in the terms and conditions of the contract do not require approval as to form by the Attorney General. The Attorney General shall make a list of those changes which he or she considers to be substantive and the list, and any changes to the list, shall be published in the State Register. A contract that exceeds the dollar amount requiring competitive sealed bids in this section shall be filed with the State Auditor. If requested to do so, the governing boards, council, or commission shall make all contracts available for inspection by the State Auditor. The
governing board, council, or commission, as appropriate, shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the faithful performance of a contract.

(n) If the governing board, council, or commission purchases or contracts for materials, supplies, equipment, services, and printing contrary to §18B-5-4 through §18B-5-7 of this code or the rules pursuant to this article, the purchase or contract is void and of no effect.

(o) A governing board or the council, or commission, as appropriate, may request the director of purchasing to make available the facilities and services of that department to the governing boards, council, or commission in the purchase and acquisition of materials, supplies, equipment, services, and printing. The director of purchasing shall cooperate with that governing board, council, or commission, as appropriate, in all such purchases and acquisitions upon that request.

(p) Each governing board or the council, or commission, as appropriate, may permit affiliated organizations, state institutions of higher education, or private institutions of higher education to join as purchasers on purchase contracts for materials, supplies, services, and equipment entered into by that governing board or the council, or commission. An affiliated organization, state institution of higher education, or private institution desiring to join as purchaser on purchase contracts shall file with that governing board or the council or commission, as appropriate, an affidavit signed by the president or designee of the affiliated organization, state institution of higher education, or private institution requesting that it be authorized to join as purchaser on purchase contracts of the governing board or the council, or commission, as appropriate. The affiliated organization, state institution of higher education, or private institution shall agree that it is bound by such terms and conditions as that governing board or the council, or
commission may prescribe and that it will be responsible for payment directly to the vendor under each purchase contract.

(q) Notwithstanding any other provision of this code to the contrary, the governing boards, council, and commission, as appropriate, may make purchases from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment, or printing to be purchased is available from that source, and purchasing from that source would be the most financially advantageous manner of making the purchase.

(r) An independent performance audit of all purchasing functions and duties which are performed at any state institution of higher education shall be performed at least once in each three-year period. The Joint Committee on Government and Finance shall require a performance audit and the governing boards, council, and commission, as appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing boards, council, or commission.

(1) The governing board shall provide for independent performance audits of all purchasing functions and duties on its campus at least once in each three-year period.

(2) Each audit shall be inclusive of the entire time period that has elapsed since the date of the preceding audit.

(3) Copies of all appropriate documents relating to any audit performed by a governing board shall be furnished to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability within 30 days of the date the audit report is completed.

(s) The governing boards shall require each institution under their respective jurisdictions to notify and inform
every vendor doing business with that institution of §5A-3-54 of this code, also known as the Prompt Pay Act of 1990.

(t) Consultant services, such as strategic planning services, do not preclude or inhibit the governing boards, council, or commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

(u) Purchasing card use may be expanded by the council, commission, and state institutions of higher education pursuant to this subsection.

(1) The council and commission jointly shall establish procedures to be implemented by the council, commission, and any state college and university or community and technical college using purchasing cards. The governing boards of the exempted schools shall establish procedures to be implemented by their respective institutions. The procedures shall ensure that each meets the following conditions:

(A) Appropriate use of the purchasing card system;

(B) Full compliance of §12-3-1 et seq. of this code relating to the purchasing card program; and

(C) Sufficient accounting and auditing procedures for all purchasing card transactions.

(2) Notwithstanding any other provision of this code to the contrary, the council, commission, and any institution authorized pursuant to §18B-5-4(u)(3) of this code may use purchasing cards for the following purposes:

(A) Payment of travel expenses directly related to the job duties of the traveling employee, including, but not limited to, fuel and food; and
(B) Payment of any routine, regularly scheduled payment, including, but not limited to, utility payments and real property rental fees.

(3) The commission and council each shall evaluate the capacity of each state college and university and community and technical college under its jurisdiction for complying with the procedures established pursuant to §18B-5-4(u)(2) of this code. The commission and council each shall authorize expanded use of purchasing cards pursuant to that subdivision for any state college and university and community and technical college it determines has the capacity to comply.
Veterans Assistance; providing that the West Virginia Department of Veterans Assistance shall reimburse the division for the actual costs incurred by the division in administering the requirements of this section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-12a. Commissioner of Motor Vehicles — commissioner shall prescribe forms providing for veteran contributions.

(a) Notwithstanding §17A-2-12 of this code, the commissioner shall prescribe and provide suitable forms of application which provide the following applicants the ability to make a contribution of $3, $5, or $10 to the West Virginia Department of Veterans Assistance:

(1) Applicants for original or renewal driver’s licenses or identification cards; and

(2) Applicants for a renewal of a vehicle registration.

(b) A contribution under §17A-2-12a(a) of this code shall be added, as appropriate, to the regular fee for:

(1) An original or renewal driver’s license or identification card; and

(2) A renewal of a vehicle registration.

(c) Contributions under §17A-2-12a(a) of this code shall be used exclusively for purposes set forth in §9A-1-1 et seq. of this code.

(d) The division shall determine on a monthly basis the total amount collected under this section and report and transfer said amount to the State Treasurer. The State Treasurer shall transfer the amount collected under this section to the West Virginia Department of Veterans Assistance.
(e) The West Virginia Department of Veterans Assistance shall reimburse the Motor Vehicle Fees Fund for the actual costs incurred by the division in the administration of this section.

CHAPTER 98

(S. B. 339 - By Senators Gaunch and Blair)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2018.]

AN ACT to amend and reenact §5-16D-1, §5-16D-3, §5-16D-4, and §5-16D-6 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Retirement Health Benefit Trust Fund within the Public Employees Insurance Agency; modifying definitions to provide flexibility for compliance with the Governmental Accounting Standards Board guidance; defining new terms; and allowing the current allocation process for unfunded liability to continue.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16D. WEST VIRGINIA RETIREMENT HEALTH BENEFIT TRUST FUND.

§5-16D-1. Definitions.

1 As used in this article, the term:

2 (a) “Actuarial cost method” means a method for determining the actuarial present value of the obligations and administrative expenses of the fund and for developing an actuarially equivalent allocation of the value to time periods, usually in the form of a normal cost and a total other post-employment benefits liability. Acceptable actuarial methods are the aggregate, attained age, entry age, frozen
attained age, frozen entry age, and projected unit credit methods.

(b) “Actuarially sound” means that calculated contributions to the fund are sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing for fund obligations as they accrue in the future and the cost of amortizing the unfunded total other post-employment benefits liability over a period of no more than 30 years.

(c) “Actuarial present value of total projected benefits” means the present value, at the valuation date, of the cost to finance benefits payable in the future, discounted to reflect the expected effects of the time value of money and the probability of payment.

(d) “Actuarial assumptions” means assumptions regarding the occurrence of future events affecting the fund such as mortality, withdrawal, disability, and retirement; changes in compensation and offered post-employment benefits; rates of investment earnings and other asset appreciation or depreciation; procedures used to determine the actuarial value of assets; and other relevant items.

(e) “Actuarial valuation” means the determination, as of a valuation date, of the normal cost, total other post-employment benefits liability, actuarial value of assets, and related actuarial present values for the fund.

(f) “Administrative expenses” means all expenses incurred in the operation of the fund, including all investment expenses.

(g) “Board” means the Public Employees Insurance Agency Finance Board created in §5-16-4 of this code.

(h) “Collective net other post-employment benefits liability” means for any actuarial valuation, the excess of the plan’s total other post-employment benefits liability over
the actuarial value of the assets of the fund under an actuarial cost method used by the fund for funding purposes.

(i) “Cost-sharing multiple employer plan” means a single plan with pooling (cost-sharing) arrangements for the participating employers. All risk, rewards, and costs, including benefit costs, are shared and not attributed individually to the employers. A single actuarial valuation covers all plan members and the same contribution rate applies for each employer.

(j) “Covered health care expenses” means all actual health care expenses paid by the health plan on behalf of fund beneficiaries. Actual health care expenses include claims payments to providers and premiums paid to intermediary entities and health care providers by the health plan.

(k) “Employer” means any employer as defined by §5-16-2 of this code which has or will have retired employees in any Public Employees Insurance Agency health plan.

(l) “Fund” means the West Virginia Retiree Health Benefit Trust Fund established under this article.

(m) “Fund beneficiaries” means all persons receiving post-employment health care benefits through the health plan.

(n) “Health plan” means the health insurance plan or plans established under §5-16-1 et seq. of this code.

(o) “Minimum annual employer payment” means the annual amount paid by employers which, when combined with the retirees’ contributions on their premiums that year, provide sufficient funds such that the annual finance plan of the finance board will cover all projected retiree covered health care expenses and related administrative costs for that year. The finance board shall develop the minimum annual employer payment as part of its financial plan each year as addressed in §5-16-5 of this code.
(p) “Normal cost” means that portion of the actuarial present value of the fund obligations and expenses which is allocated to a valuation year by the actuarial cost method used for the fund.

(q) “Obligations” means the administrative expenses of the fund and the cost of covered health care expenses incurred on behalf of fund beneficiaries.

(r) “Other post-employment benefits” or “retiree post-employment health care benefits” means those benefits as addressed by governmental accounting standards board statement no. 43 or any subsequent governmental standards board statement that may be applicable to the fund.

(s) “Plan for other post-employment benefits” means the fiscal funding plan for retiree post-employment health care benefits as it relates to governmental accounting standards board statement no. 43 or any subsequent governmental accounting standards board statements that may be applicable to the fund.

(t) “Proportionate share” means the portion of the collective net other post-employment benefits liability that is attributed to, and the responsibility of, a particular employer.

(u) “Retiree” means retired employee as defined by §5-16-2 of this code.

(v) “Retirement system” or “system” means the West Virginia Consolidated Public Retirement Board created and established by §5-10-1 et seq. of this code and includes any retirement systems or funds administered or overseen by the Consolidated Public Retirement Board.

(w) “Total other post-employment benefits liability” means that portion, as determined by a particular actuarial cost method, of the actuarial present value of fund obligations and administrative expenses which is not provided by future normal costs.
§5-16D-3. Operation of trust fund.

(a) Responsibility for the rules and policies for the proper operation of the fund is vested in the board.

(b) The board shall adopt actuarial assumptions as it deems necessary and prudent.

(c) The board shall determine the contribution rates in an actuarially sound manner and each employer’s proportionate share sufficient to maintain the fund in accordance with the state plan for other post-employment benefits.

(d) The board may promulgate, in accordance with §29A-1-1 et seq. of this code, any rules it finds necessary to properly administer the fund. The board may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.

(e) The Public Employees Insurance Agency shall furnish reports to the board at each of the board’s regularly scheduled meetings. The reports shall contain the most recent information reasonably available to the Public Employees Insurance Agency reflecting the obligations of the fund, earnings on investments, and such other information as the board deems necessary and appropriate.

(f) The Secretary of the Department of Administration, as chair of the board, shall cause to be employed within the Public Employees Insurance Agency such personnel as may be needed to carry out the provisions of this article. The prorata share of the costs to the Public Employees Insurance Agency of operating the fund shall be part of the administrative costs of the fund and shall be reimbursed to the Public Employees Insurance Agency.

(g) The Public Employees Insurance Agency, on the board’s behalf, shall be responsible for the day-to-day operation of the fund and may employ or contract for the
services of actuaries and other professionals as required to carry out the duties established by this article.

(h) The board shall contract with the West Virginia Investment Management Board for any necessary services with respect to fund investments.

(i) The Public Employees Insurance Agency, on the board’s behalf, shall maintain all necessary records regarding the fund in accordance with generally accepted accounting principles.

(j) The Public Employees Insurance Agency, on the board’s behalf, shall collect all moneys due to the fund and shall pay current post-employment health care costs and any administrative expenses necessary and appropriate for the operation of the fund from the fund. The fund’s assets shall be maintained and accounted for in state funds. The state funds shall be: (1) The Other Post-Employment Benefit Contribution Accumulation Fund; (2) the Other Post-Employment Benefit Investment Fund; and (3) the Other Post-Employment Benefit Expense Fund. These funds will be maintained by the Public Employees Insurance Agency on the board’s behalf.

(k) The Public Employees Insurance Agency, on the board’s behalf, shall prepare an annual report of fund activities. The report shall include, but not be limited to, independently audited financial statements in accordance with generally accepted accounting principles. The financial statements must be independently audited in accordance with auditing standards generally accepted in the United States and the standards applicable to financial audits contained in government auditing standards as issued by the Comptroller General of the United States.

(l) Notwithstanding any other provision of law to the contrary, the Public Employees Insurance Agency shall be entitled to request and receive any information that it deems necessary and appropriate from any relevant retirement system in order that the provisions of this article may be carried out.
§5-16D-4. Actuary.

(a) The actuary employed or retained by the Public Employees Insurance Agency shall provide technical advice to the Public Employees Insurance Agency and to the board regarding the operation of the fund.

(b) Using the actuarial assumptions most recently adopted by the board, the actuary shall, on a biannual basis, or as frequently as the board or generally accepted accounting principles deems necessary, set actuarial valuations of normal cost, actuarial liability, actuarial value of assets, and related actuarial present values for the state plan for other post-employment benefits.

§5-16D-6. Mandatory employer contributions.

(a) The board shall annually set the minimum annual employer payment sufficient to maintain the fund in an actuarially sound manner in accordance with generally accepted accounting principles and the annual finance plan.

(b) The board shall annually allocate to the respective employers the employer’s proportionate share of the collective net other post-employment liability as determined by the actuarial valuation in accordance with generally accepted accounting principles.

(c) Employers shall make annual contributions to the fund in, at least, the amount of the minimum annual employer payment rates established by the board.

(d) The Public Employees Insurance Agency shall bill each employer for the minimum annual employer payment. The Public Employees Insurance Agency shall annually collect the minimum annual employer payment. Any employer’s proportionate share of the collective net other post-employment amount not satisfied by the respective employer shall remain the liability of that employer until fully paid or otherwise amortized.
CHAPTER 99

(S. B. 350 - By Senators Ferns, Trump, Maynard, Jeffries, Baldwin and Plymale)

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §29-22A-5 of the Code of West Virginia, 1931, as amended, relating to the elimination of a requirement that the Lottery Commission file racetrack video lottery game rules with the Secretary of State; and requiring the Secretary of State to post a notice on its website that the rules for video lottery games that have been approved by the Lottery Commission are available for review at the office of the commission and provide relevant contact information.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-5. Video lottery terminal requirements; application for approval of a video lottery terminal; testing of video lottery terminals; report of test results; modifications to previously approved models; conformity to prototype; seizure and destruction of terminals.

(a) Video lottery terminals registered with and approved by the commission for use at licensed racetracks may offer video lottery games regulated, controlled, and owned and operated by the commission in accordance with the provisions of this section: Provided, That the Secretary of State shall post on the secretary’s website that the rules for video lottery games that have been approved by the commission are available for review at the office of the commission and provide relevant contact information.
(b) A manufacturer may not sell or lease a video lottery terminal for placement at a licensed racetrack in this state unless the terminal has been approved by the commission. Only manufacturers with permits may apply for approval of a video lottery terminal or associated equipment. The manufacturer shall submit two copies of terminal illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, and any other information requested by the commission for the purpose of analyzing and testing the video lottery terminal or associated equipment.

(c) The commission may require that two working models of a video lottery terminal be transported to the location designated by the commission for testing, examination, and analysis.

(1) The manufacturer shall pay all costs of testing, examination, analysis, and transportation of such video lottery terminal models. The testing, examination, and analysis of any video lottery terminal model may require dismantling of the terminal and some tests may result in damage or destruction to one or more electronic components of such terminal model. The commission may require that the manufacturer provide specialized equipment or pay for the services of an independent technical expert to test the terminal.

(2) The manufacturer shall pay the cost of transportation of two video lottery terminals to lottery headquarters. The commission shall conduct an acceptance test to determine terminal functions and central system compatibility. If the video lottery terminal fails the acceptance test conducted by the commission, the manufacturer shall make all modifications required by the commission.

(d) After each test has been completed, the commission shall provide the terminal manufacturer with a report containing findings, conclusions, and pass/fail results. The report may contain recommendations for video lottery
terminal modification to bring the terminal into compliance with the provisions of this article. Prior to approving a particular terminal model, the commission may require a trial period not in excess of 60 days for a licensed racetrack to test the terminal. During the trial period, the manufacturer may not make any modifications to the terminal model unless such modifications are approved by the commission.

(e) The video lottery terminal manufacturer and licensed racetrack are jointly responsible for the assembly and installation of all video lottery terminals and associated equipment. The manufacturer and licensed racetrack shall not change the assembly or operational functions of a terminal licensed for placement in West Virginia unless a request for modification of an existing video terminal prototype is approved by the commission. The request must contain a detailed description of the type of change, the reasons for the change, and technical documentation of the change.

(f) Each video lottery terminal approved for placement at a licensed racetrack must conform to the exact specifications of the video lottery terminal prototype tested and approved by the commission. If any video lottery terminal or any video lottery terminal modification, which has not been approved by the commission, is supplied by a manufacturer and operated by a licensed racetrack, the commission shall seize and destroy all of that licensed racetrack’s and manufacturer’s noncomplying video lottery terminals and shall suspend the license and permit of the licensed racetrack and manufacturer.
AN ACT to amend and reenact §16-1-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-17-4 of said code, all relating to removing the Commissioner of the Bureau for Public Health from the membership of the State Board of Sanitarians.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-7. Duties and powers of the commissioner; service on advisory councils; boards and commissions; authority to designate a representative to serve in his or her place on certain boards and commissions.

(a) Effective July 1, 2012, the commissioner serves on the West Virginia Board of Medicine, provided in §30-3-1 et seq. of this code.

(b) Effective July 1, 2012, the commissioner serves on the following advisory councils, boards, and commissions:

1. The Advisory Committee on Cancer (Cancer Registry);
2. The Air Quality Board;
3. The Appalachian States Low-level Radioactive Waste Commission;
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(4) The Child Fatality Review Team;
(5) The Childhood Immunization Advisory Committee;
(6) The Early Intervention Coordinating Council;
(7) The Interagency Council on Osteoporosis;
(8) The Sewage Advisory Board;
(9) The State Emergency Response Commission;
(10) The State Groundwater Coordinating Committee;
(11) The Water Development Authority;
(12) The West Virginia Commission for the Deaf and Hard of Hearing;
(13) The West Virginia Infrastructure and Jobs Development Council; and
(14) Any other advisory council, board, or commission as assigned by the secretary except for business, professional, or occupational licensing boards.

(c) Notwithstanding any other provision of this code to the contrary, the commissioner may, at his or her discretion, designate in writing, a representative to serve in his or her stead at the meetings and in the duties of all boards and commissions on which the commissioner is designated as an ex officio member. The appropriately designated representative or proxy acts with the full power and authority of the commissioner in voting, acting upon matters concerning the public health and welfare, and other business that is properly the duty of any board or commission. The representative serves as proxy at the commissioner’s will and pleasure. The provisions of this section do not apply to the West Virginia Board of Medicine, the Air Quality Board, or other board, commission, or body on which the commissioner is designated by this code as chairman ex officio, secretary ex officio, or a board, commission, or
body on which the commissioner is designated by this code as being that person whose signature must appear on licenses, minutes, or other documents necessary to carry out the intents and purposes of the board, commission, or body.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 17. SANITARIANS.

§30-17-4. State Board of Sanitarians.

(a) The Board of Registration for Sanitarians is continued and commencing July 1, 2010, shall be known as the State Board of Sanitarians. Any member of the board, except one registered sanitarian, in office on July 1, 2010, may continue to serve until his or her successor has been appointed and qualified.

(b) Prior to July 1, 2010, the Governor, by and with the advice and consent of the Senate, shall appoint one certified sanitarian to replace one registered sanitarian.

(c) Commencing July 1, 2010, the board shall consist of the following seven voting members with staggered terms:

(1) Four members who are registered sanitarians;

(2) One member who has a certificate as a sanitarian at the time of the appointment: Provided, That if the member becomes a registered sanitarian during his or her appointment term, then the person may not be reappointed as the certified sanitarian member, but may be reappointed as a registered sanitarian member; and

(3) Two citizen members who are not licensed, certified, or permitted under the provisions of this article, and who do not perform any services related to the practice of the professions regulated under the provisions of this article.

(d) Each member must be appointed by the Governor, by and with the advice and consent of the Senate, and must be a resident of this state during the appointment term.
(e) The term of each board member is five years.

(f) No member may serve more than two consecutive full terms and any member having served two full terms may not be appointed for one year after completion of his or her second full term. A member shall continue to serve until his or her successor has been appointed and qualified.

(g) Each licensed or certified member shall have been engaged in the practice of environmental health science or public health sanitation for at least five years immediately preceding the appointment.

(h) Each licensed or certified member shall maintain an active license or certificate with the board during his or her term.

(i) The Governor may remove any member from the board for neglect of duty, incompetency, or official misconduct.

(j) A licensed or certified member of the board immediately and automatically forfeits membership to the board if his or her license or certificate to practice is suspended or revoked.

(k) A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(l) The board shall designate one of its members as chairperson who serves at the will of the board.

(m) Each member of the board is entitled to receive compensation and expense reimbursement in accordance with §30-1-11 of this code.

(n) A majority of the members of the board shall constitute a quorum.
(o) The board shall hold at least two annual meetings. Other meetings may be held at the call of the chairperson, or upon the written request of two members, at such time and place as designated in the call or request.

(p) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article IV of the Constitution of this state.

CHAPTER 101

(Com. Sub. for S. B. 415 - By Senators Ferns, Blair, Maroney, Trump, Weld, Woelfel, Stollings, and Takubo)

[Passed March 3, 2018; in effect from passage.]
Fund; limiting sports wagering to existing racetrack casinos and the casino in a historic resort hotel; providing for four types of licenses to be issued related to sports betting; establishing license requirements and prohibitions; authorizing licensing fees; requiring adoption and posting of house rules; defining duties of an operator conducting sports wagering; requiring the posting of betting limits; authorizing sports wagering agreements with other governments; providing powers and duties of commission and operators; limiting certain activities of employees; authorizing the West Virginia Lottery to levy and collect a privilege tax in the amount of 10 percent of adjusted gross sports wagering receipts; requiring reports and submission of taxes; providing for certain carry over and carry back allowances; clarifying that tax is in lieu of certain other taxes; providing that certain expenditures related to sports wagering are facility modernization improvements eligible for recoupment; providing that credits are not allowed against the privilege tax; creating the West Virginia Lottery Sports Wagering Fund; authorizing the West Virginia Lottery to collect an administrative allowance from gross sports wagering receipts; providing for distribution of moneys deposited in the West Virginia Lottery Sports Wagering Fund; authorizing certain agreements between the West Virginia Lottery and law enforcement; imposing civil penalties for certain violations, and exception; prohibiting unauthorized sports wagering in this state; establishing crimes related to unauthorized sports wagering and imposing criminal penalties; establishing crimes related to authorized sports wagering and imposing criminal penalties; preempting provisions from state and local law; and establishing certain exemptions from federal law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22D. WEST VIRGINIA LOTTERY SPORTS WAGERING ACT.

§29-22D-1. Short title.

1 This article shall be known and may be cited as the West Virginia Lottery Sports Wagering Act.
§29-22D-2. State authorization of sports wagering at licensed racetrack facilities and historic resort hotel; legislative findings and declarations.

(a) Operation of West Virginia Lottery sports wagering. — Notwithstanding any provision of law to the contrary, the operation of sports wagering and ancillary activities are only lawful when conducted in accordance with the provisions of this article and rules of the commission.

(b) Legislative findings. —

(1) The Legislature finds that the operation of the four racetracks and the historic resort hotel in this state play a critical role in the economy of this state, and such constitutional lotteries are rightfully authorized as state enterprises consistent with the rights and powers granted to the states under the Tenth Amendment of the United States Constitution. The federal government is a government of limited and enumerated powers, and powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved for the states and its respective citizens.

(2) The Legislature finds that section 36, article VI of the Constitution of the State of West Virginia grants the state the exclusive right to lawfully own and operate a lottery in this state. Authorization of wagering on any constitutional lottery within West Virginia is within the state’s sovereign rights as a state to act in the best interest of its citizens.

(3) The Legislature finds that it is in the best interests of the State of West Virginia for the state to operate a lottery in the form of sports wagering and that it is the intent of the Legislature to authorize sports wagering when federal law is enacted or repealed, or a federal court decision is issued that permits a state to regulate sports wagering, as such power is reserved to the states.
(4) The Legislature finds that illegal sports wagering channels operating throughout the United States pose a critical threat to the safety and welfare of the citizens of West Virginia and that creating civil and criminal penalties to prosecute illegal operators, while transferring this black market demand into a secure and highly regulated environment, will protect the public and positively benefit state revenues and the state’s economy.

(5) The Legislature finds that in order to protect residents of this state who wager on sports or other events and to capture revenues and create jobs generated from sports wagering, it is in the best interests of this state and its citizens to regulate this activity by authorizing and establishing a secure, responsible, fair, and legal system of sports wagering immediately, when the federal ban on sports wagering is lifted.

(6) The Legislature finds that the most effective and efficient manner in which the state can operate and regulate the forms of lottery authorized by the provisions of this article is to limit the number of authorized operators to those who are licensed, pursuant to the provisions of §29-22A-1 et seq. of this code, and to facilities licensed to operate video lottery terminals, pursuant to the provisions of §29-25-1 et seq. of this code.

(7) The Legislature finds that the granting of licenses pursuant to the provisions of this article, while maintaining all ownership rights and exercising control through strict regulation of all West Virginia Lottery sports wagering authorized by the provisions of this article, constitutes an appropriate exercise by the Legislature of the power granted it by the provisions of section 36, article VI of the Constitution of the State of West Virginia.

(8) The Legislature finds that the operation of West Virginia Lottery sports wagering at racetracks, licensed pursuant to the provisions of §29-22A-1 et seq. of this code, and at a historic resort hotel, licensed pursuant the
provisions of §29-25-1 et seq. of this code, serves to protect, preserve, promote, and enhance the tourism industry of the state as well as the general fiscal wellbeing of the state and its subdivisions.


For the purposes of this article, the following terms have the meanings ascribed to them in this section:

1. “Adjusted gross sports wagering receipts” means an operator’s gross sports wagering receipts from West Virginia Lottery sports wagering, less winnings paid to wagerers in such games.

2. “Collegiate sport or athletic event” means a sport or athletic event offered or sponsored by, or played in connection with, a public or private institution that offers educational services beyond the secondary level.

3. “Commission” or “State Lottery Commission” means the West Virginia Lottery Commission, created by §29-22-1 et seq. of this code.

4. “Director” means the Director of the West Virginia State Lottery Commission, appointed pursuant to §29-22-6 of this code.

5. “Gaming equipment” or “sports wagering equipment” means any mechanical, electronic or other device, mechanism, or equipment, and related supplies used or consumed in the operation of West Virginia Lottery sports wagering at a licensed gaming facility including, but not limited to, a kiosk installed to accept sports wagers.

6. “Gaming facility” means a designated area on the premises of an existing historic resort hotel, licensed under §29-25-1 et seq. of this code, to operate video lottery and table games or the facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-22A-1 et seq. of this code.
“Government” means any governmental unit of a national, state, or local body exercising governmental functions, other than the United States Government.

“Gross sports wagering receipts” means the total gross receipts received by a licensed gaming facility from sports wagering.

“License” means any license, applied for or issued by the commission under this article, including, but not limited to:

(A) A license to act as agent of the commission in operating West Virginia Lottery sports wagering at a licensed gaming facility (operator license or West Virginia Lottery sports wagering license);

(B) A license to supply a gaming facility, licensed under this article, to operate sports wagering with sports wagering equipment or services necessary for the operation of sports wagering (supplier license);

(C) A license to be employed at a racetrack or gaming facility, licensed under this article, to operate West Virginia Lottery sports wagering when the employee works in a designated gaming area that has sports wagering or performs duties in furtherance of or associated with the operation of sports wagering at the licensed gaming facility (occupational license); or

(D) A license to provide management services under a contract to a gaming facility, licensed under this article, to operate sports wagering (management services provider license).

“Licensed gaming facility” means a designated area on the premises of an existing historic resort hotel, pursuant to §29-25-1 et seq. of this code, or the facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-22A-1 et seq. of this code,
(11) “Lottery” means the public gaming systems or games regulated, controlled, owned, and operated by the State Lottery Commission in the manner provided by general law, as provided in this article, §29-22-1 et seq., §29-22A-1 et seq., §29-22B-1 et seq., §29-22C-1 et seq., and §29-25-1 et seq. of this code.

(12) “National criminal history background check system” means the criminal history record system maintained by the Federal Bureau of Investigation, based on fingerprint identification or any other method of positive identification.

(13) “Operator” means a licensed gaming facility which has elected to operate a sports pool and other authorized West Virginia Lottery sports wagering activities.

(14) “Professional sport or athletic event” means an event at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event.

(15) “Sports event” or “sporting event” means any professional sport or athletic event, any collegiate sport or athletic event, motor race event, or any other special event authorized by the commission under this article.

(16) “Sports pool” means the business of accepting wagers on any sports event by any system or method of wagering.

(17) “Sports wagering account” means a financial record established by a licensed gaming facility for an individual patron in which the patron may deposit and withdraw funds for sports wagering and other authorized purchases, and to which the licensed gaming facility may credit winnings or other amounts due to that patron or authorized by that patron.
(18) “Sports wagering agreement” means a written agreement between the commission and one or more other governments whereby persons who are physically located in a signatory jurisdiction may participate in sports wagering conducted by one or more operators licensed by the signatory governments.

(19) “Sports wagering fund” means the special fund in the State Treasury, created in §29-22D-17 of this code.

(20) “Supplier” means a person that requires a supplier license to provide a sports wagering licensee with goods or services to be used in connection with operation of West Virginia Lottery sports wagering.

(21) “Wager” means a sum of money or thing of value risked on an uncertain occurrence.

(22) “West Virginia Lottery sports wagering” or “sports wagering” means the business of accepting wagers on sporting events and other events, the individual performance statistics of athletes in a sporting event or other events, or a combination of any of the same by any system or method of wagering approved by the commission including, but not limited to, mobile applications and other digital platforms that utilize communications technology to accept wagers originating within this state. The term includes, but is not limited to, exchange wagering, parlays, over-under, moneyline, pools, and straight bets. The term does not include:

(A) Pari-mutuel betting on the outcome of horse or dog races, authorized by §19-23-12a and §19-23-12d of this code;

(B) Lottery games of the West Virginia State Lottery, authorized by §29-22-1 et seq. of this code;

(C) Racetrack video lottery, authorized by §29-22A-1 et seq. of this code;
(D) Limited video lottery, authorized by §29-22B-1 et seq. of this code;

(E) Racetrack table games, authorized by §29-22C-1 et seq. of this code;

(F) Video lottery and table games, authorized by §29-25-1 et seq. of this code; and

(G) Daily Fantasy Sports (DFS).

(23) “West Virginia Lottery sports wagering license” means authorization granted under this article by the commission to a gaming facility that is already licensed under §29-22A-1 et seq. or §29-25-1 et seq. of this code, which permits the gaming facility as an agent of the commission to operate West Virginia Lottery sports wagering in one or more designated areas or in one or more buildings owned by the licensed gaming facility on the grounds where video lottery is conducted by the licensee or through any other authorized platform developed by the gaming facility. This term is synonymous with “operator’s license.”


(a) In addition to the duties set forth elsewhere in this article, §29-22-1 et seq., §29-22A-1 et seq., §29-22B-1 et seq., §29-22C-1 et seq., and §29-25-1 et seq. of this code, the commission shall have the authority to regulate sports pools and the conduct of sports wagering under this article.

(b) The commission shall examine the regulations implemented in other states where sports wagering is conducted and shall, as far as practicable, adopt a similar regulatory framework through promulgation of rules and regulations.

(c) The commission has the authority, pursuant to §29A-1-1, et seq. and §29A-3-1, et seq. of this code, to promulgate or otherwise enact any legislative, interpretive, and
procedural rules the commission considers necessary for the successful implementation, administration, and enforcement of this article. Rules proposed by the commission before December 1, 2018, may be promulgated as emergency rules pursuant to §29A-3-15 of this code.

(1) Regulations promulgated by the commission may include, but are not limited to, those governing the acceptance of wagers on a sports event or a series of sports events; maximum wagers which may be accepted by an operator from any one patron on any one sports event; type of wagering tickets which may be used; method of issuing tickets; method of accounting to be used by operators; types of records which shall be kept; use of credit and checks by patrons; type of system for wagering; protections for patrons placing wagers; and promotion of social responsibility, responsible gaming, and inclusion of the statement, “If you or someone you know has a gambling problem and wants help, call 1-800 GAMBLER,” in every designated area approved for sports wagering and on any mobile application or other digital platform used to place wagers.

(2) The commission shall establish minimum internal control standards (MICS) and approve minimum internal control standards proposed by licensed operators for administration of sports wagering operations, wagering equipment and systems, or other items used to conduct sports wagering, as well as maintenance of financial records and other required records.

(d) The commission shall determine the eligibility of a person to hold or continue to hold a license, shall issue all licenses, and shall maintain a record of all licenses issued under this article. The commission may accept applications, evaluate qualifications of applicants, and undertake initial review of licenses prior to promulgation of emergency rules upon the effective date of this article.
(e) The commission shall levy and collect all fees, surcharges, civil penalties, and weekly tax on adjusted gross sports wagering receipts imposed by this article, and deposit all moneys into the sports wagering fund, except as otherwise provided under this article.

(f) The commission may sue to enforce any provision of this article or any rule of the commission by civil action or petition for injunctive relief.

(g) The commission may hold hearings, administer oaths, and issue subpoenas or subpoenas duces tecum: Provided, That all hearings shall be conducted pursuant to the provisions of the State Administrative Procedures Act, §29A-2-1, et seq. of this code and the Lottery Administrative Appeal Procedures, W.Va. CSR §179-2-1, et seq.

(h) The commission may exercise any other powers necessary to effectuate the provisions of this article and the rules of the commission.

§29-22D-5. Licenses required.

(a) The commission shall not grant a license required under this article to any applicant until the commission has published the notice in the State Register, as required by §29-22D-15(f) of this code.

(b) No person may engage in any activity in connection with West Virginia Lottery sports wagering in this state unless all necessary licenses have been obtained in accordance with this article and rules of the commission. Four types of licenses: (1) Operator; (2) supplier; (3) management services provider; and (4) occupational—are issued pursuant to this article, and no person or entity may engage in any sports wagering operation or activity without first obtaining the appropriate license.

(c) The commission may not grant a license until it determines that each person who has control of the applicant
meets all qualifications for licensure. The following persons are considered to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company, or subsidiary company of the applicant who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation; this does not include any bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business;

(2) Each person associated with a non-corporate applicant who directly or indirectly holds a beneficial or proprietary interest in the applicant’s business operation, or who the commission otherwise determines has the ability to control the applicant; and

(3) Key personnel of an applicant, including any executive, employee, or agent, having the power to exercise significant influence over decisions concerning any part of the applicant’s business operation.

(d) License application requirements. — All applicants for any license issued under this article shall submit an application to the commission in the form the commission requires and submit fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation. The commission may require additional background checks on licensees when they apply for annual license renewal, and any applicant convicted of any disqualifying offense shall not be licensed.

(e) Each sports wagering licensee, licensed supplier, or a licensed management services provider shall display the
license conspicuously in its place of business or have the license available for inspection by any agent of the commission or any law-enforcement agency.

(f) Each holder of an occupational license shall carry the license and have some indicia of licensure prominently displayed on his or her person when present in a licensed gaming facility at all times, in accordance with the rules of the commission.

(g) Each person licensed under this article shall give the commission written notice within 30 days of any change to any information provided in the licensee’s application for a license or renewal.

(h) No commission employee may be an applicant for any license issued under this article nor may any employee of any such licensee directly or indirectly hold an ownership or a financial interest in any West Virginia Lottery sports wagering license.

§29-22D-6. Operator license; West Virginia sports wagering operators.

(a) In addition to the casino games permitted pursuant to the provisions of §29-22A-1 et seq., §29-22C-1 et seq., and §29-25-1 et seq. of this code, a licensed gaming facility may operate West Virginia Lottery sports wagering upon the approval of the commission, and the commission shall have the general responsibility for the implementation of this article and all other duties specified in §29-22A-1 et seq., §29-22A-1 et seq., §29-22C-1 et seq., and §29-25-1 et seq. of this code, the provisions of this article, and applicable regulations.

(b) All sports wagering authorized by this article shall be West Virginia Lottery games owned by the State of West Virginia. An operator license granted by the commission pursuant to this article grants licensees lawful authority to conduct West Virginia Lottery sports wagering within the
terms and conditions of the license and any regulations promulgated under this article.

(c) *Sports wagering licenses.* — The commission may issue up to five licenses to operate West Virginia Lottery sports wagering in accordance with the provisions of this article. No more than five licenses to operate a gaming facility with West Virginia Lottery sports wagering shall be permitted in this state.

(d) *Grant of license.* — Upon application by a gaming facility and payment of a $100,000 application fee, the commission shall immediately grant a West Virginia Lottery sports wagering license to an operator that provides for the right to conduct West Virginia Lottery sports wagering: *Provided,* That the applicant must hold a valid racetrack video lottery license issued by the commission, pursuant to §29-22A-1 *et seq.* of this code, or a valid license to operate a gaming facility, issued by the commission pursuant to §29-25-1 *et seq.* of this code, and otherwise meet the requirements for licensure under the provisions of this article and the rules of the commission. This license shall be issued for a five-year period, and may be renewed for five-year periods upon payment of a $100,000 renewal fee, as long as an operator continues to meet all qualification requirements.

(e) *Location.* — A West Virginia Lottery sports wagering license authorizes the operation of West Virginia Lottery sports wagering at locations and through any mobile application or other digital platforms approved by the commission.

(f) *Management service contracts.* —

(1) *Approval.* — A West Virginia Lottery sports wagering licensee may not enter into any management services contract that would permit any person other than the licensee to act as the commission’s agent in operating West Virginia Lottery sports wagering unless the
management service contract: (A) Is with a person licensed
under this article to provide management services; (B) is in
writing; and (C) has been approved by the commission.

(2) Material change. — The West Virginia Lottery
sports wagering licensee shall submit any material change
in a management services contract, previously approved by
the commission, to the commission for its approval or
rejection before the material change may take effect.

(3) Other commission approvals and licenses. — The
duties and responsibilities of a management services
provider under a management services contract may not be
assigned, delegated, subcontracted, or transferred to a third
party without the prior approval of the commission. Third
parties must be licensed as a management services provider
under this article before providing services.

(g) Expiration date and renewal. —

(1) A licensed operator shall submit to the commission
such documentation or information as the commission may
require demonstrating to the satisfaction of the director that
the licensee continues to meet the requirements of the law
and regulations. Required documentation or information
shall be submitted no later than five years after issuance of
an operator license and every five years thereafter, or within
lesser periods based on circumstances specified by the
commission.

(2) If the licensee fails to apply to renew its license
issued pursuant to §29-22A-1 et seq. or §29-25-1 et seq. of
this code prior to expiration, the commission shall renew its
license under this article at the time the expired license is
renewed as long as the licensee was operating in compliance
with applicable requirements in the preceding license year.

(h) Surety bond. — A West Virginia Lottery sports
wagering licensee shall execute a surety bond in an amount
and in the form approved by the commission, to be given to
the state, to guarantee the licensee faithfully makes all payments in accordance with the provisions of this article and rules promulgated by the commission.

(i) **Audits. —** Upon application for a license and annually thereafter, a West Virginia Lottery sports wagering licensee shall submit to the commission an annual audit of the financial transactions and condition of the licensee’s total operations prepared by a certified public accountant in accordance with generally accepted accounting principles and applicable federal and state laws.

(j) **Commission office space. —** A West Virginia Lottery sports wagering licensee shall provide suitable office space at the sports wagering facility, at no cost, for the commission to perform the duties required of it by this article and the rules of the commission.

(k) **Facility qualifications. —** A West Virginia Lottery sports wagering licensee shall demonstrate that its gaming facility with West Virginia Lottery sports wagering will: (1) Be accessible to disabled individuals, in accordance with applicable federal and state laws; (2) be licensed in accordance with this article, and all other applicable federal, state, and local laws; and (3) meet any other qualifications specified in rules adopted by the commission. Notwithstanding any provision of this code or any rules promulgated by the Alcohol Beverage Control Commissioner to the contrary, vacation of the premises after service of beverages ceases is not required for any licensed gaming facility.

§29-22D-7. Management services providers; license requirements.

(a) **License. —** The holder of a license to operate West Virginia Lottery sports wagering may contract with an entity to conduct that operation in accordance with the regulations of the commission. That entity shall obtain a license as a management services provider prior to the execution of any such contract, and such license shall be
issued pursuant to the provisions of this article and any
regulations promulgated by the commission.

(b) License qualifications and fee. — Each applicant for
a management services provider license shall meet all
requirements for licensure and pay a nonrefundable license
and application fee of $1,000. The commission may adopt
rules establishing additional requirements for an authorized
management services provider. The commission may accept
licensing by another jurisdiction, that it specifically
determines to have similar licensing requirements, as
evidence the applicant meets authorized management
services provider licensing requirements.

(c) Renewal. — Management services provider licenses
shall be renewed annually to any licensee who continues to
be in compliance with all requirements and who pays the
annual renewal fee of $1,000.

(d) Any entity or individual who shares in revenue,
including any affiliate operating under a revenue share
agreement, shall be licensed under this section.

§29-22D-8. Suppliers; license requirements.

(a) Supplier license. —

(1) The commission may issue a supplier license to a
person to sell or lease sports wagering equipment, systems,
or other gaming items necessary to conduct sports wagering,
and offer services related to such equipment or other gaming
items to a West Virginia Lottery sports wagering licensee
while the license is active. The commission may establish
the conditions under which the commission may issue
provisional licenses, pending completion of final action on
an application.

(2) The commission may adopt rules establishing
additional requirements for a West Virginia Lottery sports
wagering supplier and any system or other equipment
utilized for wagering. The commission may accept licensing
by another jurisdiction, that it specifically determines to
have similar licensing requirements, as evidence the
applicant meets West Virginia Lottery sports wagering
supplier licensing requirements.

(b) Supplier specifications. — An applicant for a
supplier license shall demonstrate that the equipment,
system, or services that the applicant plans to offer to the
sports wagering licensee conform to standards established
by the commission and applicable state law. The
commission may accept approval by another jurisdiction,
that it specifically determines have similar equipment
standards, as evidence the applicant meets the standards
established by the commission and applicable state law.

(c) License application and renewal fees. — Applicants
shall pay to the commission a nonrefundable license and
application fee in the amount of $1,000. After the initial
one-year term, the commission shall renew supplier licenses
annually thereafter. Renewal of a supplier license will be
granted to any renewal applicant who has continued to
comply with all applicable statutory and regulatory
requirements, upon submission of the commission issued
renewal form and payment of a $1,000 renewal fee.

(d) Inventory. — A licensed sports wagering supplier
shall submit to the commission a list of all sports wagering
equipment and services sold, delivered to, or offered to a
West Virginia Lottery sports wagering licensee in this state,
as required by the commission, all of which must be tested
and approved by an independent testing laboratory
approved by the commission. A sports wagering licensee
may continue to use supplies acquired from a licensed sports
wagering supplier, even if a supplier’s license expires or is
otherwise cancelled, unless the commission finds a defect in
the supplies.


(a) All persons employed to be engaged directly in
sports wagering-related activities, or otherwise conducting
or operating sports wagering, shall be licensed by the
commission and maintain a valid occupational license at all
times and the commission shall issue such license to be
employed in the operation of sports wagering to a person
who meets the requirements of this section.

(b) An occupational license to be employed by a gaming
facility with West Virginia Lottery sports wagering permits
the licensee to be employed in the capacity designated by
the commission while the license is still active. The
commission may establish, by rule, job classifications with
different requirements to recognize the extent to which a
particular job has the ability to impact the proper operation
of West Virginia Lottery sports wagering.

(c) Application and fee. — Applicants shall submit any
required application forms established by the commission
and pay a nonrefundable application fee of $100. The fee
may be paid on behalf of an applicant by the employer.

(d) Renewal fee and form. — Each licensed employee
shall pay to the commission an annual license fee of $100
by June 30 of each year. The fee may be paid on behalf of
the licensed employee by the employer. In addition to a
renewal fee, each licensed employee shall annually submit
a renewal application on the form required by the
commission.

§29-22D-10. License prohibitions.

(a) The commission may not grant any license, pursuant
to the provisions of this article, if evidence satisfactory to
the commission exists that the applicant:

(1) Has knowingly made a false statement of a material
fact to the commission;

(2) Has been suspended from operating a gambling
game, gaming device, or gaming operation, or had a license
revoked by any governmental authority responsible for
regulation of gaming activities;
(3) Has been convicted of a crime of moral turpitude, a gambling-related offense, a theft or fraud offense, or has otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of respect for law and order; or

(4) Is a company or individual who has been directly employed by any illegal or offshore book that serviced the United States, or otherwise accepted black market wagers from individuals located in the United States.

(b) The commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license:

(1) If the applicant or licensee has not demonstrated to the satisfaction of the commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;

(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation which sells more than five percent of a licensee’s voting stock, or more than five percent of the voting stock of a corporation which controls the licensee, or sells a licensee’s assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the commission to have met the qualifications of a licensee under this article.

(c) In the case of an applicant for a sports wagering license, the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if an applicant has not met the requirements of this section or any other provision of this article.

(a) Each operator shall adopt comprehensive house rules for game play governing sports wagering transactions with its patrons. These comprehensive rules will be published as part of the minimum internal control standards. The rules shall specify the amounts to be paid on winning wagers and the effect of schedule changes. House rules shall be approved by the commission prior to implementation.

(b) The house rules, together with any other information the commission deems appropriate, shall be conspicuously displayed and included in the terms and conditions of the sports wagering system. Copies shall be made readily available to patrons.

(c) The commission shall license and require the display of West Virginia Lottery game logos on game surfaces, other gaming items, and any locations the commission considers appropriate.

§29-22D-12. Operator duties; sports wagering operations at a licensed gaming facility.

(a) General. — All operators licensed under this article to conduct West Virginia Lottery sports wagering shall:

(1) Employ a monitoring system utilizing software to identify non-normal irregularities in volume or odds swings which could signal suspicious activities that should require further investigation which shall be immediately reported and investigated by the commission. System requirements and specifications shall be developed according to industry standards and implemented by the commission as part of the minimum internal control standards;

(2) Promptly report to the commission any facts or circumstances related to the operation of a West Virginia Lottery sports wagering licensee which constitute a violation of state or federal law and immediately report any suspicious betting over a threshold set by the operator that
has been approved by the commission to the appropriate state or federal authorities;

(3) Conduct all sports wagering activities and functions in a manner which does not pose a threat to the public health, safety, or welfare of the citizens of this state and does not adversely affect the security or integrity of the West Virginia Lottery;

(4) Hold the commission and this state harmless from and defend and pay for the defense of any and all claims which may be asserted against a licensee, the commission, the state, or employees thereof, arising from the licensee’s actions or omission while acting as an agent of the commission operating West Virginia Lottery sports wagering pursuant to this article;

(5) Assist the commission in maximizing sports wagering revenues; and

(6) Keep current in all payments and obligations to the commission.

(b) Duties. — All West Virginia Lottery sports wagering licensees shall:

(1) Acquire West Virginia Lottery sports wagering gaming equipment by purchase, lease, or other assignment and provide a secure location for the placement, operation, and play of sports wagering gaming equipment;

(2) Prevent any person from tampering with or interfering with the operation of any West Virginia Lottery sports wagering;

(3) Ensure that West Virginia Lottery sports wagering conducted at a gaming facility is within the sight and control of designated employees of the licensee and such wagering at the facility or otherwise available by the licensee is conducted under continuous observation by security
equipment in conformity with specifications and requirements of the commission;

(4) Ensure that West Virginia Lottery sports wagering occurs only in the specific locations within designated gaming areas approved by the commission or using a commission approved mobile application or other digital platform that utilizes communications technology to accept wagers originating within this state, or on a sports wagering device. West Virginia Lottery sports wagering shall only be relocated or offered in additional authorized manners in accordance with the rules of the commission;

(5) Maintain sufficient cash and other supplies to conduct sports wagering at all times; and

(6) Maintain daily records showing the gross sports wagering receipts and adjusted gross sports wagering receipts of the licensee from West Virginia Lottery sports wagering and shall timely file with the commission any additional reports required by rule or by other provisions of this code.


A sports wagering licensee shall conspicuously post a sign at each West Virginia Lottery sports wagering location indicating the minimum and maximum wagers permitted at that location and shall comply with the same.


(a) On behalf of the State of West Virginia, the commission is authorized to:

(1) Enter into sports wagering agreements with other governments whereby persons who are physically located in a signatory jurisdiction may participate in sports wagering conducted by one or more operators licensed by the signatory governments; and
(2) Take all necessary actions to ensure that any sports wagering agreement entered into, pursuant to this section, becomes effective.

(b) The regulations adopted by the commission pursuant to this section may include provisions prescribing:

(1) The form, length, and terms of an agreement entered into by the commission and another government, including, but not limited to, provisions relating to how: Taxes are to be treated by this state and another government; revenues are to be shared and distributed; and disputes with patrons are to be resolved;

(2) The information to be furnished to the commission by a government that proposes to enter into an agreement with this state pursuant to this section;

(3) The information to be furnished to the commission to enable the commission and director to carry out the purposes of this section;

(4) The manner and procedure for hearings conducted by the commission pursuant to this section, including any special rules or notices; and

(5) The information required to be furnished to the commission to support any recommendations made to the commission, pursuant to this section.

(c) The commission may not enter into any sports wagering agreement, pursuant to this section, unless the agreement includes provisions that:

(1) Account for the sharing of revenues by this state and another government;

(2) Permit the effective regulation of sports wagering by this state, including provisions relating to licensing of persons, technical standards, resolution of disputes by
(3) Require each government that is a signatory to the agreement to prohibit operators of sports wagering, management or other service providers, or suppliers, manufacturers or distributors of sports wagering systems from engaging in any activity permitted by the sports wagering agreement unless they are licensed in this state or in a signatory jurisdiction with similar requirements approved by the commission;

(4) No variation from the requirements of the sports wagering agreement is permitted for any signatory government without a lack of opposition by this state and all signatory governments;

(5) Prohibit any subordinate or side agreements among any subset of governments that are signatories to the agreement unless it relates exclusively to the sharing of revenues; and

(6) Require the government to establish and maintain regulatory requirements governing sports wagering that are consistent with the requirements of this state in all material respects if the sports wagering agreement allows persons physically located in this state to participate in sports wagering conducted by another government or an operator licensed by another government.

§29-22D-15. Authorization of sports wagering in this state; requirements.

(a) An operator shall accept wagers on sports events and other events authorized under this article from persons physically present in a licensed gaming facility where authorized sports wagering occurs, or from persons not physically present who wager by means of electronic devices. A person placing a wager shall be at least 21 years of age.
(b) An operator may accept wagers from an individual physically located within this state using a mobile or other digital platform or a sports wagering device, approved by the commission, through the patron’s sports wagering account.

(c) An operator may accept wagers from an individual physically located in a state or jurisdiction with which the commission has entered into a sports wagering agreement using a mobile or other digital platform or a sports wagering device through the patron’s sports wagering account, so long as the device or platform is approved by the commission and all other requirements of the agreement are satisfied.

(d) The commission or operator may ban any person from entering a gaming area of a gaming facility conducting sports wagering or the grounds of a gaming facility licensed under this article or from participating in the play or operation of any West Virginia Lottery sports wagering. A log of all excluded players shall be kept by the commission and each licensee, and no player on the commission’s exclusion list or the licensed operator’s exclusion list shall wager on any West Virginia Lottery sports wagering under this article.

(e) The commission shall promulgate regulations implementing the provisions of §29-22D-15(a) of this code by interpretive rule and minimum internal control standards.

(f) The commission shall, when a federal law is enacted or repealed or when a federal court decision is issued that permits a state to regulate sports wagering, publish a notice in the State Register notifying the public of the enactment or repeal of federal law or of the issuance of such court decision. The commission shall not be authorized to conduct sports wagering in this state until the notice prescribed in this subsection is published in the State Register.
(g) No licensed gaming facility employee may place a wager on any sports wagering at the employer’s facility or through any other mobile application or digital platform of their employer.

(h) No commission employee may knowingly wager or be paid any prize from any wager placed at any licensed gaming facility with West Virginia Lottery sports wagering within this state or at any facility outside this jurisdiction that is directly or indirectly owned or operated by a sports wagering licensee.

§29-22D-16. Sports wagering revenues; accounting for the state’s share of revenue imposed for the privilege of offering West Virginia Lottery sports wagering; limitation of other taxes; recoupment for improvements.

(a) Imposition and rate of assessment. — For the privilege of holding a license to operate sports wagering under this article, the state shall impose and collect ten percent of the licensee’s adjusted gross sports wagering receipts from the operation of West Virginia Lottery sports wagering (hereinafter “privilege tax” or “tax”). The accrual method of accounting shall be used for purposes of calculating the amount of the tax owed by the licensee.

(b) Operator revenue reports and payment of privilege tax. —

(1) The tax levied and collected pursuant to §29-22D-16(a) of this code is due and payable to the commission in weekly installments on or before the Wednesday following the calendar week in which the adjusted gross sports wagering receipts were received and the tax obligation was accrued.

(2) The licensed operator shall complete and submit the return for the preceding week by electronic communication to the commission, on or before Wednesday of each week, in the form prescribed by the commission that provides:
(A) The total gross sports wagering receipts and adjusted gross sports wagering receipts from operation of West Virginia Lottery sports wagering during that week;

(B) The tax amount for which the sports wagering licensee is liable; and

(C) Any additional information necessary in the computation and collection of the tax on adjusted gross sports wagering receipts required by the commission.

(3) The tax amount shown to be due shall be remitted by electronic funds transfer simultaneously with the filing of the return. All moneys received by the commission pursuant to this section shall be deposited in the sports wagering fund in accordance with the provisions of this article.

(4) When adjusted gross receipts for a week is a negative number because the winnings paid to patrons wagering on the licensee’s West Virginia Lottery sports wagering exceeds the licensee’s total gross receipts from sports wagering by patrons, the commission shall allow the licensee to carry over the negative amount to returns filed for subsequent weeks. The negative amount of adjusted gross receipts may not be carried back to an earlier week and moneys previously received by the commission will not be refunded, except if the licensee surrenders its operator’s license and the licensee’s last return reported negative adjusted gross receipts. In that case, the commission shall multiply the amount of negative adjusted gross receipts by 10 percent and pay the amount to the licensee in the manner approved by the commission.

(c) Privilege tax obligation imposed by this section is in lieu of other taxes. — With the exception of the ad valorem property tax collected under chapter eleven-a of this code, the privilege tax on adjusted gross sports wagering receipts imposed by this section is in lieu of all other state and local taxes and fees imposed on the operation of, or the proceeds from operation of West Virginia Lottery sports wagering,
except as otherwise provided in this section. The consumers sales and services tax imposed pursuant to §11-15-1 et seq. of this code, the use tax imposed by §11-15A-1 et seq. of this code and any similar local tax imposed at the municipal or county level, shall not apply to the licensee’s gross receipts from any West Virginia Lottery sports wagering or to the licensee’s purchase of sports wagering equipment, supplies, or services directly used in operation of the sports wagering authorized by this article.

(d) Acquisition of any system or wagering equipment and other items related to the operation of West Virginia sports wagering shall be considered “facility modernization improvements” eligible for recoupment as defined in §29-22A-10(b)(2) and §29-25-22(c) of this code.

(e) Prohibition on credits. — Notwithstanding any other provision of this code to the contrary, no credit may be allowed against the privilege tax obligation imposed by this section or against any other tax imposed by any other provision of this code for any investment in gaming equipment or for any investment in or improvement to real property that is used in the operation of West Virginia Lottery sports wagering.

§29-22D-17. West Virginia Lottery Sports Wagering Fund; distribution of funds.

(a) The special fund in the State Treasury known as the West Virginia Lottery Sports Wagering Fund is hereby created and all moneys collected under this article by the commission shall be deposited with the State Treasurer to the West Virginia Lottery Sports Wagering Fund. The fund shall be an interest-bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund. All expenses of the commission incurred in the administration and enforcement of this article shall be paid from the sports wagering fund pursuant to §29-22D-17(b) of this code.
(b) The commission shall deduct an amount sufficient to reimburse its actual costs and expenses incurred in administering sports wagering at licensed gaming facilities from the gross deposits into the sports wagering fund. The amount remaining after the deduction for administrative expenses is the net profit.

(1) Administrative allowance. — The commission shall retain up to 15 percent of gross deposits for the fund operation and its administrative expenses: Provided, That in the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate but may not exceed $250,000. On a monthly basis, the director shall report any surplus in excess of $250,000 to the Joint Committee on Government and Finance and remit the entire amount of those surplus funds in excess of $250,000 to the State Treasurer which shall be allocated as net profit.

(2) Distribution of net profit. — In each fiscal year, net profit shall be deposited into the State Lottery Fund created by §29-22-18 of this code until a total of $15 million is deposited; thereafter, the remainder shall be deposited into the Public Employees Insurance Agency Financial Stability Fund to stabilize and preserve the future solvency of PEIA, and such amount may not be included in the calculation of any plan year aggregate premium cost-sharing percentages between employers and employees.

§29-22D-18. Law enforcement.

Notwithstanding any provision of this code to the contrary, the commission shall, by contract or cooperative agreement with the West Virginia State Police, arrange for those law-enforcement services uniquely related to gaming, as such occurs at facilities of the type authorized by this article, that are necessary to enforce the provisions of this article that are not subject to federal jurisdiction: Provided, That the State Police shall only have exclusive jurisdiction

(a) The commission may impose, on any person who violates the provisions of this article, a civil penalty not to exceed $50,000 for each violation. Such penalty shall be imposed on all individuals and is not limited to individuals licensed under this article. This provision shall not be construed as applicable to office pools.

(b) The provisions of §29A-5-1 et seq. of this code apply to any civil penalty imposed pursuant to the provisions of this section.

§29-22D-20. Crimes and penalties related to unauthorized sports wagering operations.

(a) Any person, other than a licensee under this article, who engages in accepting, facilitating, or operating a sports wagering operation is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or confined in jail for not more than ninety days, or both fined and confined.

(b) Notwithstanding the penalty provisions §29-22D-20(a) of this code, any person convicted of a second violation of §29-22D-20(a) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $50,000, or confined in jail for not more than six months, or both fined and confined.

(c) Notwithstanding the penalty provisions of §29-22D-20(a) or §29-22D-20(b) of this code, any person convicted of a third or subsequent violation of said §29-22D-20(a) of this code is guilty of a felony, and upon conviction thereof, shall be fined not less than $25,000 nor more than $100,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and confined.

(a) A sports wagering licensee is guilty of unlawful operation and is guilty of a misdemeanor when:

(1) The licensee operates West Virginia Lottery sports wagering without authority of the commission to do so;

(2) The licensee operates West Virginia Lottery sports wagering in any location or by any manner that is not approved by the commission;

(3) The licensee knowingly conducts, carries on, operates, or allows any sports wagering to occur on premises or through any other device if equipment or material has been tampered with, or exposed to conditions in which it will be operated in a manner designed to deceive the public;

(4) The licensee employs an individual who does not hold a valid occupational license in a position for which a license is required or otherwise allows an individual to perform duties for which such license is required or continues to employ an individual after the employee’s occupational license is no longer valid;

(5) The licensee acts or employs another person to act as if he or she is not an agent or employee of the licensee in order to encourage participation in West Virginia Lottery sports wagering at the licensed gaming facility;

(6) The licensee knowingly permits an individual under the age of 21 to enter or remain in a designated gaming area or to engage in sports wagering at a licensed gaming facility; or

(7) The licensee exchanges tokens, chips, electronic media, or other forms of credit used for wagering for anything of value except money or credits applied to a sports
wagering account at a gaming facility authorized under this article.

(b) A person is guilty of a felony when:

(1) A person offers, promises, or gives anything of value to anyone for the purpose of influencing the outcome of a race, sporting event, contest, or game upon which a wager may be made, or a person places, increases, or decreases a wager after acquiring knowledge, not available to the general public, that anyone has been offered, promised, or given anything of value for the purpose of influencing the outcome of the race, sporting event, contest, or game upon which the wager is placed, increased or decreased, or attempts to do any of the same;

(2) A person changes or alters the normal outcome of any game played on a mobile or other digital platform, including any interactive gaming system used to monitor the same or the way in which the outcome is reported to any participant in the game;

(3) The person manufactures, sells, or distributes any device that is intended by that person to be used to violate any provision of this article or the sports wagering laws of any other state;

(4) The person places a bet or aids any other individual in placing a bet on a sporting event or other sports wagering game or offering authorized under this article after unlawfully acquiring knowledge of the outcome on which winnings from that bet are contingent;

(5) The person claims, collects, or takes anything of value from a gaming facility with West Virginia Lottery sports wagering with intent to defraud or attempts such action without having made a wager in which such amount or value is legitimately won or owed;

(6) The person knowingly places a wager using counterfeit currency or other counterfeit form of credit for
wagering at a gaming facility with West Virginia Lottery sports wagering; or

(7) The person, not a licensed gaming facility under this article or an employee or agent of a gaming facility licensed under this article acting in furtherance of the licensee’s interest, has in his or her possession on grounds owned by the gaming facility licensed under this article or on grounds contiguous to the licensed gaming facility, any device intended to be used to violate a provision of this article or any rule of the commission.

(c) Any person who violates any provision of §29-22D-21(a) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than six months, or both fined and confined, except any violation that is not committed by a natural person may result in a fine of not more than $25,000.

(d) Any person who violates any provision of §29-22D-21(b) of this code is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000, or confined in a state correctional facility for not less than one year nor more than five years, or both fined and confined.

*(e) With regard to §29-22D-21(b) of this code, each West Virginia sports wagering licensee shall post notice of the prohibitions and penalties of this section in a manner determined by the rules of the commission.

*Note: S.B. 415 became law without the signature of the Governor and the Senate Clerk’s Office subsequently corrected an error in the enrolled bill after it had been filed with the Secretary of State. This correction, manually changing “a” to “b” in a subsection reference, is included on line 88 of this page.

No local law or rule providing any penalty, disability, restriction, regulation, or prohibition for operating a gaming facility with West Virginia Lottery sports wagering or supplying a licensed gaming facility may be enacted, and the provisions of this article preempt all regulations, rules, ordinances, and laws of any county or municipality in conflict with this article.

§29-22D-23. Exemption from federal law.

Pursuant to Section 2 of Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1172, approved January 2, 1951, the State of West Virginia, acting by and through duly elected and qualified members of the Legislature, does declare and proclaim that the state is exempt from Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1171 to §1178.


All shipments of gambling devices including any sports wagering devices or related materials to licensed gaming facilities in this state are legal shipments of gambling devices into the State of West Virginia, as long as the registering, recording, and labeling of which have been completed by the supplier thereof in accordance with Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1171 to §1178.

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CHAPTER 102

(S. B. 479 - By Senator Gaunch)

[Passed March 7, 2018; in effect from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend and reenact §6-9-1a, §6-9-7, §6-9-8, and §6-9-9a of the Code of West Virginia, 1931, as amended; and to amend said
code by adding thereto a new section, designated §6-9-9b, all relating to audits, reviews, and monitoring of local government offices; defining terms; clarifying applicable audit requirements; establishing a small government monitoring program; authorizing the Auditor, acting in the capacity as chief inspector, to oversee and maintain the monitoring program; directing the Auditor to prescribe policies and procedures for the monitoring program; authorizing cooperative agreements with higher education institutions to perform and participate in the monitoring program; changing the expenditure threshold for performance of annual audits; clarifying the notification and publication requirements when misfeasance, malfeasance, or nonfeasance is discovered as part of an audit, examination, or investigation; lowering the time frame in which a legal authority has to take action upon recommendations from an audit; raising the cost limits for certain municipalities for performance of services by the chief inspector; removing Class III municipalities from the cost limits; adding cost limits for municipalities policemen and firemen pension and relief funds; authorizing chief inspector to designate certain reports as confidential; and declaring that audit work papers created by the chief inspector division are confidential and not deemed public records.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-1a. Definitions.

As used in this article:

(a) “Audit” means a systematic examination and collection of sufficient, competent evidential matter needed for an Auditor to attest to the fairness of management’s assertions in the financial statements and to evaluate whether management has sufficiently and effectively carried out its responsibilities and complied with applicable laws and regulations. An audit shall be conducted in accordance with generally accepted auditing standards, standards issued by the chief inspector, and, as applicable, the single audit
requirement of the Uniform Guidance, Title 2 of the Code of Federal Regulations, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as amended or revised from time to time, or any successor circular or regulation of the Office of Management and Budget.

(b) “Examination” includes an audit, review, or small government monitoring as defined in this section.

c) “Federal awards” means federal financial assistance and federal cost-reimbursement contracts that nonfederal entities receive directly from federal awarding agencies or indirectly from pass-through entities.

d) “Federal financial assistance” means assistance that nonfederal entities receive or administer in the form of grants, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, or other assistance, but does not include amounts received as reimbursement for services rendered to individuals in accordance with guidance issued by the director of the federal office of management and budget.

e) “Financial audit” includes financial statement audits and financial related audits, as defined by government auditing standards.

f) “Government auditing standards” means the government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits of government organizations, programs, and activities.

(g) “Investigation” means an examination, inspection, or review of a local government’s finances to determine or ascertain whether fraudulent, illegal, or improper conduct has occurred, including, but not limited to, misappropriation, waste, or misuse of moneys or assets.

(h) “Local government” means any unit of local government within the state, including a county, county board of education, municipality, and any other authority, board, commission,
district, office, public authority, public corporation, or other instrumentality of a county, county board of education, or municipality or any combination of two or more local governments.

(i) “Nonfederal entity” means a state, local government, or nonprofit organization.

(j) “Office of Management and Budget” means the executive Office of the President of the United States, Office of Management and Budget.

(k) “Proper legal authority” means the prosecuting attorney of the county wherein the audited, examined, or investigated entity is located, the Attorney General, law enforcement, or other legal authority the chief inspector deems appropriate.

(l) “Review” means an inquiry or analytical procedures that provide the Auditor with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

(m) “Single audit” means a financial and compliance audit as defined in the federal Single Audit Act of 1996, as amended, in section 7502(d), chapter 75, title 31 of the United States Code, of a nonfederal entity that includes the entity’s financial statements and federal awards. Each single audit conducted for any fiscal year shall cover the operations of the entire nonfederal entity; or at the option of the nonfederal entity, the audit shall include a series of audits that cover departments, agencies, and other organizational units that expend or otherwise administer federal awards during the fiscal year being audited except that each such audit shall encompass the financial statements and schedule of expenditures of federal awards
for each department, agency, and organizational unit, which shall be considered to be a nonfederal entity.

(n) “Small government monitoring” means specialized procedures, performed on certain qualifying local governments as a lower cost alternative to an audit or review.

§6-9-7. Examinations into affairs of local public offices; penalties.

(a) The chief inspector has the power by himself or herself, or by any person appointed, designated, or approved by the chief inspector to perform the service, to examine into all financial affairs of every local governmental office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof. An examination shall be made annually, if required, to comply with the Single Audit Act and when otherwise required by law or contract. When that act does not apply, unless otherwise required by law or by contract, the examination shall be made at least once a year, if practicable. Furthermore, the chief inspector shall furnish annually to the Legislature a list of each local government office or political subdivision and all boards, commissions, authorities, agencies, or other offices created under authority thereof and the year of its most recent completed audit.

(b) When required for compliance with regulations for federal funds received or expended by county boards of education the chief inspector or his or her designee, including any certified public accountant approved by the chief inspector shall conduct and issue an audit report within the time specified in controlling federal regulations. Examinations of other local governments shall be conducted and audit, review, or monitoring reports issued in accordance with uniform procedures of the chief inspector.

(c) In cooperation with institutions of higher education located in the State of West Virginia, the chief inspector may establish and maintain a small government monitoring program. The small government monitoring program shall
authorize local governments which are not otherwise required to undergo a single audit or a financial audit to apply to the chief inspector, on an annual basis, for participation in the program. The chief inspector shall prescribe and oversee monitoring procedures that shall be performed by higher education students in the field of accounting. Participating institutions of higher education shall enter into a cooperative agreement with the chief inspector to provide the service. The chief inspector shall prescribe policies and procedures for the administration of the small government monitoring program.

(d) A county board of education may elect, by May 1 of the fiscal year to be audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform the examinations. When this election is made, a copy of the order of the county board making the election shall be filed with the chief inspector and the State Board of School Finance. The county board of education is allowed to contract with any certified public accountant on the chief inspector’s then current list of approved certified public accountants, unless the State Board of School Finance or the prosecuting attorney of the county in which the board is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists. The county board shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit.

(e) The chief inspector shall, at least annually, prepare a list of certified public accountants approved by the chief inspector to perform examinations of local governments. Names shall be added to or deleted from that list in accordance with uniform procedures of the chief inspector. When each list or updated list is issued, the chief inspector shall promptly file a copy of the list in the State Register and send a copy to the State Board of Education, the State Board
of School Finance, and to local governments who request a copy.

(f) A county board of education, when procuring the services of a certified public accountant on the chief inspector’s list, shall follow the procurement standards prescribed by the Uniform Guidance, Title 2 of the Code of Federal Regulations, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in effect for the fiscal year being examined, or in any replacement circular or regulation of the Office of Management and Budget and in addition shall follow those standards as determined by the office of chief inspector.

(g) The approved independent certified public accountant making examinations under this section shall comply with requirements of this section applicable to examinations performed by the chief inspector, including applicable requirements of the federal government and uniform procedures of the chief inspector applicable to examinations of county boards of education.

(1) Upon completion of the certified public accountant’s examination and audit or review report, the certified public accountant shall promptly send two copies of the certified report to the county board of education who shall file one copy with the federal Audit Clearing House. The certified public accountant shall send one copy of the certified report to the State Board of School Finance, and one copy to the chief inspector.

(2) If any examination discloses misfeasance, malfeasance, or nonfeasance in office on the part of any public officer or employee, the certified public accountant shall submit his or her recommendation to the chief inspector regarding the legal action the approved certified public accountant considers appropriate, including, but not limited to, whether criminal prosecution or civil action to effect restitution is appropriate, and three additional copies of the certified audit report. After review of the
recommendations and the audit report, the chief inspector shall proceed as provided in §6-9-7(n) of this code. For purposes of this section and §18-9B-13 of this code, a certified audit report of an approved certified public accountant shall be treated in the same manner as a report of the chief inspector.

(h) On every examination, inquiry shall be made as to the financial conditions and resources of the agency having jurisdiction over the appropriations and levies disbursed by the office and whether the requirements of the Constitution and statutory laws of the state and the ordinances and orders of the agency have been properly complied with and also inquire into the methods and accuracy of the accounts and such other matters of audit and accounting as the chief inspector may prescribe.

(i) If a local government office is not subject to a single audit requirement under federal regulations or if it is not otherwise required by law or contract to undergo an annual audit and its expenditures from all sources are less than $500,000 during the fiscal year the chief inspector may choose to perform either a review or audit on the local government office and may in his or her discretion determine the frequency of such review or audit.

(j) The chief inspector or any authorized assistant may issue subpoenas and compulsory process, direct the service thereof by any sheriff, compel the attendance of witnesses and the production of books and papers at any designated time and place, selected in their respective county, and administer oaths.

(k) If any person refuses to appear before the chief inspector or his or her authorized assistant when required to do so, refuses to testify on any matter or refuses to produce any books or papers in his or her possession or under his or her control, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 and confined for not more than six months.
(l) A person convicted of willful false swearing in an examination is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 and confined in jail not more than six months.

(m) Except as otherwise provided in this section, a copy of the certified report of each examination shall be filed in the office of the commissioner, chief inspector with the governing body of the local government and with other offices as prescribed in uniform procedures of the chief inspector.

(n) If any audit, examination or investigation discloses misfeasance, malfeasance, or nonfeasance in office on the part of any public officer or employee, a certified copy of the report shall be published electronically by the chief inspector with notice of the publishing sent in writing to the proper legal authority of the entity being audited, examined, or investigated the chief inspector deems appropriate for such legal action as is proper. At the time the certified audit, examination, or investigation report is published, the chief inspector shall notify the proper legal authority of the entity being audited, examined, or investigated he or she deems appropriate in writing of his or her recommendation as to the legal action that the chief inspector considers proper, whether criminal prosecution or civil action to effect restitution, or both.

(o) If the proper legal authority or prosecuting attorney, within 90 days of receipt of the certified audit report and recommendations, refuses, neglects, or fails to take efficient legal action by a civil suit to effect restitution or by prosecuting criminal proceedings, in accordance with the recommendations, the chief inspector may institute the necessary proceedings or participate therein and prosecute the proceedings in any court of the state to a final conclusion.

(p) A local government that is not a county board of education may elect, by May 1 of the fiscal year to be
audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform the examinations. When this election is made, a copy of the order of the governing body making the election shall be filed with the chief inspector. An electing local government is allowed to contract with any certified public accountant on the chief inspector’s then current list of approved certified public accountants, unless the prosecuting attorney of the county in which the local government is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists: Provided, That the audit of a local government may be performed by the chief inspector at his or her discretion. The local government shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit: Provided, however, That the chief inspector may elect to conduct the audit of a local unit of government with one or more members of his or her audit staff where, in the opinion of the chief inspector, a special or unusual situation exists.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

(a) The cost of any service or act performed by the chief inspector under the provisions of this article as to any county or district office, officer or institution shall be paid by the county commission of the county; the cost of any service or act to any board of education shall be paid by the board; the cost of any service or act to any municipal corporation shall be paid by the authorities of the municipal corporation: Provided, That in municipalities in which the total revenue from all taxes does not exceed the sum of $2,000 annually, the cost including the per diem and all actual costs and expenses of the services shall not exceed the sum of $200. The cost of this service shall be the actual cost and expense of the service performed, including transportation, hotel,
meals, materials, per diem compensation of deputies, assistants, clerical help, and the other costs that are necessary to enable them to perform the services required, but the costs shall not exceed the sum of $3,000 for services rendered to a Class IV municipality: Provided, however, That the chief inspector may charge up to an additional $3,000 for costs incurred for each service or act performed for a utility or park system owned by a Class IV municipality and for each policemen’s and firemen’s pension and relief fund maintained by the municipality: Provided further, That if a municipality is required to undergo a single audit by the federal agency or agencies making a grant, the cost limitations of this subsection do not apply: And provided further, That the chief inspector shall provide a written quote for all costs in advance for all services required by this article. The chief inspector shall render to the agency liable for the cost a statement of the cost as soon after the cost was incurred as practicable and the agency shall allow the cost and cause it to be paid promptly in the manner that other claims and accounts are allowed and paid and the total amount constitutes a debt against the local agency due the state. Whenever there is in the State Treasury a sum of money due any county commission, board of education or municipality from any source, upon the application of the chief inspector, the sum shall be at once applied on the debt against the county commission, board of education or municipality and the fact of the application of the fund shall be reported by the Auditor to the county commission, board of education or municipality, which report shall be a receipt for the amount named in the report. All money received by the chief inspector from this source shall be paid into the State Treasury, shall be deposited to the credit of an account to be known as chief inspector’s fund and shall be expended only for the purpose of covering the cost of the services, unless otherwise directed by the Legislature. The cost of any examination, service, or act by the chief inspector made necessary, or the part thereof that was made necessary, by the willful fault of any officer or employee, may be
recovered by the chief inspector from that person, on
motion, on 10-days’ notice in any court having jurisdiction.

(b) For the purpose of permitting payments to be made
at definite periods to deputy inspectors and assistants for per
diem compensation and expenses, there is hereby created a
revolving fund for the chief inspector’s office. The fund
shall be accumulated and administered as follows:

(1) There shall be appropriated from the state General
Revenue Fund the sum of $25,000 to be transferred to this
fund to create a revolving fund which, together with other
payments into this fund as provided in this article, shall
constitute a fund to defray the cost of this service;

(2) Payments received for the cost of services of the
chief inspector’s office and interest earned on the invested
balance of the chief inspector’s revolving fund shall be
deposited into this revolving fund, which shall be known as
the Chief Inspector’s Fund;

(3) Any appropriations made to this fund may not be
considered to have expired at the end of any fiscal period;

and

(4) The chief inspector may transfer an amount not to
exceed $400,000 from the Chief Inspector’s Fund to the
special operating fund created in §32-4-1 et seq. of this
code: Provided, That any transfers shall be completed prior
to July 1, 2003.

§6-9-9a. Public inspection of reports of examinations.

All reports of examinations and audits of public offices
made in accordance with the provisions of §6-9-7 of this
code, and the copies thereof, when filed in the office of the
chief inspector of public offices or in the office of the State
Tax Commissioner, shall be public documents and shall be
available for public inspection: Provided, That if an
examination or investigative report discloses misfeasance,
nonfeasance, or malfeasance, the chief inspector may direct
that a report remain confidential until such time that the
proper legal authority, as described in §6-9-7(n) of this
code, has completed its investigation or adjudication of the
matter and authorizes public disclosure.

§6-9-9b. Documentation of chief inspector.

(a) The audit working papers created by the chief
inspector division during examinations or investigations
shall be considered confidential, and shall not be deemed
public records for purposes of §29B-1-1 et seq. of this code.

(b) For purposes of this section, “audit working papers”
includes, but is not limited to, the books and records of the
entity being audited, intra- and inter-agency
communications, draft reports, summaries, schedules,
notes, memoranda, and all other records relating to an
examination or investigation by the chief inspector division.

CHAPTER 103

(Com. Sub. for S. B. 522 - By Senator Maynard)

[Passed March 6, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §29A-1-3b of the Code of West
Virginia, 1931, as amended; and to amend and reenact §29A-
3-8, §29A-3-12, and §29A-3-19 of said code, all relating
generally to the Administrative Procedures Act; providing
that rules become void if statutory authority is repealed;
providing that legislative exempt, procedural, or interpretive
rules may be repealed by an agency upon notification to
Secretary of State; relating to the deadline for filing agency-
approved rules; providing a procedure for the agencies to
affirmatively seek renewal of a legislative rule; providing that
legislative rules up for termination are not subject to a public comment period; and providing for review by the Legislative Rule-Making Review Committee.

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

**ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.**


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

(b) Upon repeal or elimination of a statute that provides rule-making authority, any rule adopted or promulgated by the agency pursuant to that statute is void.

**ARTICLE 3. RULEMAKING.**

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

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

(b) A legislative exempt, procedural, or interpretive rule may be amended by the agency prior to final adoption without further hearing or public comment. The amendment may not change the main purpose of the rule. If the fiscal implications have changed since the rule was proposed, the agency shall attach a new fiscal note to the notice of filing. Upon adoption of the rule, including any amendment, the
agency shall file the text of the adopted legislative exempt, 
procedural, or interpretive rule with its notice of adoption in 
the State Register and the rule is effective on the date 
specified in the rule or 30 days after the filing, whichever is 
later or as specified in this code.

(c) An agency may repeal a legislative exempt, 
procedural, or interpretive rule by filing a notice of repeal 
with the Secretary of State.

§29A-3-12. Submission of legislative rules to Legislature.

(a) No later than 40 days before the sixtieth day of each 
regular session of the Legislature, the cochairmen of the 
Legislative Rule-Making Review Committee shall submit 
to the clerk of the respective houses of the Legislature 
copies of all proposed legislative rules which have been 
submitted to, and considered by, the committee pursuant to 
the provisions of §29A-3-11 of this code and which have 
not been previously submitted to the Legislature for study, 
together with the recommendations of the committee with 
respect to the rules, a statement of the reasons for any 
recommendation that a rule be amended or withdrawn, and 
a statement that a bill authorizing the legislative rule has 
been drafted by the staff of the committee or by Legislative 
Services pursuant to §29A-3-11 of this code. The 
cochairmen of the committee may also submit the rules at 
the direction of the committee at any time before or during 
a special session in which consideration of the rules may be 
appropriate. Beginning in 2019, the committee may 
withhold from its report any proposed legislative rule which 
was submitted to the committee after the last Friday in July 
and beginning in 2020, and every four years thereafter, by 
the last Friday in August. The clerk of each house shall 
submit the report to his or her house at the commencement 
of the next session.

All bills introduced authorizing the promulgation of a 
rule may be referred by the President of the Senate and by 
the Speaker of the House of Delegates to appropriate
standing committees of the respective houses for further consideration or the matters may be otherwise dealt with as each house or its rules provide. The Legislature may, by act, authorize the agency to adopt a legislative rule incorporating the entire rule or may authorize the agency to adopt a rule with any amendments adopted by the Legislature. The clerk of the house originating the act shall immediately file a copy of any bill of authorization enacted with the Secretary of State and with the agency proposing the rule and the clerk of each house may prepare and file a synopsis of legislative action during any session on any proposed rule submitted to the house during the session for which authority to promulgate was not by law provided during the session. In acting upon the separate bills authorizing the promulgation of rules, the Legislature may, by amendment or substitution, combine the separate bills of authorization insofar as the various rules authorized in the amendment or substitution are proposed by agencies which are placed under the administration of one of the single, separate executive departments identified under the provisions of §5F-1-2 of this code or the Legislature may combine the separate bills of authorization by agency or agencies within an executive department. In the case of rules proposed for promulgation by an agency which is not administered by an executive department pursuant to the provisions of §5F-1-2 of this code, the separate bills of authorization for the proposed rules of that agency may, by amendment or substitution, be combined. These provisions relating to combining separate bills of authorization according to department or agency are not intended to restrict the permissible breadth of bills of authorization and do not preclude the Legislature from otherwise combining various bills of authorization which have a unity of subject matter. Any number of provisions may be included in a bill of authorization, but the single object of the bill shall be to authorize the promulgation of proposed legislative rules.

(b) If the Legislature during its regular session disapproves all or part of any legislative rule which was
submitted to it by the Legislative Rule-Making Review Committee during the session, an agency may not thereafter issue any rule or directive or take other action to implement the rule or part of the rule unless and until otherwise authorized to do so, except that the agency may resubmit the same or similar proposed rule to the Legislative Rule-Making Review Committee in accordance with the provisions of §29A-3-11 of this code.

(c) Nothing shall be construed to prevent the Legislature by law from authorizing, or authorizing and directing, an agency to promulgate legislative rules not proposed by the agency or upon which some procedure specified in this chapter is not yet complete.

(d) Whenever the Legislature is convened by proclamation of the Governor, upon his or her own initiative or upon application of the members of the Legislature, or whenever a regular session of the Legislature is extended or convened by the vote or petition of its members, the Legislature may by act enacted during the extraordinary or extended session authorize, in whole or in part, any legislative rule, whether submitted to the Legislative Rule-Making Review Committee or not, if legislative action on the rule during the session is a lawful order of business.

(e) As a part of any act that amends chapter 64 of this code, authorizing the promulgation of a proposed legislative rule or rules, the Legislature may also provide, by general language or with specificity, for the disapproval of rules not approved or acted upon by the Legislature.


(a) Any new legislative rule promulgated pursuant to this article after April 1, 2016, shall include a sunset provision terminating the rule after five years: Provided, That the rule may be renewed for additional terms of five years or less by the Legislature pursuant to the rule-making procedures and authority in this article: Provided, however,
That if a different sunset or termination provision exists in
the statute under which the proposed rule is promulgated,
the enacting statute’s provision shall control: *Provided
further,* That this subsection shall not apply to rules
promulgated by the Department of Environmental
Protection or emergency rules promulgated pursuant to
§29A-3-15 of this code.

(b) Any legislative rule existing as of April 1, 2016, that
is thereafter modified pursuant to this article, shall include
a sunset provision as part of the modification setting forth a
termination date for the rule: *Provided,* That the rule may be
renewed for additional terms of years by the Legislature
pursuant to the rule-making procedures and authority in this
article: *Provided, however,* That if a different sunset or
termination provision exists in the statute under which the
legislative rule is promulgated, the enacting statute’s
provision controls: *Provided further,* That this subsection
shall not apply to legislative rules promulgated by the
Department of Environmental Protection or emergency
rules promulgated pursuant to §29A-3-15 of this code.

(c) The existence of a sunset provision terminating a
legislative rule shall not preclude the repeal of the
legislative rule by the Legislature prior to its termination.

(d) As part of its rule review under this article, the
Legislative Rule-Making Review Committee may establish
a procedure for timely review of a legislative rule prior to
its termination for those agencies that have affirmatively
sought renewal prior to expiration. The procedure may
include a requirement that the agency show cause as to why
the terminating legislative rule is required and necessary to
be continued for another term of years.

(e) The Secretary of State shall provide notice to the
promulgating agency and the Legislative Rule-Making
Review Committee at least 18 months prior to every
legislative rule’s termination date. The promulgating
agency has 60 days from receipt of the notice to file the
legislative rule with the Secretary of State and the Legislative Rule-Making Review Committee affirmatively seeking renewal of the legislative rule: Provided, That the legislative rule that is scheduled to sunset may not be amended or changed except for a new sunset date and is not subject to the public comment period requirements contained in §29A-3-5 of this code. The Legislative Rule-Making Review Committee, as part of its rule review under this article, may begin reviewing a legislative rule upon its filing.

CHAPTER 104

(Com. Sub. for H. B. 2982 - By Delegate Upson)

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-15a; and to amend and reenact §29B-1-4 of said code, all relating to allowing certain winners of State Lottery draw games to remain anonymous; providing that a person entitled to collect proceeds exceeding one million dollars from a winning draw game ticket may remain anonymous in regards to his or her name, personal contact information, and likeness; establishing a procedure by which a draw game winner may request anonymity from the State Lottery Director; providing that a draw game winner who elects to remain anonymous must remit 5 percent of his or her winnings to the State Lottery Fund; establishing an effective date; and providing that information provided when a draw game winner elects to remain anonymous is exempt from disclosure under the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:
CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-15a. Option for winners of draw games to remain anonymous.

(a) A person entitled to collect proceeds exceeding one million dollars from a winning draw game ticket may remain anonymous: Provided, That such anonymity only applies to the person’s name, personal contact information, and likeness.

(b) If the person entitled to collect proceeds exceeding one million dollars from a winning draw game ticket desires to remain anonymous, he or she shall contact the State Lottery Director in writing or appear at the state lottery headquarters in person, concerning his or her desire to remain anonymous: Provided, That such a request only permits that the person’s name, personal contact information, and likeness remain anonymous. At the time of his or her request to remain anonymous, the person shall provide his or her contact information, including any personal telephone number, residential address, and electronic mail address.

(c) Any request to remain anonymous may be made by certified mail addressed to the West Virginia State Lottery Director, P.O. Box 2067, Charleston, West Virginia 25327, by electronic mail to an email address that is to be established by West Virginia State Lottery prior to the effective date of this section, or in person at the state lottery headquarters. Once established, the secure email address shall be posted on the West Virginia Lottery’s website prior to the effective date of this section.

(d) Upon receiving a request to remain anonymous, the director shall contact the person requesting anonymity and schedule an appointment to meet at any county, regional, or state lottery office to confirm the winning number and to
otherwise make arrangements to protect the anonymity of the requesting person.

(e) If a person elects to remain anonymous pursuant to this section, he or she shall remit 5 percent of his or her winnings to the State Lottery Fund.

(f) The requirements of this section are effective on January 1, 2019.

CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

*§29B-1-4. Exemptions.

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical, or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: Provided, That this article does not preclude an individual from inspecting or copying his or her own personal, medical, or similar file;

*NOTE: This section was also amended by H. B. 4015 (Chapter 106), which passed prior to this act.
(3) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(4) (A) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(B) Records identifying motor vehicles used, and the agencies using them, for undercover investigation activities conducted by state law-enforcement agencies or other agencies that are authorized by this code to use undercover or unmarked vehicles;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents, or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological, and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document, or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body;

(9) Records assembled, prepared, or maintained to prevent, mitigate, or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique
response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement, and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications, and network security records, passwords, security codes, or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests, or the results of those tests;

(15) Architectural or infrastructure designs, maps, or other records that show the location or layout of the facilities where computing, telecommunications, or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;
(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222;

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident, or to facility personnel;

(20) Information related to applications under §61-7-4 of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: Provided, That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: Provided, however, That information or other records exempted under this subdivision may be disclosed to a law-enforcement agency or officer: (i) To determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes;

(21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, “personal information” means a law-enforcement officer’s social security number, health information, home address, personal address, personal telephone numbers, and personal email addresses and those of his or her spouse, parents, and children as well as the names of the law-enforcement officer’s spouse, parents, and children; and

(22) Information provided by a person when he or she elects to remain anonymous after winning a draw game prize, pursuant to §29-22-15a of this code.
(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of government by intimidation or coercion;

(3) Affect the conduct of a branch or level of government by intimidation or coercion; or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.
§18B-11-4 and §18B-11-6 of said code; to amend and reenact §4-13-2 of said code; to amend and reenact §5-26A-3 of said code; to amend and reenact §5B-2C-6 of said code; to amend and reenact §5F-1-2 of said code; to amend said code by adding thereto a new section, designated §5F-1-6; to amend and reenact §5F-2-1 of said code; to amend and reenact §6-7-2a of said code; to amend and reenact §18-2I-1, §18-2I-2 and §18-2I-4 of said code; to amend and reenact §18A-1-1, §18A-1A-1-5, §18A-1A-2, §18-10A-3, §18-10A-6a and §18-10A-12 of said code; to amend and reenact §18-30-4 of said code; to amend and reenact §18A-2-9 and §18A-2-12 of said code; to amend and reenact §18A-3-1, §18A-3-1d, §18A-3-2c and §18A-3-8 of said code; to amend and reenact §18A-3C-1, §18A-3C-2 and §18A-3C-3 of said code; to amend and reenact §18B-1B-2 of said code; to amend and reenact §18B-3D-2 of said code; to amend and reenact §18A-1B-16-5 and §18B-1B-16-8 of said code; to amend and reenact §18B-1B-1 of said code; and to amend and reenact §29-24-3 and §29-24-5 of said code, all relating to revising the processes through which professional development is delivered for those who provide public education in this state, including improvement of the focus on school-level continuous improvement processes led by the principal, generally; eliminating administrative offices, duplicative programs and obsolete provisions; repealing provisions related to creation and duties of distance learning coordinating council; repealing provisions related to annual state board professional development master plan; repealing provisions related to beginning principal internships; repealing provisions related to center for professional development and principals academy curriculum; repealing provisions related to center for development professional development project; repealing provisions related to principals academy establishment, mission, required attendance and employment of coordinator; repealing provisions related to pilot program of delivering educational services via distance learning; repealing provisions related to creation of depositories for assistive devices and services at two colleges or universities; repealing provisions creating the National Institute For Teaching Excellence and its governing
board; modifying membership of Sesquicentennial of the American Civil War Commission; modifying membership of Commission for National and Community Service; removing Department of Education and the Arts as option to provide technical support to the Academy of Science and Technology in preparation of annual report; eliminating Department of Education and the Arts as executive department headed by secretary; establishing internal effective date; transferring Division of Culture and History and Division of Rehabilitation Services to Department of Commerce; making the Educational Broadcasting Authority and Library Commission each an independent agency within executive branch; correcting names of agencies; eliminating salary of Secretary of Education and the Arts; modifying the scope and goals of the system for coordination and delivery of professional development to be instituted by State Board of Education; modifying legislative findings with respect to professional development; eliminating requirement for State Board of Education master plan for professional development; requiring State Board of Education rule to include process for aggregating school and system strategic plan information to assist design and delivery of professional development; transferring the Center for Professional Development to be under the authority and control of the State Board of Education; replacing references to the secretary and the Department of Education and the Arts in rehabilitation and vocational services related statutes; modifying membership of College Prepaid Tuition and Savings Program Board; including instructional leadership among the responsibilities of principals and requiring course work in instructional leadership and related topics as prerequisite for administrative certification; moving from a precertification requirement to a pre-employment requirement that principals, assistant principals and administrators complete education and training in evaluation skills; deleting provisions proscribing limitations on certain rights and privileges of principals and assistant principals as teachers; removing requirements for interaction between State Board of Education and Center for Professional Development regarding performance
evaluations; removing proscription of issuance or renewal of certain administrative certificate; removing requirement for State Board of Education consultation with Secretary of Education and Arts and Chancellor for Higher Education prior to exercise of authority over education; adding within standards for education of professional educators requirement providing for the study of the history and philosophical foundations of Western Civilization and the writings of the founders of the United States of America; eliminating references to regional education service agencies; removing requirement for State Board of Education to consult with Secretary of Education and the Arts and the Chancellor of Higher Education; removing provisions related to required training and professional development of principals through principals academy; adding instructional leadership and management techniques to required minimum standards for rule governing training of principals; removing language relating to waivers, eligibility, progress tracking and expenses relating to training of principals; requiring county professional staff development councils to base proposals for staff development on analysis of individual and collective need indicated in school’s strategic plans; incorporating development of certain teachers, principals, assistant principals, vocational administrators and others in the provisions for a comprehensive system to improve teaching and learning; making legislative finding that professional development resources must be focused rather than increased; removing obsolete provisions related to phased implementation of provisions for professional personnel evaluations; eliminating requirement for five percent of evaluations to be based on state summative assessment and increasing percent based on evidence of student learning by five percent; incorporating principals into the comprehensive system of support for improved professional performance; requiring deficiencies identified through personnel evaluations to be incorporated in strategic plans for continuous improvement; removing language requiring posting and other provisions relating to employment; restricting certain appropriations for certain activities;
modifying membership and selection process for members of Higher Education Policy Commission; modifying membership of Workforce Development Initiative Program Advisory Committee; updating agency references and removing Secretary of Education and the Arts with respect to rural health initiative; modifying membership of Science and Research Council; transferring certain references and responsibilities to Technology-Related Assistance Revolving Loan Fund For Individuals With Disabilities Board to Secretary of Commerce; directing the adoption and promulgation of rules and guidelines; and making consequential changes incident to the elimination of agencies or programs or the modification of duties, responsibilities and functions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 13. WEST VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION AND FUND.

§4-13-2. Membership; terms; filling vacancies; election of chair and vice chair.

1 (a) The Governor shall appoint twelve members as follows:

2 (1) Three academic historians;

3 (2) The State Superintendent of Schools, or a designee;

4 (3) One representative of the Division of Culture and History;

5 (4) One representative of the Division of Tourism;

6 (5) One representative from the Herbert Henderson Minority Affairs Office;
(6) Five citizens members, no more than one of whom may be from any one state senatorial district;

(7) One member of the House of Delegates, to be appointed by the Speaker of the House of Delegates, who shall serve as an ex officio nonvoting member of the commission; and

(8) One member of the Senate, to be appointed by the President of the Senate, who shall serve as an ex officio nonvoting member of the commission.

(b) The members shall serve until July 1, 2021.

(c) Appointments to fill vacancies shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

(d) The commission shall elect a chair and a vice chair from among its members.

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

ARTICLE 26A. WEST VIRGINIA COMMISSION FOR NATIONAL AND COMMUNITY SERVICE.

§5-26A-3. Members.

(a) The West Virginia commission for national and community service shall have no fewer than fifteen and no more than twenty-five voting members to be appointed by the Governor.

(b) The voting membership of the West Virginia commission for national and community service shall include:
(1) At least one individual with expertise in the educational and developmental needs of the state’s disadvantaged youth;

(2) At least one individual with experience in promoting the involvement of older adults in national or community service and volunteer programs;

(3) A representative of a community-based agency operating within the state;

(4) The State Superintendent of Schools or a designee;

(5) A representative of a county or municipal government;

(6) A representative of a local labor organization;

(7) A representative of a for-profit business operating within the state;

(8) An individual whose age is between the age of sixteen years and twenty-five years, inclusive, who has been, or remains, a participant or a supervisor in a volunteer or service program; and

(9) A representative of an arts or crafts organization.

(c) The membership of the West Virginia Commission for National and Community Service shall include a representative of the corporation for national and community service who shall serve as a member in a nonvoting, ex officio capacity.

(d) No more than twenty-five percent of the voting membership of the West Virginia commission for national and community service may be individuals who are employed by the state or its agencies, except that the membership may include additional employees of the state or its agencies in a nonvoting, ex officio capacity.
(e) No member of the West Virginia Commission for National and Community Service may vote on an issue affecting organizations for which the member has served as a staff person or as a volunteer at any time during the twelve-month period before the member’s appointment to the commission.

(f) No more than fifty percent plus one of the members of the West Virginia Commission for National and Community Service may be members of the same political party.

(g) To the extent possible, the membership of the West Virginia Commission for National and Community Service shall reflect the diversity of the state’s population.

(h) Members of the West Virginia Commission for National and Community Service who were appointed under the executive order of the Governor entered on January 28, 1994, shall continue as members of the commission for a term of three years, except that the Governor shall designate eight members who shall serve for a term of two years and shall also designate an additional eight members who shall serve for a term of one year. Additional appointments by the Governor under the provisions of this section and appointments by the Governor upon the expiration of a member’s term shall be made for a term of three years. Appointments of members by the Governor to serve for an unexpired term shall be for the remainder of the unexpired term. Members may be reappointed.

(i) The voting members of the West Virginia Commission for National and Community Service shall annually elect a voting member to serve as the chair of the commission.

(j) The members of the West Virginia Commission for National and Community Service shall meet at the call of the chair, who shall be obligated to call a meeting at the
request of a simple majority of the members or as necessary
to ensure that the members have met at least twice in each
calendar year of the commission’s operation.

(k) The members of the West Virginia Commission for
National and Community Service shall serve without
compensation, except that the members of the commission
who are not state employees shall be reimbursed for their
actual and necessary expenses incurred in discharging their
duties and responsibilities as members of the commission.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2C. WEST VIRGINIA ACADEMY OF SCIENCE
AND TECHNOLOGY.

§5B-2C-6. Periodic reports.

(a) The academy will prepare and produce an annual
report on the state of science and technology in West
Virginia and submit it to the Governor, the Speaker of the
House of Delegates, the President of the Senate and the joint
commission on economic development or before July 1, of
each year. The report shall address all aspects of research,
development and commercialization that the academy
council deems material, including, but not limited to:

(1) Strengths, weaknesses, opportunities, and threats to
West Virginia’s research, development, and
commercialization environment and establishments;

(2) Options for actions by the Legislature and the
Governor to maximize the ability of the state to attract
investment, grants, and infrastructure development to
support growth of science and technology research,
development, and commercialization in the state;

(3) The status of, and options to improve, scientific and
technological entrepreneurship in West Virginia; and
(4) The status of, and options to improve, the collaboration of institutions of higher education in obtaining competitive research awards and grants.

(b) In preparing its annual report, the council may utilize the technical support available to it through the West Virginia Development Office, the West Virginia Experimental Program to Stimulate Competitive Research (EPSCoR), the West Virginia higher education system, federal and state agencies, and other entities that have an interest in fostering science and technology research, development, and commercialization in this state.

(c) Each month, an academy representative shall meet with legislative and executive leaders to provide updates and information concerning opportunities, issues and progress of science, technology, and commercialization in the state.

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

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

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

(1) Department of Administration;

(2) Department of Environmental Protection;

(3) Department of Health and Human Resources;

(4) Department of Military Affairs and Public Safety;

(5) Department of Revenue;

(6) Department of Transportation;
(7) Department of Commerce; and

(8) Department of Veterans’ Assistance.

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

§5F-1-6. House Bill 4006 amendments effective date.

Except for instances where specifically provided otherwise, all amendments to this code made by the passage of House Bill 4006 during the 2018 regular session of the Legislature shall become effective July 1, 2018.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

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

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

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

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

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

(5) Board of Risk and Insurance Management provided in §29-12-1 et seq. of this code;
(6) Boundary Commission provided in §29-23-1 et seq. of this code;

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

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

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

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

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

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

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

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

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

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

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in §22A-6-1 et seq. of this code;
(B) Board of Miner Training, Education and Certification provided in §22A-7-1 et seq. of this code; and

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

(3) The West Virginia Development Office provided in §5B-2-1 et seq. of this code;

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

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

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

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

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis.

(8) Office of Energy, within the Development Office, provided in §5B-2F-1 et seq. of this code.

(9) West Virginia Tourism Office and Tourism Commission provided in §5B-2I-1 et seq. of this code;

(10) Division of Culture and History provided in §29-1-1 et seq. of this code; and

(11) Division of Rehabilitation Services provided in §18-10A-1 et seq. of this code.
(c) The Economic Development Authority provided in §31-15-1 et seq. of this code is continued as an independent agency within the executive branch.

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

(e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 et seq. of this code and the State Library Commission provided in §10-1-1 et seq. of this code are each continued as separate independent agencies within the executive branch.

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

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

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

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

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

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

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

7. Oil and Gas Conservation Commission provided in §22C-9-1 et seq. of this code.
(g) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

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

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

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

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

(5) State Commission on Intellectual Disability provided in §29-15-1 et seq. of this code;

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

(7) Bureau for Child Support Enforcement provided in chapter 48 of this code.

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

(1) Adjutant General’s Department provided in §15-1A-1 et seq. of this code;

(2) State Armory Board provided in §15-6-1 et seq. of this code;

(3) Military Awards Board provided in §15-1G-1 et seq. of this code;
(4) West Virginia State Police provided in §15-2-1 et seq. of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in §15-5-1 et seq. of this code and Emergency Response Commission provided in §15-5A-1 et seq. of this code;

(6) Sheriffs’ Bureau provided in §15-8-1 et seq. of this code;

(7) Division of Justice and Community Services provided in §15-9A-1 et seq. of this code;

(8) Division of Corrections provided in chapter 25 of this code;

(9) Fire Commission provided in §29-3-1 et seq. of this code;

(10) Regional Jail and Correctional Facility Authority provided in §31-20-1 et seq. of this code; and

(11) Board of Probation and Parole provided in §62-12-1 et seq. of this code.

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

(1) Tax Division provided in chapter 11 of this code;

(2) Racing Commission provided in §19-23-1 et seq. of this code;

(3) Lottery Commission and position of Lottery Director provided in §29-22-1 of this code;

(4) Insurance Commissioner provided in §33-2-1 et seq. of this code;
(5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of this code and §60-2-1 *et seq.* of this code;

(6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this code;

(7) Lending and Credit Rate Board provided in chapter 47A of this code;

(8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code;

(9) The State Budget Office provided in §11B-2-1 *et seq.* of this code;

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

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

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

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

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

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

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

(4) Driver’s Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code;
(5) Aeronautics Commission provided in §29-2A-1 et seq. of this code;

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

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

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

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

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

(n) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in §5F-1-2 of this code, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.
(o) When an agency, board, or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under §5F-2-2 of this code to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

*§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

1 (a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

14 The annual salary of each named appointive state officer is as follows:

*NOTE: This section was also amended by H. B. 4338 (Chapter 107), which passed subsequent to this act.
Commissioner, Division of Highways, $92,500; Commissioner, Division of Corrections, $80,000; Director, Division of Natural Resources, $75,000; Superintendent, State Police, $85,000; Commissioner, Division of Financial Institutions, $75,000; Commissioner, Division of Culture and History, $65,000; Commissioner, Alcohol Beverage Control Commission, $75,000; Commissioner, Division of Motor Vehicles, $75,000; Director, Human Rights Commission, $55,000; Commissioner, Division of Labor, $70,000; Chairperson, Board of Parole, $55,000; members, Board of Parole, $50,000; members, Employment Security Review Board, $17,000; and Commissioner, Workforce West Virginia, $75,000. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, $95,000: Provided, That effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be paid an annual salary not to exceed $175,000; Transportation, $95,000: Provided, however, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid $120,000; Revenue, $95,000; Military Affairs and Public Safety, $95,000; Administration, $95,000; Commerce, $95,000; Veterans’ Assistance, $95,000; and Environmental Protection, $95,000: Provided further, That any officer specified in this subsection whose salary is increased by more than $5,000 as a result of the amendment and reenactment of this section during the 2011 regular session of the Legislature shall be paid the salary increase in increments of $5,000 per fiscal year beginning July 1, 2011, up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code and shall be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, $80,000; Director, Division of Rehabilitation Services, $70,000; Director, Division of Personnel, $70,000;
Executive Director, Educational Broadcasting Authority, $75,000; Secretary, Library Commission, $72,000; Director, Geological and Economic Survey, $75,000; Executive Director, Prosecuting Attorneys Institute, $80,000; Executive Director, Public Defender Services, $70,000; Commissioner, Bureau of Senior Services, $75,000; Executive Director, Women’s Commission, $45,000; Director, Hospital Finance Authority, $35,000; member, Racing Commission, $12,000; Chairman, Public Service Commission, $85,000; members, Public Service Commission, $85,000; Director, Division of Forestry, $75,000; Director, Division of Juvenile Services, $80,000; Executive Director, Regional Jail and Correctional Facility Authority, $80,000; and Executive Director of the Health Care Authority, $80,000.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, $92,500; Insurance Commissioner, $92,500; Director, Lottery Commission, $92,500; Director, Division of Homeland Security and Emergency Management, $65,000; and Adjutant General, $125,000.
(d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING AUTHORITY.

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-2a. West Virginia distance learning coordinating council; creation; duties.

[Repealed.]

CHAPTER 18. EDUCATION.

ARTICLE 2I. STATE-LEVEL LEADERSHIP FOR PROFESSIONAL DEVELOPMENT SYSTEM.

§18-2I-1. Professional development coordination and delivery; system goals.

The purpose of this article is to establish clear state-level leadership for professional development for all West Virginia public school educators and administrators. As the state institution charged with the general supervision of the state school system, the state board shall institute a system for the coordination and delivery of high-quality professional development. The system shall clearly define the goals for professional development and delineate roles and responsibilities of the various state, school district and individual school levels for the delivery of high-quality
professional development. The state board shall include among the goals for the system of professional development the following:

(1) The instructional leadership skills of principals are developed to ensure that each school is led by a principal who is knowledgeable of continuous improvement processes and capable of leading effective improvement efforts. The principal also must understand the value of fair and accurate personnel performance evaluations as an effective, continuous improvement effort to drive professional learning at the school level;

(2) Professional development is among the array of supports and processes necessary under a performance-based accreditation system to build the capacity of schools to impact student performance and well-being by increasing staff individual and collective skills, competencies, and abilities. It should be based on a thorough analysis of accountability data and strategic planning for continuous improvement that addresses those areas that must be a priority for individual school support, including an analysis of personnel evaluation data in order to target individualized professional learning at the school level;

(3) The school is the unit of change. Local and state resources, policies, and procedures must focus on assisting the improvement of each West Virginia school and on differentiating supports according to need and level of performance, including the implementation of school-based professional development programs that address the unique needs of staff and students; and

(4) Professional development should be delivered using techniques, school schedules or time in a manner that does not diminish student learning by the absence of their classroom teacher.

§18-2I-2. Legislative findings.

The Legislature finds:
(1) That high-quality professional development is critical in supporting improved practice, assuring teacher quality and raising student achievement;

(2) That professional development is vital in the state’s overall school improvement efforts;

(3) That the state board shall assure the efficient delivery of high-quality professional development programs and that the duplication of efforts be minimized;

(4) That the state board shall assure all stakeholders are appropriately involved in the planning and implementing of programs to meet requisite needs and that high-quality professional development programs be provided to public school educators of West Virginia in the most efficient and cost effective manner;

(5) That continuous improvement is the on-going process of planning, determining, implementing, and refining efforts to improve student performance and well-being. It is the collective staff process of analyzing student performance data, studying current school and classroom practices, determining root causes, researching solutions, and implementing processes outlined in the school’s strategic plan; and

(6) That the capacity for excellence resides in every school. Schools are responsible for creating school-wide and classroom conditions that produce student success. Every school needs quality leadership and the flexibility and support to make the decisions that will lead to the achievement of all students.

§18-21-3. Annual professional development master plan established by state board.

[Repealed.]
§18-21-4. Coordination, development and evaluation of professional development programs.

(a) On or before November 1, 2018, the state board shall promulgate a rule in accordance with §29A-3B-1 et seq. of this code to ensure the coordination, development and evaluation of high-quality professional development programs. The rule shall include, but is not limited to, the following:

1. Standards for quality professional development that all professional development providers shall use in designing, implementing, and evaluating professional development that shall become part of the system for the coordinated delivery of high-quality professional development established by the state board;

2. Processes for aggregating information, in part from school and school district strategic plans, to determine areas of common need for professional development, as well as those more varied, to assist in the design of the most effective and efficient method and level of delivery;

3. Processes for assuring professional development resources are appropriately allocated to identified areas of need;

4. Processes for evaluating the effectiveness, efficiency, and impact of the professional development;

5. Processes for ensuring all stakeholders, including affected principals and classroom teachers, have a voice in the identification of needed professional development and various delivery models;

6. Processes for collaboration among West Virginia Department of Education, county boards, principals and classroom teachers; and

7. Processes for ensuring that the expertise and experience of state institutions of higher education with
teacher preparation programs are included in developing and implementing professional development programs.

(b) The Center for Professional Development, formerly provided for under §18A-3A-1 et seq. of this code before the effective date of the amendment and reenactment of this section during the 2018 regular session of the Legislature, is hereby transferred to be under the authority and control of the state board. To assist in the delivery of high quality professional development for teachers, principals, and other school employees, the state board shall incorporate within the Department of Education the Center for Professional Development whose general mission shall be under the direction of the state board to advance the quality of teaching and learning in the schools of West Virginia through programs, technical assistance and support to schools and school systems to meet the legislative findings and goals of this article. The center shall perform other duties that may be assigned to it by the state board. In addition, the center shall provide statewide coordination for the continued growth and development of advanced placement programs in West Virginia high schools, including, but not limited to, serving as a liaison for The College Board, Inc., and providing for the training of advanced placement teachers.

ARTICLE 10A. REHABILITATION SERVICES.

§18-10A-1. Definitions.

As used in this article and §18-10B-1 et seq. of this code:

(1) “State board” means the Secretary of the Department of Commerce, or where required by federal law, the board, commission or council designated by the Secretary of the Department of Commerce to oversee certain functions of the Division of Rehabilitation Services. All references in this code to the state board of vocational education, except where the context clearly indicates the provision of
vocational education to other than disabled individuals, means the state board defined by this subsection.

(2) “Division” means the division of vocational rehabilitation established by this article.

(3) “Director” means the director of the division of vocational rehabilitation.

(4) “Employment handicap” means a physical or mental condition which constitutes, contributes to, or if not corrected will probably result in, an obstruction to occupational performance.

(5) “Disabled individual” means any person who has a substantial employment handicap.

(6) “Vocational rehabilitation” and “vocational rehabilitation services” means any services, provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a disabled individual for his or her employment handicap and to enable him or her to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, attendant care services, physical restoration, transportation, occupational licenses, occupational tools and equipment, including motor vehicles, maintenance, and training books and materials.

(7) “Rehabilitation training” means all necessary training provided to a disabled individual to compensate for his or her employment handicap including, but not limited to, manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(8) “Physical restoration” means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a disabled individual’s employment handicap within
a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care not to exceed ninety days, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions.

(9) “Prosthetic appliance” means any artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(10) “Occupational licenses” means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(11) “Maintenance” means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation.

(12) “Regulations” means regulations made by the director with the approval of the secretary of the Department of Commerce or the state board.

(13) “Attendant care evaluation unit” means any agency certified by the division of vocational rehabilitation that employs a qualified evaluator to provide evaluations and attendant referrals such as the centers for independent living, the West Virginia Rehabilitation Center and any other unit approved by the division.

(14) “Attendant care services” means services which include, but are not limited to:

(a) Routine bodily functions such as bowel and bladder care;

(b) Dressing;

(c) Ambulation;
(d) Meal preparation and consumption;
(e) Assistance in moving in and out of bed;
(f) Bathing and grooming;
(g) Housecleaning and laundry; and
(h) Any other similar activity of daily living.

(15) “Attendant” means a self-employed individual who is trained to perform attendant care services and who works as an independent contractor.

§18-10A-2. Division of Rehabilitation Services.

(a) The Division of Rehabilitation Services is transferred to the Department of Commerce created in §5F-1-1 et seq. of this code. The secretary shall appoint any board, commission, or council over the division to the extent required by federal law to qualify for federal funds for providing rehabilitation services for disabled persons. The secretary and the boards, commissions or councils as he or she is required by federal law to appoint are authorized and directed to cooperate with the federal government to the fullest extent in an effort to provide rehabilitation services for disabled persons.

(b) References in this article or §18-10B-1 et seq. of this code to the state Board of Vocational Education, the state Board of Rehabilitation or the state board as the governing board of vocational or other rehabilitation services or facilities mean the Secretary of Commerce. All references in the code to the Division of Vocational Rehabilitation mean the Division of Rehabilitation Services and all references to the Director of the Division of Vocational Rehabilitation means the Director of the Division of Rehabilitation Services.
§18-10A-3. Director of division of vocational rehabilitation; powers and duties.

The division shall be administered, under the general supervision and direction of the Secretary of the Department of Commerce or, if required by federal law his or her designated state board, by a director appointed by the secretary, or if required by federal law his or her designated state board in accordance with established personnel standards and on the basis of his or her education, training, experience, and demonstrated ability.

In carrying out his or her duties under this article, the director shall:

1. Appoint such personnel as he or she considers necessary for the efficient performance of the functions of the division.

2. Establish a merit system of personnel management, or in lieu thereof, avail himself or herself of the services of the state merit system upon payment of a fair share of the expenses of the operation of the system.

3. Make regulations governing the protection of records and confidential information; the manner and form of filing applications for vocational rehabilitation services, eligibility therefor, and investigation and determination thereof; procedures for fair hearings; and such other matters as may be necessary or desirable in accomplishing the purposes of this article.

4. Have the authority to establish and operate a staff development program for the employees of the division and may, in furtherance of such a program, and utilizing any funds appropriated or made available, for such purpose, pay to the employees compensation or expenses, or both, while the employees are pursuing approved training courses or academic studies for the purpose of becoming better equipped for their employment in the division; the staff development program shall be conducted subject to
appropriate rules as adopted by the director and approved by the state board: Provided, That these rules shall include reasonable provisions for the return of any employee, receiving the benefits of such training, for a reasonable period of duty, or for reimbursement to the state for expenditures incurred on behalf of the training of such employee.

(5) Establish appropriate subordinate administrative units within the division.

(6) Prepare and submit to the Secretary of the Department of Commerce or his or her designated state board annual reports of activities and expenditures and, prior to each regular session of the Legislature, estimates of sums required for carrying out the provisions of this article and estimates of the amounts to be made available for this purpose from all sources.

(7) Make requisition for disbursement, in accordance with regulations of the funds available for vocational rehabilitation purposes.

(8) Take such other action as may be determined necessary or appropriate to carry out the purposes of this article.

§18-10A-6a. West Virginia Rehabilitation Services Special Account; expenditures.

(a) There is hereby established in the State Treasury a separate account which shall be designated the “West Virginia Rehabilitation Services Special Account”. The director of rehabilitation services shall deposit promptly into the account all fees received for services provided by the West Virginia Rehabilitation Center from whatever source, including the federal government, state government or from other third-party payers or personal payments.

(b) A five-year West Virginia rehabilitation services long-range plan shall be developed by the director and shall
be adopted by the Secretary of Commerce. The West Virginia rehabilitation services’ long-range plan shall be updated and revised at least every two years.

(c) The director may expend the moneys deposited in the West Virginia Rehabilitation Services Special Account in accordance with federal laws and regulations and with the laws of this state necessary for the development of the five-year long-range plan and subsequent revisions.

(d) The director may expend the moneys deposited in the West Virginia Rehabilitation Services Special Account as provided in the long-range plan at such times and in such amounts as the director determines to be necessary for the purpose of maintaining or improving the delivery of rehabilitation services: Provided, That during the budget preparation period which occurs prior to the convening of the Legislature, the director shall submit for inclusion in the executive budget document and budget bill his or her recommended capital expenditures, recommended priorities, estimated costs, and request for appropriations for maintaining or improving the delivery of vocational rehabilitation services.

(e) The director shall make an annual report to the Legislature on the status of the West Virginia Rehabilitation Services Special Account, including the previous year’s expenditures and projected expenditures for the next year.

§18-10A-12. Vocational evaluation and work adjustment program for disadvantaged individuals.

The division, under the direction of any federally mandated board, commission, or council appointed by the Secretary of the Department of Commerce, is authorized and directed to cooperate with the federal government in providing vocational evaluation and work adjustment services to disadvantaged individuals.

“Vocational evaluation and work adjustment services” include, as appropriate in each case, such services as:
(a) A preliminary diagnostic study to determine that the individual is disadvantaged, has an employment handicap, and that services are needed;

(b) A thorough diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, cultural, social, and environmental factors which bear on the individual’s handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual’s personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed;

(c) Services to appraise the individual’s patterns of work behavior and ability to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance, including the utilization of work, simulated or real, to assess and develop the individual’s capacities to perform adequately in a work environment;

(d) Any other goods or services provided to a disadvantaged individual, determined (in accordance with regulations of the federal government) to be necessary for, and which are provided for the purpose of, ascertaining the nature of the handicap to employment and whether it may reasonably be expected the individual can benefit from vocational rehabilitation services or other services available to disadvantaged individuals;

(e) Outreach, referral, and advocacy; and

(f) The administration of these evaluation and work adjustment services.

As used in this section, the term “disadvantaged individuals” means: (1) Disabled individuals as defined in
§18-10A-1(5) of this code; (2) individuals disadvantaged by reason of their youth or advanced age, low educational attainments, ethnic or cultural factors, prison or delinquency records, or other conditions which constitute a barrier to employment; and (3) other members of their families when the provision of vocational rehabilitation services to family members is necessary for the rehabilitation of the individual described in subdivision (1) or (2) above.

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.

(a) The West Virginia college prepaid tuition and savings program is continued. The program consists of a prepaid tuition plan and a savings plan.

(b) The board of the college prepaid tuition and savings program is continued and all powers, rights and responsibilities of the board of trustees of the prepaid tuition trust fund are vested in the board of the college prepaid tuition and savings program.

(c) The board consists of eight members and includes the following:

(1) The State Treasurer, or his or her designee;

(2) A representative of the Higher Education Policy Commission, who may or may not be a member of the Higher Education Policy Commission, appointed by the commission who serves as a voting member of the board;

(3) A representative of the Council for Community and Technical College Education, who may or may not be a member of the Council for Community and Technical College Education, appointed by the council who serves as a voting member of the board; and
(4) Five other members, appointed by the Governor, with knowledge, skill and experience in an arts, academic, business or financial field, to be appointed as follows:

(A) Two private citizens not employed by, or an officer of, the state or any political subdivision of the state;

(B) One member representing the interests of private institutions of higher education located in this state appointed from one or more nominees of the West Virginia association of private colleges; and

(C) Two members representing the public.

(d) The public members and the member representing the interests of private institutions of higher education are appointed by the Governor with the advice and consent of the Senate.

(e) Only state residents are eligible for appointment to the board.

(f) Members appointed by the Governor serve a term of five years and are eligible for reappointment at the expiration of their terms. If there is a vacancy among appointed members, the Governor shall appoint a person representing the same interests to fill the unexpired term.

(g) Members of the board serve until the later of the expiration of the term for which the member was appointed or the appointment of a successor. Members of the board serve without compensation. The treasurer may pay all expenses, including travel expenses, actually incurred by board members in the conduct of their official duties. Expense payments are made from the college prepaid tuition and savings program administrative account, and are made at the same rate paid to state employees.

(h) The treasurer may provide support staff and office space for the board.
(i) The treasurer is the chairman and presiding officer of the board, and may appoint the employees the board considers advisable or necessary. A majority of the members of the board constitute a quorum for the transaction of the business of the board.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.


(a) Upon the recommendation of the county superintendent of schools, the county board of education shall employ and assign, through written contract, public school principals who shall be the principal instructional leader of the school and shall supervise the management and operation of the school or schools to which they are assigned to improve student performance and progress. The principals shall hold valid administrative certificates appropriate for their assignments.

(b)(1) Beginning on July 1, 1994, the prerequisites for issuance of an administrative certificate for principals shall include that the person has successfully completed at least six credit hours of approved course work in public school management techniques at an accredited institution of higher education and has successfully completed education and training in evaluation skills approved by the state board.

(2) Beginning on July 1, 2019, the prerequisites for issuance of an administrative certificate for principals shall include that the person has successfully completed at least six credit hours of approved course work in public school instructional leadership and management techniques at an accredited institution of higher education, including, but not limited to, the standards for high quality schools, the school accreditation process and strategic planning for continuous improvement.
(c) Prior to employment as a principal or assistant principal, or in another administrative position the duties of which require conducting personnel performance evaluations, the principal, assistant or administrator shall successfully complete education and training in evaluation skills approved by the state board.

(d) Under the supervision of the superintendent and in accordance with the rules and regulations of the county board of education, the principal:

1. Shall assume administrative and instructional leadership responsibility for the planning, management, operation, and evaluation of the total educational program of the school or schools to which he or she is assigned.

2. May submit recommendations to the superintendent regarding the appointment, assignment, promotion, transfer and dismissal of all personnel assigned to the school or schools under said principal’s control. The recommendations shall be submitted in writing as prescribed by the superintendent; and

3. Shall perform such other duties as may be assigned by the superintendent pursuant to the rules and regulations of the county board of education.

(e) Upon recommendation of the county superintendent of schools, the county board of education shall, when needed, employ and assign, through written contract, assistant principals who shall work under the direction of the school principal. Such assistant principals shall hold valid administrative certificates appropriate for their assignments.

(f) The assignment of principals and assistant principals by each county board of education is subject to the following:

1. A certificated principal shall be assigned to each school;
(2) A principal may not be assigned more than two schools;

(3) No additional schools may be assigned to the principal of a school where enrollment exceeds four hundred students;

(4) A principal assigned to more than one school may not be assigned any teaching duties except on a temporary emergency basis;

(5) A principal shall be assigned full-time at each school whose net enrollment equals or exceeds one hundred seventy students and may not be assigned any teaching duties except on a temporary emergency basis;

(6) A principal assigned on a full-time basis to a school whose net enrollment is more than seventy-five students but less than one hundred seventy students shall have a minimum of twenty hours per week for nonteaching duties;

(7) A principal assigned on a full-time basis to a school with seventy-five students or less shall have a minimum of ten hours per week for nonteaching duties;

(8) Nothing in this section prohibits a county board of education from assigning a full-time principal to a school with a net enrollment of less than one hundred seventy students; and

(9) The State Board of Education may not deny a county board of education the right to place a principal in a school with less than one hundred seventy students.

§18A-2-12. Performance evaluations of school personnel; professional personnel evaluation process; restrictions on requirements on lesson plans and record keeping by classroom teachers.

(a) The state board shall adopt a written system for the evaluation of the employment performance of personnel,
which system shall be applied uniformly by county boards in the evaluation of the employment performance of personnel employed by the board.

(b) The system adopted by the state board for evaluating the employment performance of professional personnel shall be in accordance with the provisions of this section.

(c) For purposes of this section, “professional personnel”, “professional”, or “professionals”, means professional personnel and other professional employees, as defined in §18A-1-1 of this code but does not include classroom teachers, principals, and assistant principals subject to the evaluation processes established pursuant to §18A-3C-2 of this code.

(d) The performance evaluation system shall contain, but not be limited to, the following information:

(1) The professional personnel positions to be evaluated;

(2) The frequency and duration of the evaluations, which shall be of such frequency and duration as to insure the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn, but at least annually;

(3) The evaluation shall serve the following purposes:

(A) Serve as a basis for the improvement of the performance of the personnel in their assigned duties;

(B) Provide an indicator of satisfactory performance for individual professionals;

(C) Serve as documentation for a dismissal on the grounds of unsatisfactory performance; and
(D) Serve as a basis for programs to increase the professional growth and development of professional personnel;

(4) The standards for satisfactory performance for professional personnel and the criteria to be used to determine whether the performance of each professional meets those standards and other criteria for evaluation for each professional position evaluated. Professional personnel, as appropriate, shall demonstrate competency in the knowledge and implementation of the technology standards adopted by the state board. If a professional fails to demonstrate competency in the knowledge and implementation of these standards, he or she will be subject to an improvement plan to correct the deficiencies; and

(5) Provisions for a written improvement plan, which shall be specific as to what improvements, if any, are needed in the performance of the professional and shall clearly set forth recommendations for improvements, including recommendations for additional education and training during the professional’s recertification or license renewal process.

(e) A professional whose performance is considered to be unsatisfactory shall be given notice of deficiencies. A remediation plan to correct deficiencies shall be developed by the employing county board and the professional. The professional shall be given a reasonable period of time for remediation of the deficiencies and shall receive a statement of the resources and assistance available for the purposes of correcting the deficiencies.

(f) No person may evaluate professional personnel for the purposes of this section or professional educator for the purposes of §18A-3C-2 of this code unless the person has an administrative certificate issued by the state superintendent and has successfully completed education and training in evaluation skills approved by the state board, which will enable the person to make fair, professional, and
credible evaluations of the personnel whom the person is
responsible for evaluating.

(g) Any professional whose performance evaluation
includes a written improvement plan shall be given an
opportunity to improve his or her performance through the
implementation of the plan. If the next performance
evaluation shows that the professional is now performing
satisfactorily, no further action may be taken concerning the
original performance evaluation. If the evaluation shows
that the professional is still not performing satisfactorily, the
evaluator either shall make additional recommendations for
improvement or may recommend the dismissal of the
professional in accordance with the provisions of §18A-2-8
of this code.

(h) This subsection applies to all classroom teachers
irrespective of the process under which they are evaluated.

(1) Lesson plans are intended to serve as a daily guide
for teachers and substitutes for the orderly presentation of
the curriculum. Lesson plans may not be used as a substitute
for observations by an administrator in the performance
evaluation process. A classroom teacher, as defined in
§18A-1-1 of this code, may not be required to post his or
her lesson plans on the Internet or otherwise make them
available to students and parents or to include in his or her
lesson plans any of the following:

(A) Teach and reteach strategies;

(B) Write to learn activities;

(C) Cultural diversity;

(D) Color coding; or

(E) Any other similar items which are not required to
serve as a guide to the teacher or substitute for daily
instruction;
(2) The Legislature finds that classroom teachers must be free of unnecessary paperwork so that they can focus their time on instruction. Therefore, classroom teachers may not be required to keep records or logs of routine contacts with parents or guardians;

(3) Nothing in this subsection may be construed to prohibit classroom teachers from voluntarily posting material on the Internet; and

(4) Nothing in §18A-3C-1 et seq. of this code may be construed to negate the provisions of this subsection.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

(a) The education of professional educators in the state is under the general direction and control of the state board.

The education of professional educators in the state includes all programs leading to certification to teach or serve in the public schools. The programs include the following:

(1) Programs in all institutions of higher education, including student teaching and teacher-in-residence programs as provided in this section;

(2) Beginning teacher induction programs;

(3) Granting West Virginia certification to persons who received their preparation to teach outside the boundaries of this state, except as provided in subsection (b) of this section;

(4) Alternative preparation programs in this state leading to certification, including programs established pursuant to the provisions of §18A-3-1a, §18A-3-1b, §18A-3-1c, §18A-3-1d, §18A-3-1e, §18A-3-1f, §18A-3-1g,
§18A-3-1h and §18A-3-1i of this code and programs which are in effect on the effective date of this section; and

(5) Continuing professional education, professional development, and in-service training programs for professional educators employed in the public schools in the state.

(b) The state board shall adopt standards for the education of professional educators in the state and for awarding certificates valid in the public schools of this state. The standards include, but are not limited to the following:

(1) A provision for the study of the history and philosophical foundations of Western Civilization and the writings of the founders of the United States of America;

(2) A provision for the study of multicultural education. As used in this section, multicultural education means the study of the pluralistic nature of American society including its values, institutions, organizations, groups, status positions and social roles;

(3) A provision for the study of classroom management techniques, including methods of effective management of disruptive behavior including societal factors and their impact on student behavior; and

(4) A teacher from another state shall be awarded a teaching certificate for a comparable grade level and subject area valid in the public schools of this state, subject to §18A-3-10 if he or she has met the following requirements:

(A) Holds a valid teaching certificate or a certificate of eligibility issued by another state;

(B) Has graduated from an educator preparation program at a regionally accredited institution of higher education or from another educator preparation program;

(C) Possesses the minimum of a bachelor’s degree; and
(D) Meets all of the requirements of the state for full certification except employment.

(c) The state board may enter into an agreement with county boards for the use of the public schools in order to give prospective teachers the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(d) An agreement established pursuant to subsection (c) of this section shall recognize student teaching as a joint responsibility of the educator preparation institution and the cooperating public schools. The agreement shall include the following items:

1. The minimum qualifications for the employment of public school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising;

2. The remuneration to be paid to public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers;

3. Minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching;

4. Assurance that the student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher;

5. A provision requiring any higher education institution with an educator preparation program to document that the student teacher’s field-based and clinical experiences include participation and instruction with multicultural, at-risk and exceptional children at each programmatic level for which the student teacher seeks certification; and
(6) A provision authorizing a school or school district that has implemented a comprehensive beginning teacher induction program, to enter into an agreement that provides for the training and supervision of student teachers consistent with the educational objectives of this subsection by using an alternate structure implemented for the support, supervision and mentoring of beginning teachers. The agreement is in lieu of any specific provisions of this subsection and is subject to the approval of the state board.

(e) Teacher-in-residence programs. —

(1) In lieu of the provisions of subsections (c) and (d) of this section and subject to approval of the state board, an institution of higher education with a program for the education of professional educators approved by the state board may enter into an agreement with county boards for the use of teacher-in-residence programs in the public schools.

(2) A “teacher-in-residence program” means an intensively supervised and mentored residency program for prospective teachers during their senior year that refines their professional practice skills and helps them gain the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(3) The authorization for the higher education institution and the county board to implement a teacher-in-residence program is subject to state board approval. The provisions of the agreement include, but are not limited to, the following items:

(A) A requirement that the prospective teacher in a teacher-in-residence program has completed all other preparation courses and has passed the appropriate basic skills and subject matter test or tests required by the state board for teachers to become certified in the area for which licensure is sought;
(B) A requirement that the teacher-in-residence serve only in a teaching position in the county which has been posted and for which no other teacher fully certified for the position has been employed;

(C) Specifics regarding the program of instruction for the teacher-in-residence setting forth the responsibilities for supervision and mentoring by the higher education institution’s educator preparation program, the school principal, and peer teachers and mentors, and the responsibilities for the formal instruction or professional development necessary for the teacher-in-residence to perfect his or her professional practice skills. The program also may include other instructional items as considered appropriate.

(D) A requirement that the teacher-in-residence hold a teacher-in-residence permit qualifying the individual to teach in his or her assigned position as the teacher of record;

(E) A requirement that the salary and benefit costs for the position to which the teacher-in-residence is assigned shall be used only for program support and to pay a stipend to the teacher-in-residence as specified in the agreement, subject to the following:

(i) The teacher-in-residence is a student enrolled in the teacher preparation program of the institution of higher education and is not a regularly employed employee of the county board;

(ii) The teacher-in-residence is included on the certified list of employees of the county eligible for state aid funding the same as an employee of the county at the appropriate level based on their permit and level of experience;

(iii) All state-aid-funding due to the county board for the teacher-in-residence shall be used only in accordance with the agreement with the institution of higher education for support of the program as provided in the agreement,
including costs associated with instruction and supervision as set forth in paragraph (C) of this subdivision;

(iv) The teacher-in-residence is provided the same liability insurance coverage as other employees; and

(v) All state aid funding due to the county for the teacher-in-residence and not required for support of the program shall be paid as a stipend to the teacher-in-residence: Provided, That the stipend paid to the teacher-in-residence shall be no less than sixty-five percent of all state aid funding due the county for the teacher-in-residence.

(F) Other provisions that may be required by the state board.

(f) In lieu of the student teaching experience in a public school setting required by this section, an institution of higher education may provide an alternate student teaching experience in a nonpublic school setting if the institution of higher education meets the following criteria:

(1) Complies with the provisions of this section;

(2) Has a state board approved educator preparation program; and

(3) Enters into an agreement pursuant to subdivisions (g) and (h) of this section.

(g) At the discretion of the higher education institution, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall require one of the following:

(1) The student teacher shall complete at least one half of the clinical experience in a public school; or

(2) The educator preparation program shall include a requirement that any student performing student teaching in a nonpublic school shall complete the following:
(A) At least two hundred clock hours of field-based training in a public school; and

(B) A course, which is a component of the institution’s state board approved educator preparation program, that provides information to prospective teachers equivalent to the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the public schools in West Virginia. The course also shall include instruction on at least the following elements:

(i) State board policy and provisions of this code governing public education;

(ii) Requirements for federal and state accountability, including the mandatory reporting of child abuse;

(iii) Federal and state mandated curriculum and assessment requirements, including multicultural education, safe schools, and student code of conduct;

(iv) Federal and state regulations for the instruction of exceptional students as defined by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq.; and

(v) Varied approaches for effective instruction for students who are at-risk.

(h) In addition to the requirements set forth in subsection (g) of this section, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall include the following:

(1) A requirement that the higher education institution with an educator preparation program shall document that the student teacher’s field-based and clinical experiences include participation and instruction with multicultural, at-risk, and exceptional children at each programmatic level for which the student teacher seeks certification; and
(2) The minimum qualifications for the employment of school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising.

(i) The state superintendent may issue certificates as provided in §18A-3-2a of this code to graduates of educator preparation programs and alternative educator preparation programs approved by the state board. The certificates are issued in accordance with this section and rules adopted by the state board.

(1) A certificate to teach may be granted only to a person who meets the following criteria:

(A) Is a citizen of the United States, except as provided in subdivision (2) of this subsection;

(B) Is of good moral character;

(C) Is physically, mentally, and emotionally qualified to perform the duties of a teacher; and

(D) Is at least eighteen years of age on or before October 1 of the year in which his or her certificate is issued.

(2) A permit to teach in the public schools of this state may be granted to a person who is an exchange teacher from a foreign country or an alien person who meets the requirements to teach.

(j) Institutions of higher education approved for educator preparation may cooperate with each other and with one or more county boards to organize and operate centers to provide selected phases of the educator preparation program. The phases include, but are not limited to the following:

(1) Student teaching and teacher-in-residence programs;
(2) Beginning teacher induction programs;

(3) Instruction in methodology; and

(4) Seminar programs for college students, teachers with provisional certification, professional support team members, and supervising teachers.

By mutual agreement, the institutions of higher education and county boards may budget and expend funds to operate the centers through payments to the appropriate fiscal office of the participating institutions and the county boards.

(k) The provisions of this section do not require discontinuation of an existing student teacher training center or school which meets the standards of the state board.

(l) All institutions of higher education approved for educator preparation in the 1962-63 school year continue to hold that distinction so long as they meet the minimum standards for educator preparation. Nothing in this section infringes upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

(m) Definitions. — For the purposes of this section, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) “Nonpublic school” means a private school, parochial school, church school, school operated by a religious order, or other nonpublic school that elects to meet the following conditions:

(A) Comply with the provisions of §18-28-1 et seq. of this code;

(B) Participate on a voluntary basis in a state operated or state sponsored program provided to this type school pursuant to this section; and
(C) Comply with the provisions of this section;

(2) “At-risk” means a student who has the potential for academic failure, including, but not limited to, the risk of dropping out of school, involvement in delinquent activity, or poverty as indicated by free or reduced lunch status; and

(3) “Exceptional child” or “exceptional children” has the meaning ascribed to these terms pursuant to §18-20-1 of this code, but, as used in this section, the terms do not include gifted students.

§18A-3-1d. Alternative program rules; necessary contents.

(a) Alternative program rules. –

(1) The state board shall promulgate a legislative rule or rules in accordance with §29A-3B-1 et seq. of this code containing procedures for the approval and operation of alternative teacher education programs as provided in this article. The State Board shall promulgate separate procedures for alternative programs for classroom teachers, alternative programs for highly qualified special education teachers, and additional alternative programs to prepare highly qualified special education teachers. These procedures shall be separate from the state board’s other procedures for approving standard teacher education programs.

(2) Before adopting a rule or rules, the state board shall submit its proposed rule or rules to the Legislative Oversight Commission on Education Accountability for review.

(b) Necessary contents. – The state board’s rule or rules shall include, at a minimum, the following elements:

(1) An orderly set of deadlines, forms, and guidance to govern:

(A) A partnership’s process for applying to become an approved education provider;
(B) The state board’s process for reviewing and acting on a partnership’s application;

(C) An approved education provider’s process for seeking persons to enroll in an alternative program; and

(D) A person’s process for enrolling in an approved education provider’s alternative program;

(2) Procedures for determining whether a partnership agreement complies with §18A-3-1b and §18A-3-1c of this code;

(3) Procedures for determining whether a partnership agreement complies with any additional requirements contained in the state board’s rule or rules;

(4) Standards for how often and for what lengths of time an alternative program teacher must observe in a mentor’s classroom;

(5) Guidelines for determining what tuition or other charges an approved education provider may impose relating to an alternative program;

(6) A list of the test or tests that a person must pass if he or she seeks a certification to teach American Sign Language; and

(7) A list of the test or tests that a person must pass if he or she seeks a certification to teach in selected vocational and technical areas.

§18A-3-2c. Minimum qualities, proficiencies and skills required of principals; state board rule.

On or before October 1, 2018, the state board shall promulgate rules in accordance with §29A-3B-1 et seq. of this code regarding the minimum qualities, proficiencies and skills that will be required of principals after July 1, 2019. The state board shall promulgate and may, from time
to time, amend such rules. The rules promulgated by the state board shall address at least the following:

(1) Instructional leadership and management techniques, including, but not limited to, the standards for high quality schools, the school accreditation process, and strategic planning for continuous improvement;

(2) Staff relations, including, but not limited to, the development and use of skills necessary to make a positive use of faculty senates, manage faculty and staff with courtesy and mutual respect, coach and motivate employees, and build consensus as a means of management;

(3) School community leadership qualities, including, but not limited to, the ability to organize and leverage community initiative, communicate effectively, work effectively with local school improvement councils, manage change, resolve conflict, and reflect the highest personal values;

(4) Educational proficiencies, including, but not limited to, knowledge of curriculum, instructional techniques, student learning styles, student assessment criteria, school personnel performance, evaluation skills, and family issues; and

(5) Administrative skills, including, but not limited to, organizational, fiscal, public policy, and total quality management skills and techniques.

§18A-3-2d. Beginning principal internships.

[Repealed.]

§18A-3-8. County professional staff development councils.

The Legislature finds the professional expertise and insight of the classroom teacher to be an invaluable ingredient in the development and delivery of staff
development programs which meet the needs of classroom teachers.

Therefore, a professional staff development council comprised of proportional representation from the major school levels and from vocational, special education and other specialties in proportion to their employment numbers in the county shall be established in each school district in the state in accordance with rules adopted by the State Board of Education. Nominations of instructional personnel to serve on the county staff development council may be submitted by the faculty senates of the district to the county superintendent who shall prepare and distribute ballots and tabulate the votes of the counties instructional personnel voting on the persons nominated. Each county staff development council shall consist of between nine and fifteen members at the discretion of the county superintendent based on the size of the county. The councils have final authority to propose staff development programs for their peers based upon an analysis of the individual and collective needs of the schools of the county as indicated by their strategic plans.

The county superintendent or a designee has an advisory, nonvoting role on the council. The county board shall make available an amount equal to one tenth of one percent of the amounts provided in accordance with §18-9A-4 of this code and credit the funds to an account to be used by the council to fulfill its objectives. The local board has final approval of all proposed disbursements.

Any funds credited to the council during a fiscal year, but not used by the council, shall be carried over in the council account for use in the next fiscal year. These funds are separate and apart from, and in addition to, those funds to be credited to the council pursuant to this section. At the end of each fiscal year, the council shall report to each faculty senate chairperson the amount of funds carried over into the next fiscal year.
ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for Professional Development; intent and mission; Principals Academy curriculum and expenses; authorization to charge fees.

1 [Repealed]

§18A-3A-2. Professional development project.

1 [Repealed.]


1 [Repealed.]

§18A-3A-3. Professional personnel evaluation project.

1 [Repealed.]


1 [Repealed.]

ARTICLE 3C. IMPROVING TEACHING AND LEARNING.

§18A-3C-1. Findings; purposes and definition.

1 (a) The Legislature makes the following findings:

2 (1) Processes set forth in this article for the performance evaluation of professional personnel and the induction and professional growth of teachers and leaders are not intended to make up for substandard initial preparation, but instead are intended to build on a solid foundation created by the teacher and principal preparation programs. Therefore, the Legislature expects the teacher preparation programs to graduate teachers and leaders who can perform at a level that increases student achievement. The Legislature expects that the processes set forth in this article will allow a teacher and principal to excel beyond that level in the classroom and in school leadership positions;
(2) The comprehensive system of support provided in this article should be implemented in a way that effectively provides for the professional growth of teachers and principals;

(3) In order for the comprehensive system of support to much more effectively provide for the professional growth of teachers and principals, professional development resources must be focused in the most cost effective manner on the unique needs of individual schools, including their professional personnel evaluation data, to increase the school’s capacity to improve student performance and progress; and

(4) Although the quality of the teacher is extremely important to the academic achievement of students, students cannot learn if they are not present to receive the instruction. Therefore, attending school on a regular basis is of utmost importance to the academic success of students.

(b) The purpose of this article is to create a comprehensive infrastructure that routinely supports a continuous process for improving teaching and learning. Its focus is on developing strong teaching and school leadership, without which effective learning does not occur. The general components of this infrastructure include the following:

(1) High-quality teacher and principal preparation, induction, and evaluation;

(2) Universal support for emerging teachers and principals including comprehensive induction and support for (A) Beginning teachers, student teachers, teachers teaching in assignments for which they have less than a full professional credential, and teacher candidates pursuing certification through an alternative route; and (B) beginning principals, assistant principals, and vocational administrators, and those of them beginning a new
assignment at a school with a significantly different grade level configuration;

(3) Evaluation of the performance of teachers and leaders in demonstrating high quality professional practice, leadership, and collaboration and the resulting growth in student learning;

(4) Focused improvement in teaching and learning through the use of evaluation data to inform the delivery of professional development and additional supports to improve teaching based on the evaluation results and to inform the need for improvements in teacher preparation programs; and

(5) The creation of a leadership culture that seeks and builds powerful alliances among all stakeholders focused on continuous growth in student learning.

(c) For purposes of this article “professional personnel” includes classroom teachers, assistant principals, and principals as defined in §18A-1-1 of this code.

§18A-3C-2. Performance evaluations of professional personnel.

(a) The provisions of this section govern the performance evaluation of classroom teachers, principals and assistant principals employed in public schools and school systems. To the extent that this section conflicts with the provisions of §18A-2-12 of this code relating to professional personnel performance evaluations, this section shall govern.

(b) Before July 1, 2018, the state board shall adopt a legislative rule in accordance with §29A-3B-1 et seq. of this code, for annually evaluating the performance of each professional person. The rule shall provide for performance evaluations of professional personnel to be conducted in accordance with this section in each school and school system.
(c) (1) The process adopted by the state board for evaluating the performance of classroom teachers shall incorporate at least the following:

(A) Alignment with the West Virginia Professional Teaching Standards adopted by the state board that establish the foundation for educator preparation, teacher assessment, and professional development throughout the state;

(B) Employment of the professional teaching standards to provide explicit and extensive measures of the work of teaching and what teachers must know and be able to do and provide evaluative measures of educator performance; and

(C) The use of two pieces of evidence at two points in time over the instructional term to demonstrate student learning as an indicator of educator performance.

(2) Eighty percent of the evaluation shall be based on an appraisal of the educator’s ability to perform the critical standard elements of the professional teaching standards. The appraisal shall include conferences with the evaluator reinforced through observation. Twenty percent of the evaluation shall be based on evidence of the learning of the students assigned to the educator in accordance with paragraph (C), subdivision (1) of this subsection.

(d) (1) The process adopted by the state board for evaluating the performance of principals and assistant principals shall include at least the following:

(A) Alignment with the West Virginia Professional Leadership Standards adopted by the state board establishing the responsibility of principals for the collective success of their school including the learning, growth, and achievement of students, staff, and self;

(B) Employment of the professional leadership standards to provide explicit and extensive measures of the work of school leadership focused on the continuous improvement of teaching and learning. The process shall
include conferences and goal setting with the superintendent or his or her designee and the use of a survey of stakeholders to assist in identifying the needs and establishing the goals for the school and the principal. The survey shall be distributed to at least the following stakeholders: Students, parents, teachers, and service personnel. The evaluative measures shall include the use of data, evidence, and artifacts to confirm the principal’s performance on achieving the goals established by the principal and superintendent; and

(C) The use of two pieces of evidence at two points in time over the instructional term to demonstrate the growth in student learning at the school.

(2) Eighty percent of the evaluation shall be based on an appraisal of the principal’s or the assistant principal’s ability to perform the critical standard elements of the professional leadership standards and achieve the goals established for the principal and the school. Twenty percent of the evaluation shall be based on evidence of the learning of the students assigned to the school in accordance with paragraph (C), subdivision (1) of this subsection.

(e) Evaluations of the performance of professional personnel shall serve the following purposes:

(1) Serve as a basis for the improvement of the performance of the professional personnel in their assigned duties;

(2) Serve as the basis for providing professional development specifically targeted on the area or areas identified through the evaluation process as needing improvement. If possible, this targeted professional development should be delivered at the school site using collaborative processes, mentoring or coaching or other approaches that maximize use of the instructional setting;
(3) Serve as the basis for establishing priorities for the
 provision of county-level professional development when
 aggregate evaluation data from the county’s schools
 indicates an area or areas of needed improvement;

(4) Serve as a basis for informing the teacher
 preparation programs in this state of an area or areas of
 needed improvement in the programs, or informing a
 specific program of needed improvement, when state-level
 aggregate evaluation data indicates that beginning teachers
 who have graduated from the program have specific
 weaknesses;

(5) Provide an indicator of level of performance of the
 professional personnel;

(6) Serve as a basis for programs to increase the
 professional growth and development of professional
 personnel; and

(7) Serve as documentation for a dismissal on the
 grounds of unsatisfactory performance.

(f) The rule adopted by the state board shall include
 standards for the performance of professional personnel and
 the criteria to be used to determine whether their
 performance meets the standards. The rule also shall include
 guidance on best practices for providing time within the
 school day for teachers and leaders subject to performance
 evaluations under this section to participate in the
 collaborative mentoring or coaching and planning processes
 necessary for execution of the performance evaluation
 process and achieving advanced levels of performance.

(g) The rule adopted by the state board shall include
 provisions for written improvement plans when necessary
 to improve the performance of the professional personnel.
 The written improvement plan shall be specific as to what
 improvements are needed in the performance of the
 professional personnel and shall clearly set forth
recommendations for improvements including recommendations for additional education and training of professionals subject to recertification. Professional personnel whose performance evaluation includes a written improvement plan shall be given an opportunity to improve his or her performance through the implementation of the plan.

(h) A professional person whose performance is considered to be unsatisfactory shall be given written notice of his or her deficiencies. A written improvement plan to correct these deficiencies shall be developed by the employing county board and the employee. The professional person shall be given a reasonable period of time, not exceeding twelve months, to accomplish the requirements of the improvement plan and shall receive a written statement of the resources and assistance available for the purposes of correcting the deficiencies. If the next performance evaluation shows that the professional is now performing satisfactorily, no further action may be taken concerning the original performance evaluation. If the evaluation shows that the professional is still not performing satisfactorily, the evaluator either shall make additional written recommendations for improvement or may recommend the dismissal of the professional personnel in accordance with the provisions of §18A-2-8 of this code.

(i) No person may evaluate professional personnel for the purposes of this section unless the person has an administrative certificate issued by the state superintendent and has successfully completed education and training in evaluation skills approved by the state board which will enable the person to make fair, professional, and credible evaluations of the personnel whom the person is responsible for evaluating.

(j) Prior to implementation of the evaluation process pursuant to this section at a school, each affected employee shall be given training to ensure that the employees have a full understanding of the purposes, instruments, and
procedures used in evaluating their performance. Thereafter, this training shall be held annually at the beginning of the employment term.

§18A-3C-3. Comprehensive system for teacher and leader induction and professional growth.

(a) The intent of the Legislature is to allow for local-level implementation of comprehensive systems of support for building professional practice consistent with sound educational practices and resources available. In this regard, it is the intent of the Legislature that the comprehensive systems of support shall incorporate support for improved professional performance that is targeted on deficiencies identified through the educator personnel evaluation process and other professional development needs identified in the strategic plans for continuous improvement of schools and school systems. Further, because of significant variability among the counties, not only in the size of their teaching force, distribution of facilities and available resources, but also because of their varying needs, the Legislature intends for the implementation of this section to be accomplished in a manner that provides adequate flexibility to the counties to design and implement a comprehensive system of support for improving professional performance that best achieves the goals of this section within the county. Finally, because of the critical importance of ensuring that all teachers perform at the accomplished level or higher in the delivery of instruction that at least meets the West Virginia Professional Teaching Standards and because achieving this objective at a minimum entails providing assistance to address the needs as indicated by the data informed results of annual performance evaluations, including the self-assessed needs of the teachers themselves, the Legislature expects the highest priority for county and state professional development will be on meeting these needs and that the comprehensive systems of support for improving professional practice will reflect substantial redirection of
existing professional development resources toward this highest priority.

(b) On or before July 1, 2018, the state board shall publish guidelines on the design and implementation of a county-level comprehensive system of support for improving professional practice. The purpose of the guidelines is to assist the county board with the design and implementation of a system that best achieves the goals of this section within the county. The guidelines may include examples of best practices and resources available to county boards to assist them with the design and implementation of a comprehensive system.

(c) Effective for the school year beginning July 1, 2018, and thereafter, a county board is not eligible to receive state funding appropriated for the purposes of this section or any other provision of law related to beginning teacher and principal internships and mentor teachers and principals unless it has adopted a plan for implementation of a comprehensive system of support for improving professional practice, the plan has been verified by the state board as meeting the requirements of this section and the county is implementing the plan. The plan shall address the following:

(1) The manner in which the county will provide the strong school-based support and supervision that will assist beginning teachers in developing instructional and management strategies, procedural and policy expertise, and other professional practices they need to be successful in the classroom and perform at the accomplished level. Nothing in this subdivision prohibits a school or school system that was granted an exception or waiver from §18A-3-2c of this code prior to the effective date of this section from continuing implementation of the program in accordance with the exception or waiver;

(2) The manner in which the county will provide the strong support and supervision that will assist beginning
principals in developing instructional leadership, supervisory and management strategies, procedural and policy expertise, and other professional practices they need to be successful in leading continuous school improvement and performing at the accomplished level or above;

(3) The manner in which the county in cooperation with the teacher preparation programs in this state will provide strong school-based support and assistance necessary to make student teaching a productive learning experience;

(4) The manner in which the county will use the data from the educator performance evaluation system to serve as the basis for providing professional development specifically targeted on the area or areas identified through the evaluation process as needing improvement. If possible, this targeted professional development should be delivered at the school site using collaborative processes, mentoring or coaching or other approaches that maximize use of the instructional setting;

(5) The manner in which the county will use the data from the educator performance evaluation system to serve as the basis for establishing priorities for the provision of county-level professional development when aggregate evaluation data from the county’s schools indicates an area or areas of needed improvement;

(6) If a county uses master teachers, mentors, academic coaches, or any other approaches using individual employees to provide support, supervision, or other professional development or training to other employees for the purpose of improving their professional practice, the manner in which the county will select each of these individual employees based upon demonstrated superior performance and competence as well as the manner in which the county will coordinate support for these employees. If the duties of the position are to provide mentoring to an individual teacher at only one school, then
priority shall be given to applicants employed at the school at which those duties will be performed;

(7) The manner in which the county will use local resources available, including, but not limited to, funds for professional development and academic coaches, to focus on the priority professional development goals of this section;

(8) The manner in which the county will adjust its scheduling, use of substitutes, collaborative planning time, calendar, or other measures as may be necessary to provide sufficient time for professional personnel to accomplish the goals of this section as set forth in the county’s plan; and

(9) The manner in which the county will monitor and evaluate the effectiveness of implementation and outcomes of the county system of support for improving professional practice.

(d) Effective the school year beginning July 1, 2018, and thereafter, appropriations for beginning teacher and principal mentors and internships and any new appropriation which may be made for the purposes of this section shall be expended by county boards only to accomplish the activities as set forth in their county plan pursuant to this section. Effective the school year beginning July 1, 2018, and thereafter, no specific level of compensation is guaranteed for any employee service or employment as a mentor and such service or employment is not subject to the provisions of this code governing extra duty contracts.

(e) The Legislative Oversight Commission on Education Accountability shall review the progress of the implementation of this article and may make any recommendations it considers necessary to the Legislature during the 2019 regular legislative session.

CHAPTER 18B. HIGHER EDUCATION.
ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The commission is comprised of nine members, all of whom are entitled to vote. The membership of the commission is as follows:

1. The State Superintendent of Schools, ex officio;

2. The chair of the West Virginia Council for Community and Technical College Education, ex officio;

3. Four at-large members who are citizens of the state, appointed by the Governor, by and with the advice and consent of the Senate; and

4. Three at-large members who are designated as higher education representatives, appointed by the Governor, by and with the advice and consent of the Senate; for each of the higher education representatives, the Governor shall choose from recommendations made by any state college and university or exempted school and the Governor may request additional recommendations from state colleges and universities or exempted schools if in the Governor in his or her sole discretion determines that additional recommendations are necessary for appointments to the commission.

(b) Each of the at-large members appointed by the Governor shall represent the public interest and shall be committed to the legislative intent and goals set forth in state law and policy.

(c) The Governor may not appoint any person to be a member of the commission who is an officer, employee or member of the council or an advisory board of any state college or university or exempted school; an officer or
member of any political party executive committee; the
holder of any other public office or public employment
under the government of this state or any of its political
subdivisions; an appointee or employee of any governing
board; or an immediate family member of any employee
under the jurisdiction of the commission, the council or any
governing board.

(d) Of the seven, at-large members appointed by the
Governor:

(1) No more than four may belong to the same political
party;

(2) At least two shall be appointed from each
congressional district; and

(3) Effective July 1, 2008, no more than one member
may serve from the same county.

(e) The at-large members appointed by the Governor
serve overlapping terms of four years.

(f) The Governor shall appoint a member to fill any
vacancy among the seven at-large members, by and with the
advice and consent of the Senate. Any member appointed to
fill a vacancy serves for the unexpired term of the vacating
member. The Governor shall fill the vacancy within thirty
days of the occurrence of the vacancy.

(g) An at-large member appointed by the Governor may
not serve more than two consecutive terms.

(h) Before exercising any authority or performing any
duties as a member of the commission, each member shall
qualify as such by taking and subscribing to the oath of
office prescribed by section five, article IV of the
Constitution of West Virginia and the certificate thereof
shall be filed with the Secretary of State.
(i) A member of the commission appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-2. Workforce Development Initiative Program continued; purpose; program administration; rule required.

(a) The Workforce Development Initiative Program is continued under the supervision of the council. The purpose of the program is to administer and oversee grants to community and technical colleges to implement the provisions of this article in accordance with legislative intent.

(b) It is the responsibility of the council to administer the state fund for community and technical college and workforce development, including setting criteria for grant applications, receiving applications for grants, making determinations on distribution of funds and evaluating the performance of workforce development initiatives.

(c) The chancellor, under the direction of the council, shall review and approve the expenditure of all grant funds, including development of application criteria, the review and selection of applicants for funding, and the annual review and justification of applicants for grant renewal.

(1) To aid in decision-making, the chancellor appoints an advisory committee consisting of the Executive Director of the West Virginia Development Office or designee; the Assistant State Superintendent for Technical and Adult Education; the Chair of the West Virginia Council for Community and Technical College Education; the Chair of the West Virginia Workforce Investment Council; the Executive Director of Workforce West Virginia; one member representing the
Herbert Henderson Minority Affairs Office, two members representing business and industry; and one member representing labor. The advisory committee shall review all applications for workforce development initiative grants and make recommendations for distributing grant funds to the council. The advisory committee also shall make recommendations on methods to share among the community and technical colleges any curricula developed as a result of a workforce development initiative grant.

(2) When determining which grant proposals will be funded, the council shall give special consideration to proposals by community and technical colleges that involve businesses with fewer than fifty employees.

(3) The council shall weigh each proposal to avoid awarding grants which will have the ultimate effect of providing unfair advantage to employers new to the state who will be in direct competition with established local businesses.

(d) The council may allocate a reasonable amount, not to exceed five percent up to a maximum of $50,000 of the funds available for grants on an annual basis, for general program administration.

(e) Moneys appropriated or otherwise available for the Workforce Development Initiative Program shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year are carried forward for use in the next fiscal year.

(f) Nothing in this article requires a specific level of appropriation by the Legislature.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-4. Depositories for assistive devices and services.

[Repealed.]

1 [Repealed.]

ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-5. Powers and duties of the vice chancellor.

1 In addition to all other duties assigned to the vice chancellor by the Higher Education Policy Commission, the vice chancellor shall:

4 (a) Provide assistance to communities in planning an educational and clinical component for the primary health care education sites;

7 (b) Coordinate and approve the provision of faculty members, students, interns and residents at the education sites;

10 (c) Report directly to the Higher Education Policy Commission regarding the rural health initiative;

13 (d) Oversee the administration of the Kellogg foundation grant;

16 (e) Coordinate the rural health initiative with the allied health care education programs within the state college and community college systems;

19 (f) Prepare the budget for the rural health initiative and submit the budget to the Higher Education Policy Commission for their approval;

22 (g) Distribute the funds which were appropriated to the Higher Education Policy Commission for the rural health initiative;

25 (h) Mediate any disputes between the institutions of higher education regarding the rural health initiative;
(i) Consult with the Council for Community and Technical College Education established under §18B-2B-3 of this code on the coordination of the education of student practical nurses with the rural health initiative; and

(j) Perform such other duties as may be prescribed by this article or as may be necessary to effectuate the provisions of this article.


(a) The primary health care education sites established under this article shall be supported financially in part from line item appropriations to the university of West Virginia health sciences account. Funds shall be distributed to the state’s schools of medicine upon consideration of the recommendations of the vice chancellor. Appropriations to the university of West Virginia health sciences account to support the rural health initiative shall be by line item, with at least one line item designated for primary health education program support at the schools of medicine and at least one line item designated for rural health initiative site support.

(b) The vice chancellor shall require each school of medicine to submit a detailed proposal which shall state, with specificity, how each school of medicine will be working to further the goals and meet the criteria set forth in this article and the amount of appropriation which would be needed by each school to implement the proposal.

The vice chancellor shall, giving consideration to the proposals, prepare a comprehensive plan to be presented to the board of trustees, which plan shall include a recommendation for allocations of moneys appropriated for program support and a recommendation for the allocation of moneys designated for support of the primary health care education sites commensurate with each school’s level of participation in such sites.
(c) Notwithstanding the provisions of §12-3-12 of this code, any funds appropriated to the Higher Education Policy Commission in accordance with the provisions of this section that remain unallocated or unexpended at the end of any fiscal year shall not expire, shall remain in the line item to which they were originally appropriated and shall be available in the next fiscal year to the board of trustees or a school of medicine for allocation or expenditure for the purposes of this article.

(d) Additional financial support shall come from fees generated by services, from grants and contracts, and from community resources. Any fees so generated shall be paid to and expended by the facility established as a primary health care education site unless an alternative fee arrangement is mutually agreed upon by the chief administrator of the site and the vice chancellor for health sciences.

ARTICLE 18B. SCIENCE AND RESEARCH COUNCIL.

§18B-18B-1. Science and Research Council established; purposes.

(a) The Science and Research Council is hereby established. For the purposes of this article only, “council” means the Science and Research Council established herein.

(b) The purposes of the council include, but are not limited to, the following:

1. Increasing the capacity of the state and state institutions of higher education to attract, implement, and use cutting-edge, competitive research funds and infrastructure;

2. Providing expertise and policy guidance in science and research to the state, its agencies and state institutions of higher education regarding federal programs such as the Experimental Program to Stimulate Competitive Research (“EPSCoR”) and similar state programs such as the West...
Virginia Research Trust Fund established in §18B-18A-1 et seq. of this code and the Research Challenge Fund established in §18B-1B-12 of this code;

(3) Encouraging research collaboration among public and private institutions of higher education and the private sector, both within and outside the state;

(4) Promoting education at all levels in the fields of science, technology, engineering, and mathematics; and

(5) Providing recommendations to the commission and state policymakers, including the Governor and Legislature, regarding science and research initiatives and effective programmatic activities, budgets, and investments to implement those initiatives.

(c) The council replaces the EPSCoR State Advisory Council and consists of fifteen members as follows:

(1) The vice presidents in charge of research at Marshall University and West Virginia University;

(2) A representative of health sciences at Marshall University and a representative of health sciences at West Virginia University, appointed by the deans of the respective schools of medicine;

(3) The State Superintendent of Schools or designee;

(4) The Secretary of Commerce or designee;

(5) The Vice Chancellor for Science and Research of the Commission;

(6) The Chancellor of the Commission who chairs the council;

(7) One member engaged in applied research at Marshall University and one member engaged in applied research at West Virginia University, appointed by the provosts of the respective universities; and
(8) Five members, appointed by the Governor, who have demonstrated interest, knowledge, skill, and experience in academic research and scientific innovation and who possess recognized credentials and expertise in one or more of the following areas:

(A) Science, technology, engineering, or mathematics ("STEM") fields;

(B) Cyberinfrastructure, information technology, or computer science;

(C) Research and development;

(D) Technology based economic development or industry; or

(E) Undergraduate research or science education.

At least two of the members appointed by the Governor shall be representatives of business or industry.

(d) Of the initial appointments made by the Governor, one member shall be appointed to a one-year term; one member shall be appointed to a two-year term; one member shall be appointed to a three-year term; and one member shall be appointed to a four-year term. Of the initial appointments made by the deans of schools of medicine, the member appointed by the dean of the Marshall University School of Medicine shall be appointed to a two-year term, and the member appointed by the dean of the West Virginia University School of Medicine shall be appointed to a three-year term. Of the initial appointments made by the provosts, the member appointed by the West Virginia University provost shall be appointed to a two-year term, and the member appointed by the Marshall University provost shall be appointed to a four-year term.

(e) After the initial appointments, all members serve terms of four years. Each appointed member who qualifies under the provisions of this section may serve for no more
than two successive terms. An appointment to fill a vacancy
on the council or reappointment of a member who is eligible
to serve an additional term is made in accordance with the
provisions of this section.

(f) Members of the council serve without compensation,
but are entitled to reimbursement by the commission for
expenses, including travel expenses, actually incurred by
the member in the official conduct of the business of the
council.

CHAPTER 29. MISCELLANEOUS BOARDS AND
OFFICERS.

ARTICLE 24. TECHNOLOGY-RELATED ASSISTANCE
REVOLVING LOAN FUND FOR INDIVIDUALS WITH
DISABILITIES ACT.

§29-24-3. Board created, membership, terms, officers and
staff.

(a) The technology-related assistance revolving loan
fund for individuals with disabilities board created by
chapter 247 Acts of the Legislature, regular session, 1996,
is hereby continued.

(b) The board shall consist of seven members as
follows, of whom at least three must be individuals with
disabilities:

(1) Director of the Division of Rehabilitation Services,
ex officio, who shall be entitled to vote, or his or her
designee;

(2) A representative of the banking industry;

(3) A representative of the medical profession;

(4) A certified public accountant; and

(5) Three members from the public at large who are
users or providers of technology-related assistance devices
or services for individuals with disabilities. Members shall be appointed by the Governor, by and with the advice and consent of the Senate, for terms of three years. Members appointed by the Governor with the advice and consent of the Senate prior to the effective date of this section shall continue to serve for the terms for which they were appointed. State officers or employees may be appointed to the board unless otherwise prohibited by law.

(c) In the event a board member fails to attend more than twenty-five percent of the scheduled meetings in a twelve-month period, the board may, after written notification to that member and the Secretary of Commerce, request in writing that the Governor remove the member and appoint a new member to serve his or her unexpired term.

(d) If there is a death, resignation, disqualification, or removal for any reason of any member of the board, the vacancy shall be filled in the same manner as the original appointment and the successor shall serve for the unexpired term.

(e) The board shall elect from its membership a chairperson, treasurer, and secretary as well as any other officer as appropriate. The term of the “chairperson” is for two years in duration and he or she cannot serve more than two consecutive terms.

§29-24-5. Power, duties and responsibilities of the board; loans.

(a) The board has the following powers, duties, and responsibilities:

(1) Meet at such times (minimum of four times each fiscal year) and at places as it determines necessary or convenient to perform its duties. The board shall also meet on the call of the chairperson or Secretary of Commerce;

(2) Maintain written minutes of its meetings;
(3) Propose rules for legislative promulgation in accordance with §29A-3-1 et seq. of this code for the transaction of its business and to carry out the purposes of this article. The rules shall include: (A) Guidelines, procedures, reporting requirements, accountability measures and such other criteria as the board deems appropriate and necessary to fulfill its governance responsibility under this article if it elects to contract with a nonprofit, consumer-driven organization to carry out the purposes of this article; (B) an appeals process with regard to the administration of the fund; and (C) rules governing the operation of the fund, including, but not limited to, eligibility of receipt of funds and all other matters consistent with and necessary to accomplishing the purpose of this fund;

(4) Employ personnel on a full-time, part-time or contracted basis. Board personnel may be members of the state civil service system. Participating agencies shall make staff support and resources available to the board whenever practicable at the discretion of the agencies. The compensation of personnel shall be paid from moneys in the revolving loan fund;

(5) Receive, administer and disburse funds to support purposes established by this article and contract with nonprofit, consumer-based groups dealing with individuals with disabilities to assist in administering programs established by this article;

(6) Maintain detailed records of all expenditures of the board, funds received as gifts and donations and disbursements made from the revolving loan fund;

(7) Submit to the Secretary of the Department of Commerce and the Legislature annually a summary report concerning programmatic and financial status of the revolving loan fund;

(8) Develop and implement a comprehensive set of financial standards to ensure the integrity and accountability of all funds received as well as loan funds disbursed; and
(9) Conform to the standards and requirements prescribed by the State Auditor.

(b) Subject to available funds, the board shall enter into loan agreements with any qualifying borrower, who demonstrates that:

(1) The loan will assist one or more individuals with disabilities in improving their independence, productivity and full participation in the community; and

(2) The applicant has the ability to repay the loan. Any necessary loan limitation shall be determined by the board. All loans must be repaid within such terms and at such interest rates as the board may determine to be appropriate. However, no loan may extend beyond sixty months from date of award and may be paid off anytime without prepayment penalty. The board shall determine the interest rate to be charged on loans made pursuant to this article, but in no event may the interest rate on any such loans be less than four or more than twenty-one percent per annum.

(c) The board may authorize loans up to ninety percent of the cost of an item or items.

(d) The board may award loans to qualifying borrowers for purposes, including, but not limited to, the following:

(1) To assist one or more individuals with disabilities to improve their independence through the purchase of technology-related devices; and

(2) To assist one or more individuals with disabilities to become more independent members of the community and improve such individuals quality of life within the community through the purchase of technology-related devices.

(e) If there is a failure of the borrower to repay the loan balance due and owing, the board shall seek to recover the loan balance by such legal or administrative action available to it. Persons or representatives of persons who default on a loan are not eligible for a new loan. The board shall retain
ownership of all property, equipment, or devices until the borrower’s loan is paid in full.

(f) A new loan may not be issued to, or on behalf of, a disabled person if a previous loan made to, or on behalf of, such person remains unpaid.

(g) The board may charge a fee for loan applications and processing. All funds generated by fee charges shall be directly placed into the revolving loan fund to off-set the costs of application processing.

The board may accept federal funds granted by Congress or executive order for the purposes of this chapter as well as gifts and donations from individuals, private organizations, or foundations. The acceptance and use of federal funds does not commit state funds and does not place an obligation upon the Legislature to continue the purposes for which the federal funds are made available. All funds received in the manner described in this article shall be deposited in the revolving loan fund to be disbursed as other moneys in the revolving loan fund.

CHAPTER 106

(Com. Sub. for H. B. 4015 - By Delegates Howell, Criss, Hill, Hamrick, Statler, Queen, Blair, Summers, Sypolt, Moore and Storch)

[Passed March 7, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]
§5A-12-8, §5A-12-9, §5A-12-10, §5A-12-11, §5A-12-12, §5A-12-13 and §5A-12-14; to amend said code by adding thereto a new section, designated §12-6D-7; to amend and reenact §17A-3-23 of said code; to amend said code by adding thereto three new sections, designated §17A-3-25, §17A-3-26, and §17A-3-27; and to amend and reenact §29B-1-4 of said code, all relating to the management and inventory of vehicles owned, leased, operated, or acquired by the state and its agencies; authorizing establishment of aviation division within Department of Administration; establishing Fleet Management Division within Department of Administration; repealing provisions relating to the central motor pool; continuing management of state owned or leased aircraft through an Aviation Division; setting duties of Aviation Division; continuing Aviation Fund and authorizing administration by division director or secretary of Department of Administration; defining terms; setting scope of article and applicability to spending units; continuing Fleet Management Office as Fleet Management Division; setting duties and responsibilities of division; providing for the appointment of a division director; providing powers and duties of the division director; terminating the Fleet Management Office Fund; establishing the Fleet Management Division Fund; providing for transfer of funds from Fleet Management Office Fund to Fleet Management Division Fund; establishing rulemaking authority for division director; requiring proposal of certain legislative rules; setting requirements for operators of state vehicles; establishing duties and responsibilities of spending units with respect to state vehicles and equipment; requiring each spending unit designate a fleet coordinator; requiring spending unit provide name and contact information of fleet coordinator to division; setting requirements and responsibilities of fleet coordinators; requiring spending units use vehicle management services provided by division; authorizing certain exceptions; requiring annual reporting by spending units to division; requiring spending units maintain certain records; requiring division director establish complaint process for general public to report issues relevant to state vehicle fleet; requiring spending unit investigate complaints
received by division; requiring division prepare state vehicle fleet annual report; setting contents of annual report; providing for spot compliance audits by the State Auditor; requiring legislative compliance audit; directing Enterprise Resource Planning Board develop standard naming convention for state vehicle information in centralized accounting system; increasing number of state vehicles Attorney General may have without state license plate; changing colors of state license plates to gold with blue lettering effective January 1, 2019; authorizing Commissioner of the Division of Motor Vehicles to issue special plates to certain organizations and entities at no charge; authorizing inclusion of higher education institution logos on state license plates; requiring higher education institutions bear any additional costs of those features; prohibiting public service districts or designated nongovernmental institutional from being issued state license plate; directing commissioner of Division of Motor Vehicles develop and adopt standardized naming convention for title, registration and licensing of state vehicles; providing for expiration of green and white state license plates; requiring spending units obtain new state license plate prior to January 1, 2019; requiring affirmative statement from spending unit that vehicle is state asset recorded in central accounting system, and verification of same, prior to issuance of state license plate; providing license plates and registrations be valid for not more than 24 months; requiring renewal every two years; authorizing promulgation of emergency rules by commissioner; directing proposal of legislative and emergency rules to establish standardized naming conventions for state vehicle titles, licenses, and registrations; establishing process for spending unit to apply for and acquire new uniform vehicle title and registration plate; requiring updating of information in centralized accounting system following receipt of new title, registration and license plates; providing for a citation for vehicles with expired state license plate; requiring spending unit file report with division upon receipt of citation; directing compliance audit by Legislative Auditor
of Division of Motor Vehicles; exempting confidential information relating to certain vehicles from public disclosure under the Freedom of Information Act; authorizing rule-making; and requiring annual reports to the Governor and Legislature.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-2. Department of Administration and Office of Secretary; secretary; divisions; directors.

(a) The Department of Administration and the Office of Secretary of Administration are continued in the executive branch of state government. The secretary is the Chief Executive Officer of the department and shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the Governor.

(b) The Department of Administration may receive federal funds.

(c) The secretary serves at the will and pleasure of the Governor. The annual compensation of the secretary shall be as specified in §6-7-2a of this code.

(d) There shall be in the Department of Administration an Aviation Division, at the discretion of the secretary, a Finance Division, a Fleet Management Division, a General Services Division, an Information Services and Communications Division, Division of Personnel and a Purchasing Division. Each division shall be headed by a director who may also head any and all sections within that division and who shall be appointed by the secretary.

(e) There shall also be in the Department of Administration those agencies, boards, commissions and councils specified in §5F-2-1 of this code.
ARTICLE 3. PURCHASING DIVISION.

§5A-3-49. Central motor pool for state-owned vehicles and aircraft.

[Repealed]

§5A-3-52. Aviation division; fund.

(a) The secretary may establish an aviation division within the Department of Administration to:

(1) Manage all aircraft owned or possessed by the State of West Virginia or any of its departments, divisions, agencies, bureaus, boards, commissions, offices or authorities: Provided, That, such aircraft shall not be used for personal purposes;

(2) Administer the rules, including emergency rules, promulgated under the provisions of §5A-3-48 of this code;

and

(3) Perform any duties relating to aircraft owned or possessed by the State of West Virginia assigned by the secretary, which duties may include those set out in §5A-3-50 through §5A-3-53 of this code.

(b) The special revenue account, known as the Aviation Fund, is hereby continued and shall be administered by the director of the division, or in the absence of a director, by the secretary. Expenditures from this fund are authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon fulfillment of the provisions of §11B-2-1 et seq. of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and shall be used solely in a manner consistent with this article. All costs and expenses incurred pursuant to §5A-3-52 of this code, including administrative, shall be paid from
those funds. Charges for operating, repairing and servicing aircraft made against any institution, agency, or department shall be paid into the Aviation Fund by that institution, department, or agency.

ARTICLE 12. FLEET MANAGEMENT DIVISION.

§5A-12-1. Definitions.

As used in this article:

(a) “Central motor pool” means, under the direction and control of the Secretary of Administration, the group of state vehicles to be shared among spending units;

(b) “Centralized accounting system” means the system of record for the maintenance of an accurate inventory of state vehicle fixed assets as maintained by the Enterprise Resource Planning Board pursuant to §12-6D-1 et seq. of this code;

(c) “Director” means the Director of the Fleet Management Division;

(d) “Division” means the Fleet Management Division, under the Department of Administration, as established pursuant to this article;

(e) “Fleet Coordinator” means the head of a spending unit, or his or her designee, who is responsible for the duties of fleet coordinator as required by this article;

(f) “Indirect costs” means the expenses of operating state vehicles that may or may not be attributable to a specific vehicle, including miscellaneous expenses for cleaning supplies, shop supplies, small parts, office and administrative expenses attributable to fleet coordinator activity, training costs for fleet coordinators and state vehicle driver training, facilities costs, administrative office overhead, parking costs, and shop equipment costs where applicable;
(g) “Secretary” means the Secretary of the Department of Administration;

(h) “Spending unit” means the State of West Virginia and all agencies, offices, departments, divisions, boards, commissions, councils, committees, or other entities of the state government for which an appropriation is requested or to which an appropriation is made by the Legislature. “Spending unit” does not mean any county, city, township, public service district, or other political subdivision of the state;

(i) “State vehicle” means, for the purpose of this article, a vehicle with a rating of one ton or less that is owned, purchased, or leased by any state spending unit, on which a state vehicle license plate is required, where the use of such vehicle is paid for with public funds regardless of the source of such funding, but does not include all-terrain vehicles (ATVs) or vehicles requiring a commercial driver’s license to operate;

(j) “State vehicle fleet” means all state vehicles;

(k) “State vehicle license plate” means a license plate authorized to be issued by the Division of Motor Vehicles pursuant to §17A-3-23 and §17A-3-25 of this code, which identifies the vehicle as owned or leased by the state or a spending unit;

(l) “State Vehicle Title, Registration and Relicensing Project of 2018” means the requirement for all spending units owning or leasing state vehicles, to report to the Division of Motor Vehicles and obtain new titles, new registration cards and new state vehicle license plates by December 31, 2018, pursuant to §17A-3-23 and §17A-3-25 of this code, to standardize the naming conventions on titles and registration cards of state vehicles in order to facilitate the creation and maintenance of a centralized state vehicle inventory system; and
(m) “Vehicle log” means the record of state vehicle use, to be updated by the vehicle operator and maintained by the fleet coordinators, used to track vehicle utilization data required to be compiled and maintained pursuant to this article.

§5A-12-2. Scope of Article.

(a) This article applies to all spending units of state government relating to the purchase, lease, or use of any state vehicle with the expenditure of public funds, except as otherwise provided by this code.

(b) Notwithstanding any exemption given to a spending unit by this code from the provisions of §5A-3-1 et seq. of this code or any prior exemption granted administratively from the Fleet Management Division or the Fleet Management Office, each spending unit of the state that owns, leases, purchases, or reimburses for personal vehicle use, shall comply with the reporting provisions of this article.

§5A-12-3. Fleet Management Division created; director; duties and responsibilities.

(a) The Fleet Management Office, as previously authorized pursuant to §5A-1-2 and §5A-3-52 of this code, is hereby continued in the Department of Administration as the Fleet Management Division for the purpose of maintaining a state vehicle fleet.

(b) The Division shall have the following duties and responsibilities:

(1) To provide or contract for management services, including fueling and vehicle maintenance, and any other services necessary to properly manage the operation and use of state vehicles;
(2) To preapprove and assist with purchase of new or replacement vehicles for agencies including facilitating financing arrangements;

(3) To maintain a state vehicle fleet for all state vehicles owned or leased by the State of West Virginia or any of its spending units;

(4) To charge a fee for division services by spending units utilizing state vehicles;

(5) To provide training and notice to fleet coordinators and spending units concerning the duties and responsibilities under this article, including any requirements related to the State Vehicle Title, Registration and Relicensing Project of 2018, established pursuant to §17A-3-25 of this code;

(6) To develop safe operation and other policies governing state vehicle use;

(7) To propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code;

(8) Report annually to the Governor and to the Joint Committee on Government and Finance, regarding the operations of the state fleet and the utilization of state vehicles;

(9) To develop and maintain, in cooperation with the Travel Management Office, state policies for the utilization of state vehicles, including establishing best practices for state vehicle use; and

(10) To provide assistance upon request to any spending unit related to financing, purchasing, leasing, operating, maintaining, transferring, and decommissioning state vehicles.

(c) The secretary shall appoint a director of the division, who shall:
(1) Employ such staff as needed to effectuate the provisions of this article;

(2) Maintain adequate office space for staff and equipment as needed to effectuate the provisions of this article; and

(3) Under the direction of the secretary, establish a central motor pool, which shall be maintained and administered by the division, subject to such rules as the director may promulgate: Provided, That the division is responsible for the storage, maintenance, and repairs of all vehicles assigned to the central motor pool.

§5A-12-4. Fleet Management Division Fund.

The special revenue account, known as the “Fleet Management Office Fund”, previously created by §5A-3-52 of this code, shall terminate effective July 1, 2018. On and after July 1, 2018, all funds previously belonging to the Fleet Management Office Fund shall transfer to the special revenue account which shall be known as the “Fleet Management Division Fund” which shall be created in the State Treasury, and shall be administered by the director. Expenditures are authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with §12-3-1 et seq. of this code and upon fulfillment of the requirements of §11B-2-1 et seq. of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and may be used solely in a manner consistent with this article.

§5A-12-5. Rule-making authority; emergency rules.

(a) The director shall propose legislative rules as may be necessary to implement this article, in accordance with §29A-3-1 et seq. of this code. Those rules shall include, but not be limited to:
(1) Requirements governing the use of state vehicles;

(2) Reporting requirements and responsibilities for fleet coordinators;

(3) Requirements and responsibilities for each driver or operator of a state vehicle;

(4) Information to be collected and maintained on state vehicle log sheets, including information related to mileage, destinations, and purpose of trip;

(5) The form and manner for each spending unit fleet coordinator to report to the division, including any electronic format as deemed necessary by the director;

(6) The information that each spending unit fleet coordinator shall collect and maintain regarding state vehicle use by the spending unit;

(7) The information for spending unit fleet coordinators to annually report to the division regarding state vehicle use;

(8) Requirements and policies governing commuting in and taking home state vehicles; and

(9) Requirements and policies governing volunteer and non-public employee drivers.

(b) All rules of the Fleet Management Office in effect on the effective date of this article shall remain in effect until they are amended, replaced, or repealed: Provided, That these rules shall expire on July 1, 2021, if not sooner superseded.

(c) On or before June 15, 2018, the director shall propose emergency legislative rules which may amend or modify existing legislative rules governing the use of state vehicles pursuant to §5A-12-1 et seq. of this code to implement the provisions of this article.
§5A-12-6. Vehicle operator regulations; training.

(a) Each operator of a state vehicle, or a personal vehicle for which reimbursement is sought, shall maintain the vehicle logs to the level of detail required by the division through legislative rules, and as may be required by the spending unit.

(b) Each operator of a state vehicle shall comply with the laws, rules, and policies governing state vehicle use, including spending unit rules and policies.

(c) Prior to operating a state vehicle, each operator shall be required to take such training courses as may be required by the Board of Risk and Insurance Management, the Travel Management Office, the Fleet Management Division, and the spending unit.

(d) If any public employee or public official fails to comply with any rule or regulation for state vehicle use, the spending unit may require that the individual attend training, be restricted from using state vehicles, or be prohibited from using state vehicles: Provided, That nothing in this section authorizes the division to restrict the use of state vehicles except for those employees under its control.

§5A-12-7. Spending unit duties and responsibilities.

(a) Every spending unit shall report all vehicles and equipment requiring a state license plate, including those vehicles with a rating of more than one ton, those requiring a commercial driver’s license to operate, and all-terrain vehicles, as fixed assets in the centralized accounting system maintained by the Enterprise Resource Planning Board.

(b) Every spending unit that owns state vehicles shall annually affirm to the State Agency for Surplus Property on or before July 15 of each year, that the vehicles and assets
reported to the centralized accounting system as required by §5A-12-7(a) of this code are accurate and current.

§5A-12-8. Fleet coordinators.

(a) Each spending unit shall name a fleet coordinator, who shall be responsible for the management and maintenance of state vehicle information, and for reporting state vehicle utilization reports to the division as required by this article and legislative rules promulgated pursuant thereto.

(b) Each spending unit shall provide to the division the name and contact information for the spending unit fleet coordinator.

(c) Each fleet coordinator is required to attend the Fleet Coordinator training provided by the Fleet Management Division.

(d) Each fleet coordinator shall be responsible for providing adequate training to each operator of a state vehicle within his or her spending unit.

§5A-12-9. Utilization of Vehicle Management Services; exemption.

(a) Each spending unit that owns, uses, or maintains a state vehicle shall utilize the vehicle management services provided by the Fleet Management Division for all state vehicles.

(b) Spending units may request an exemption from part or all of the services provided by the Fleet Management Division. The division shall review each request and may recommend approval of the request by the secretary. The division shall submit a legislative rule identifying each spending unit for which an exemption has been approved, which rule shall further state the nature of the proposed exemption, and which services will be used, as well as the manner in which the spending unit will comply with all other requirements of this article, including the
requirements to report certain information to the division:  
Provided, That no request for exemption pursuant to this section shall become effective without the enactment of a legislative rule pursuant to the provisions of §29A-3-1 et seq. of this code.

§5A-12-10. Annual reports by spending units.

(a) Each spending unit that owns or operates a state vehicle, rents vehicles for a state purpose, or reimburses for personal vehicle use, shall annually report the Fleet Management Division, beginning on or before October 31, 2018, and on or before October 31 each year thereafter, in the manner required by this article and by legislative rule.

(b) Each spending unit that owns or leases a state vehicle or rents or reimburses an employee for personal vehicle use, shall periodically compile and maintain the individual specific vehicle records of each state vehicle, and all records of vehicle rental and private vehicle use expenditures, for not less than three years, or as may be required by the division or the State Auditor pursuant to §5A-12-13 of this code.

§5A-12-11. Complaint process.

(a) The director shall provide a complaint process for use by the general public to report to the division issues relevant to the operation and maintenance of a state vehicle fleet. Complaints may be received by the division in writing, by telephone, or electronically: Provided, That the division shall review all complaints weekly, and report to the appropriate spending unit the information regarding the state vehicle in use by the spending unit, and shall describe the nature of the complaint, including, but not limited to mechanical problems, equipment failures, misuse, or illegal operation of a state vehicle.

(b) Each spending unit shall investigate each complaint it receives and provide an update to the division on a regular basis and at the conclusion of the investigation.
§5A-12-12. State vehicle fleet annual report.

(a) The Fleet Management Division shall maintain sufficient records and fleet coordinator reports to produce a State Vehicle Fleet Annual Report, regarding the maintenance and operation of the state vehicle fleet.

(b) On or before December 31, 2019 and each December 31 thereafter, the division shall submit the State Vehicle Fleet Annual Report to the Governor, and to the Joint Committee on Government and Finance, containing, at a minimum:

1. The total number of state vehicles;
2. The total number of vehicles operated by each spending unit;
3. The total number of state vehicle miles driven, both in the aggregate and by spending unit;
4. The total amount of fuel purchased, and the total expenditures for annual maintenance, repair, fuel expenditures, both in the aggregate and by spending unit;
5. The total number of miles reimbursed for personal vehicle use and the amount reimbursed annually, both in the aggregate and by spending unit;
6. The total number of vehicles owned and operated by the division, including information on the total miles driven, and the annual expenditures for maintenance, repair, and fuel;
7. The total annual indirect costs of operating the state vehicle fleet, both in the aggregate and by spending unit;
8. A summary of complaints received concerning state vehicle usage;
9. A summary of the State Auditor’s spot compliance audit report authorized pursuant to §5A-12-13 of this code;
(10) The operating revenue and expenses of the division; and

(11) Recommendations for any policy or statutory changes the director determines may be necessary to maintain accurate records of the state vehicle fleet, utilization of state vehicles, and the expenses necessary to maintain such vehicle fleet.

(c) An annual report produced in an electronic format complies with the reporting requirements of this article and shall be made available on the division website: Provided, That the division shall redact any personally identifiable or confidential information.

§5A-12-13. Spot compliance audits by the State Auditor.

(a) Beginning July 1, 2019, the State Auditor shall conduct spot compliance audits to monitor operator, spending unit, and fleet coordinator records and reports for accuracy and compliance with the record keeping provisions of this article. The State Auditor shall conduct a spot compliance audit on not less than 20 percent of the state vehicle fleet annually, in order to conduct spot compliance audits of all state vehicle records on a five-year cycle.

(b) A spending unit found to be noncompliant with the recordkeeping provisions of this article may be subject to further compliance monitoring as the State Auditor and director deem necessary.

(c) The State Auditor shall report to the division the findings of each spot compliance audit. Such reports shall list the spending units and fleet coordinators audited, and verify:

(1) That state vehicle drivers of the spending unit have complied with applicable training requirements and are keeping complete and accurate vehicle logs;
(2) That spending unit fleet coordinators have attended training, and are compiling and maintaining the state vehicle records required by this article; and

(3) The accuracy of fleet coordinator reporting in the manner consistent with the provisions of this article.

§5A-12-14. Legislative compliance audit.

On or before December 31, 2020, the Legislative Auditor, in accordance with §4-10-1 et seq. of this code, shall audit the division for state spending unit and fleet coordinator compliance with the reporting requirements and applicable provisions of this article. Such audit shall also include an evaluation of the data collected by the division to determine if the data being provided to the division in spending unit annual reports are sufficient to evaluate the state costs of owning, maintaining, and leasing state vehicles, and to evaluate vehicle use and expenditure trends among the spending units.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6D. WEST VIRGINIA ENTERPRISE RESOURCE PLANNING BOARD.

§12-6D-7. Establishing state vehicle fixed assets record keeping.

The West Virginia Enterprise Resource Planning Board shall, after consulting with the Fleet Management Division, established pursuant to §5A-12-1 et seq. of this code, and the Division of Motor Vehicles, pursuant to the authority in §17A-3-25, develop standard naming conventions for the title, registration, and other fixed asset information to be used in the identification of state vehicles in the system of record for fixed assets, and shall also designate the information to be entered by spending units into the centralized accounting system maintained by the West Virginia Enterprise Resource Planning Board, for the
development and maintenance of an accurate and updated state vehicle inventory.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

(a) Any motor vehicle designed to carry passengers, owned or leased by the state of West Virginia, or any of its departments, bureaus, commissions, or institutions, except vehicles used by the Governor, Treasurer, not to exceed 8 vehicles operated by investigators of the Office of the Attorney General, three vehicles per elected office of the Board of Public Works not otherwise specified, vehicles operated by the State Police, not to exceed five vehicles operated by the office of the Secretary of Military Affairs and Public Safety, not to exceed five vehicles operated by the Division of Homeland Security and Emergency Management, vehicles operated by natural resources police officers of the Division of Natural Resources, not to exceed 10 vehicles operated by the arson investigators of the Office of State Fire Marshal, not to exceed two vehicles operated by the Division of Protective Services, not to exceed 16 vehicles operated by inspectors of the Office of the Alcohol Beverage Control Commissioner, vehicles operated by the West Virginia Wing of the Civil Air Patrol, and vehicles operated by probation officers employed under the Supreme Court of Appeals may not be operated or driven by any person unless it has displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words “West Virginia” in one line
and the words “State Car” in another line, and the lettering for the words “State Car” shall be of sufficient size to be plainly readable from a distance of 100 feet during daylight: Provided, That beginning January 1, 2019, state vehicle license plates shall be gold with blue lettering.

The vehicle shall also have attached to the rear a plate bearing a number and any other words and figures as the Commissioner of Motor Vehicles shall prescribe. The rear plate shall also be green with the number in white: Provided, That beginning January 1, 2019, state vehicle license plates shall be gold with blue lettering.

(b) Registration plates issued to vehicles owned by counties shall be white on red with the word “County” on top of the plate and the words “West Virginia” on the bottom.

c) Registration plates issued to a city or municipality shall be white on blue with the word “City” on top and the words “West Virginia” on the bottom.

d) Registration plates issued to a city or municipality law-enforcement department shall include blue lettering on a white background with the words “West Virginia” on top of the plate and shall be further designed by the commissioner to include a law-enforcement shield together with other insignia or lettering sufficient to identify the motor vehicle as a municipal law-enforcement department motor vehicle. The colors may not be reversed and shall be of reflectorized material. The registration plates issued to counties, municipalities, and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of the vehicles.

e) (1) Registration plates issued to vehicles operated by county sheriffs shall be designed by the commissioner in cooperation with the sheriffs’ association with the word “Sheriff” on top of the plate and the words “West Virginia” on the bottom. The plate shall contain a gold shield.
representing the sheriff’s star and a number assigned to that plate by the commissioner. Every county sheriff shall provide the commissioner with a list of vehicles operated by the sheriff, unless otherwise provided in this section, and a fee of $10 for each vehicle submitted by July 1, 2002.

(2) Registration plates issued to vehicles operated by the West Virginia Wing of the Civil Air Patrol shall be designed by the commissioner in cooperation with the Civil Air Patrol and include the words “Civil Air Patrol” on the plate. The Civil Air Patrol shall provide the commissioner with a list of vehicles operated by the Civil Air Patrol, unless otherwise provided in this section, and a fee of $10 for each new vehicle for which a Civil Air Patrol license plate is requested.

(f) The commissioner is authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency or non-state government entity entitled to registration plates at no charge in accordance with the motor vehicle laws: Provided, That where the institutions of higher education opt to have their logo displayed on the state license plate, such institution shall bear any additional costs of those added features: Provided, however, That no public service districts or designated nongovernmental organizations shall be issued a license plate designated for vehicles owned or leased by the state of West Virginia, or any of its departments, bureaus, commissions, or institutions.

(g) Upon application, the commissioner is authorized to issue a maximum of five Class A license plates per applicant to be used by county sheriffs and municipalities on law-enforcement vehicles while engaged in undercover investigations.

(h) The commissioner is authorized to issue a maximum of five Class A license plates to be used on vehicles assigned to the Division of Motor Vehicles investigators for commercial driver examination fraud investigation and
(i) The commissioner is authorized to issue an unlimited number of license plates per applicant to authorized drug and violent crime task forces in the state of West Virginia when the chairperson of the control group of a drug and violent crime task force signs a written affidavit stating that the vehicle or vehicles for which the plates are being requested will be used only for official undercover work conducted by a drug and violent crime task force.

(j) The commissioner is authorized to issue 20 Class A license plates to the Criminal Investigation Division of the Department of Revenue for use by its investigators.

(k) The commissioner may issue a maximum of 10 Class A license plates to the Division of Natural Resources for use by natural resources police officers. The commissioner shall designate the color and design of the registration plates to be displayed on the front and the rear of all other state-owned vehicles owned by the Division of Natural Resources and operated by natural resources police officers.

(l) The commissioner is authorized to issue an unlimited number of Class A license plates to the Commission on Special Investigations for state-owned vehicles used for official undercover work conducted by the Commission on Special Investigations.

(m) The commissioner is authorized to issue a maximum of two Class A plates to the Division of Protective Services for state-owned vehicles used by the Division of Protective Services in fulfilling its mission.

(n) The commissioner is authorized to issue Class A registration plates for vehicles used by the Medicaid Fraud Control Unit created by §9-7-7 of this code.
(o) The commissioner is authorized to issue Class A registration plates for vehicles used by the West Virginia Insurance Fraud Unit created by §33-41-8 of this code.

(p) No other registration plate may be issued for, or attached to, any state-owned vehicle.

(q) The Commissioner of Motor Vehicles shall have a sufficient number of both front and rear plates produced to attach to all state-owned or leased vehicles.

(r) The commissioner shall, after consultation with the Fleet Management Division established pursuant to §5A-12-1 et seq. of this code and the Enterprise Resource Planning Board established pursuant to §12-6D-1 et seq. of this code, develop and adopt a standardized naming convention for the title, registration, and licensing of state vehicles, pursuant to §17A-3-23 and §7A-3-25 of this code. The naming convention adopted shall be consistent with the naming convention adopted for the centralized accounting system as maintained by the Enterprise Resource Planning Board for the purpose of creating and maintaining an accurate and up to date inventory of the state vehicle fleet.

(s) It is the duty of each office, department, bureau, commission, or institution furnished any vehicle to have plates as described herein affixed thereto prior to the operation of the vehicle by any official or employee.

(t) The commissioner may issue special registration plates for motor vehicles titled in the name of the Division of Public Transit or in the name of a public transit authority as defined in this subsection and operated by a public transit authority or a public transit provider to transport persons in the public interest. For purposes of this subsection, “public transit authority” means an urban mass transportation authority created pursuant to §8-27-1 et seq. of this code or a nonprofit entity exempt from federal and state income taxes under the Internal Revenue Code and whose purpose is to provide mass transportation to the public at large. The
special registration plate shall be designed by the commissioner and shall display the words “public transit” or words or letters of similar effect to indicate the public purpose of the use of the vehicle. The special registration plate shall be issued without charge.

(u) Each green registration plate with white letters affixed to a state vehicle, and each corresponding title and registration certificate for all state vehicles, other than those vehicles with Class A registration plates as provided in this section, terminates at midnight on December 31, 2018. Each spending unit assigned a state vehicle that is required to display a state vehicle license plate and registration shall obtain a new title, new registration card, and new state vehicle license plate prior to January 1, 2019: Provided, that no state vehicle license plate shall be issued unless the spending unit has provided an affirmative statement under penalty of perjury that the vehicle is a state asset recorded in the central accounting system as maintained by the Enterprise Resource Planning Board, and the same has been verified by the commissioner, as required by §17A-3-25 of this code. When new registrations are issued pursuant to this article and for subsequent, non-Class A registrations of state owned or leased vehicles, the state vehicle registration plate and certificate shall be valid for a period of not more than 24 months and shall be required to be renewed every two years.

(v) The commissioner is authorized to prepare and promulgate emergency rules, pursuant to §29A-3-1 et seq. of this code in order to implement amendments to this section.

(w) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $100. Magistrates have concurrent jurisdiction with circuit courts for the enforcement of this section.
§17A-3-25. State vehicle title, registration and relicensing project of 2018; emergency and legislative rules.

(a) On or before July 1, 2018, the commissioner shall coordinate with the Fleet Management Division established pursuant to §5A-12-1 et seq. of this code and the Enterprise Resource Planning Board established pursuant to §12-6D-1 et seq. of this code and other applicable agencies, to develop a standardized titling and registration system for state vehicles. To the extent practicable, the standardization of vehicle title, registration, and state vehicle license plates shall conform to the state’s central accounting system maintained by the Enterprise Resource Planning Board. The standardization of state vehicle titles, registrations, and license plates, as described in this section, shall be known as the “State Vehicle Title, Registration, and Relicensing Project of 2018.” Every spending unit shall comply with the provisions of this section, and §17A-3-23 of this code.

(b) The commissioner, in coordination with the Fleet Management Division, shall develop a standard system for identifying and recording the names of agencies, offices, or spending units to which each state vehicle is assigned, or registered, and such standard naming conventions shall be developed to align with the state’s central accounting system, and the centralized state vehicle inventory system. The commissioner shall propose legislative and emergency rules, pursuant to §29A-3-1 et seq. of this code, establishing those standard naming conventions for the registration, titling, and licensing of every state vehicle, and assigning by rule a list of the standardized naming conventions for each spending unit for the purpose of issuing new title, registration, and license plates to each state vehicle by December 31, 2018.

(c) Once the commissioner has promulgated legislative and emergency rules as authorized pursuant to subsection (b) of this section, and not later than September 1, 2018, the division shall begin to issue the standardized title, registration, and state vehicle license plates for all state vehicles.
(d) Any spending unit applying to license or relicense a state vehicle pursuant to this section shall include with the application an affirmative statement under the penalty of perjury that the vehicle is a state asset recorded in the central accounting system as maintained by the Enterprise Resource Planning Board before the commissioner is required to issue any motor vehicle registration plates: Provided, That for leased vehicles, the spending unit shall affirm to the commissioner that the vehicle is leased and not required to be recorded in the state central accounting system.

(e) The commissioner shall confirm that each vehicle for which an agency applies for a license, title, or registration is properly listed within the centralized accounting system as being a vehicle owned by a state agency before processing the application.

(f) The commissioner is authorized, by legislative and emergency rule, to establish a procedure whereby the commissioner shall reject the application for a state vehicle title, registration and state vehicle license plate if that application does not conform to the standard naming convention requirements. The commissioner shall provide by rule for the reasonable remedy, correcting of errors, or to compel compliance with the standard naming conventions.

(g) At midnight on December 31, 2018, all green state vehicle license plates with white lettering affixed to vehicles shall expire. The commissioner, in coordination with the Fleet Management Division, shall provide notice to each spending unit, and advertise as deemed appropriate, to inform the fleet coordinators, as defined in §5A-12-3 of this code, that such license plates expire and the procedure for being issued new titles, registrations, and license plates pursuant to this article. The head of each spending unit with state vehicles shall cooperate and comply with the requirements of the State Vehicle Title, Registration, and Relicensing Project of 2018, and the centralized accounting system.
(h) Upon receipt of the new title, registration, and license plates, each spending unit shall enter the appropriate information into the state’s central accounting system maintained by the Enterprise Resource Planning Board, in such detail and specificity as required by the board, the Fleet Management Division established pursuant to §5A-12-1 et seq. of this code.

§17A-3-26. Enforcement; report.

(a) Beginning January 1, 2019, any state vehicle in this state with a green state license plate with white lettering is in violation of this article.

(b) After January 1, 2019, any law-enforcement officer who discovers a state vehicle with an expired state vehicle license plate shall issue a citation with a penalty of $100 per violation. Upon payment of such penalty, notwithstanding court costs, the clerk of the court shall remit the amount of the penalty to the law-enforcement agency having brought the charge before the court.

(c) Any spending unit issued a citation pursuant to this section shall file a report with the Fleet Management Division within 30 days of the citation and describe the state vehicle by the vehicle identification number, the make, model, and year of the vehicle, the state vehicle license plate, and the date on which the license plate was renewed.

§17A-3-27. Compliance audit.

On or before December 31, 2019, the Legislative Auditor, in accordance with §4-10-1 et seq. of this code, shall audit the Division of Motor Vehicles for compliance with the State Vehicle Title, Registration, and Relicensing Project of 2018. The Legislative Auditor may make recommendations for future compliance monitoring of any spending unit found not in compliance with the project and make such recommendations for administrative penalties for noncompliance with the project.
CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

*§29B-1-4. Exemptions.

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical, or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: Provided, That this article does not preclude an individual from inspecting or copying his or her own personal, medical, or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(4) (A) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

*NOTE: This section was also amended by H. B. 2982 (Chapter 104), which passed subsequent to this act.
(B) Records identifying motor vehicles used, and the agencies using them, for undercover investigation activities conducted by state law-enforcement agencies or other agencies that are authorized by this code to use undercover or unmarked vehicles;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or, manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological, and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document, or manuscript;

(7) Information contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body;

(9) Records assembled, prepared, or maintained to prevent, mitigate, or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases, and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and
international law-enforcement agencies, state and local law-enforcement, and other agencies within the Department of Military Affairs and Public Safety;

National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

Computing, telecommunications, and network security records, passwords, security codes, or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

Security or disaster recovery plans, risk assessments, tests, or the results of those tests;

Architectural or infrastructure designs, maps, or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

Specific engineering plans and descriptions of existing public utility plants and equipment;

Customer proprietary network information of other telecommunications carriers, equipment manufacturers, and individual customers, consistent with 47 U.S.C. §222;

Records of the Division of Corrections, Regional Jail and Correctional Facility Authority, and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of
personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident, or to facility personnel;

(20) Information related to applications under §61-7-4 of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: Provided, That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: Provided, however, That information or other records exempted under this subdivision may be disclosed to a law-enforcement agency or officer: (i) To determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes; and

(21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, “personal information” means a law-enforcement officer’s social security number, health information, home address, personal address, personal telephone numbers, and personal email addresses, and those of his or her spouse, parents, and children, as well as the names of the law-enforcement officer’s spouse, parents, and children.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of government by intimidation or coercion;

(3) Affect the conduct of a branch or level of government by intimidation or coercion; or
(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

CHAPTER 107

(Com. Sub. for H. B. 4338 - By Delegates Fast, R. Miller, Hanshaw, Shott, Eldridge, Robinson, Lovejoy, Lane, Williams, Isner and Foster)

[By Request of the Department of Military Affairs and Public Safety]

[Passed March 10, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 27, 2018.]

and §62-12-25 of said code; to repeal §62-13-3, §62-13-4, §62-13-5, and §62-13-6a of said code; to amend and reenact §6-7-2a of said code; to amend said code by adding thereto a new chapter, designated §15A-1-1, §15A-1-2, §15A-1-3, §15A-1-4, §15A-1-5, §15A-1-6, §15A-2-1, §15A-2-2, §15A-2-3, §15A-3-1, §15A-3-2, §15A-3-3, §15A-3-4, §15A-3-5, §15A-3-6, §15A-3-7, §15A-3-8, §15A-3-9, §15A-3-10, §15A-3-11, §15A-3-12, §15A-3-13, §15A-3-14, §15A-3-15, §15A-3-16, §15A-3-17, §15A-3-18, §15A-4-1, §15A-4-2, §15A-4-3, §15A-4-4, §15A-4-5, §15A-4-6, §15A-4-7, §15A-4-8, §15A-4-9, §15A-4-10, §15A-4-11, §15A-4-12, §15A-4-13, §15A-4-14, §15A-4-15, §15A-4-16, §15A-4-17, §15A-4-18, §15A-4-19, §15A-4-20, §15A-4-21, §15A-5-1, §15A-5-2, §15A-5-3, §15A-5-4, §15A-5-5, §15A-5-6, §15A-5-7, §15A-5-8, §15A-5-9, §15A-6-1, §15A-6-2, §15A-6-3, §15A-6-4, §15A-6-5, §15A-7-1, §15A-7-2, §15A-7-3, §15A-7-4, §15A-7-5, §15A-7-6, §15A-8-1, §15A-8-2, and §15A-8-3; to amend and reenact §19-12A-5 of said code; and to amend and reenact §50-3-2 and §50-3-4a of said code, all relating generally to supervision of persons committed to the custody of the Division of Corrections, Division of Juvenile Services, and the Regional Jail and Correctional Facility Authority; setting forth rules of construction; defining terms; creating Division of Administrative Services within Department of Military Affairs and Public Safety; defining scope of duties for Division of Administrative Services; authorizing appointment of director; setting qualifications for director; providing authority and duties for director; authorizing director to enter into memorandum of understanding with certain agencies to provide services; transferring certain employees, responsibilities, equipment and records to Division of Administrative Services; providing for classified service coverage for certain employees; creating Division of Corrections and Rehabilitation within Department of Military Affairs and Public Safety; eliminating Division of Corrections and Division of Juvenile Services and transferring powers and authority to Division of Corrections and Rehabilitation; transferring certain powers and authority of Regional Jail and Correctional Facility Authority to Division of Corrections and
Rehabilitation; setting forth purpose and legislative intent; requiring chapter be construed in favor of public safety; authorizing appointment of commissioner of Division of Corrections and Rehabilitation; requiring commissioner subscribe to oath and execute bond; abolishing office of Commissioner of Division of Corrections, Director of Juvenile Services, and Executive Director of Regional Jail and Correctional Facility Authority; vesting powers of abolished offices in office of commissioner of Division of Corrections and Rehabilitation; setting salary for commissioner; setting requirements for commissioner; setting powers and duties of commissioner; providing for the hiring of officers and employees of corrections institutions; providing authority for commissioner or designee to manage and administer certain affairs of correctional units and juvenile facilities under the division’s jurisdiction; providing powers of superintendents of institutions or correctional units; requiring commissioner to investigate complaints made against superintendents or employees of institutions; requiring preemployment drug screening of prospective correctional employees; providing authority for superintendent and commissioner over employees; providing exceptions; authorizing hiring of correctional officer employees without regard to position on register; providing for compensation of employees; providing for reimbursement or provision of traveling and other expenses under certain circumstances; providing for certain reporting by commissioner and chief officers of institutions to State Auditor; prohibiting special compensation of officers and employees; providing penalties for violations of provision; setting forth certain law-enforcement powers of employees; establishing Corrections Special Operations Team; authorizing commissioner to prescribe design of employee uniforms; providing limitations on commissioner and municipalities with respect to uniform design; establishing criminal penalties for wearing or using uniform, badge, identification card or insignia with intent to deceive; establishing criminal penalty for falsely representing oneself as officer or employee of division; establishing criminal penalty for employee using position to threaten or coerce any
other person to receive benefit; providing exceptions; identifying institutions to be managed by commissioner; authorizing certain contracts; authorizing the establishment of certain work and study release units; authorizing contract with nonprofit or charitable entities; setting terms of placing person in half-way house or transitional housing facility; placing adult persons sentenced to incarceration under the jurisdiction of the commissioner in the custody of the commissioner; authorizing transfer of adult inmates among institutions; granting contracting authority to commissioner for county jails or other incarceration facilities; directing establishment of a per diem rate for felony sentenced inmates; authorizing transfer of mentally disturbed adult prisoners or inmates; directing commissioner evaluate all facilities for most appropriate space to house each type of inmate; requiring consultation with Juvenile Justice Commission regarding current or prospective juvenile facilities; requiring report on evaluation to Joint Committee on Government and Finance; prohibiting conversion of juvenile facilities to adult facilities or adult facilities to juvenile facilities absent legislative authorization; vesting title to certain properties in the state; making commissioner custodian of deeds; authorizing lease of West Virginia penitentiary in Moundsville, subject to certain conditions, with approval of secretary of Military Affairs and Public Safety; exempting division from purchasing; providing procedures to be followed when purchasing is done by division; providing conditions for emergency purchasing; authorizing certain agreements with medical schools and higher education institutions; authorizing mutual aid agreements, subject to certain conditions, with approval of secretary of Military Affairs and Public Safety; continuing certain funds from Regional Jail and Correctional Facility Authority; providing for transfer of fund administration from Regional Jail and Correctional Facility Authority or its executive director; limiting use of jail funds to certain operations and expenses; authorizing investment under certain circumstances; identifying contents of funds; authorizing certain expenditures of funds; requiring incarceration of persons by counties in jail facilities; providing exceptions;
clarifying authority of circuit and magistrate courts with respect to detention and commitment; requiring payment by county or municipality for per-day cost of incarceration; providing for establishment of per-day cost; capping per-day cost for a period of time; providing conditions for calculating per-day cost; establishing period of time for which county is responsible for costs of housing and maintaining inmates in its facilities; directing preparation of a report on feasibility of phasing out per diem charges; directing contents of report; continuing Jail Operations Partial Reimbursement Fund; establishing source of revenues; providing for use of funds; providing for administration of fund; granting rule-making authority; granting authority to develop policies; continuing legislative rules and policies of former Division of Corrections, Division of Juvenile Services, and Regional Jail and Correctional Facility Authority; authorizing furlough programs; authorizing rule-making; providing certain parameters for furlough program; granting immunity, with certain limitations, to certain persons and entities for claims arising out of furlough program; authorizing electronic monitoring; requiring commissioner charge reasonable fee; providing exceptions; providing for deposit and use of fees; setting parameters for electronic devices; authorizing continuation and establishment of diagnostic and classification subdivisions; requiring all persons committed to the custody of the division to undergo diagnosis and classification; requiring division perform mental health preliminary screenings; authorizing commissioner to transfer inmates; providing conditions for transfer under certain circumstances; authorizing monitoring of inmate telephone calls, inmate mail, and inmate electronic correspondence; requiring notice to inmates of monitoring; providing procedures for and restrictions on monitoring; excepting communications to or from attorneys; requiring promulgation of policy directive establishing record-keeping procedures; providing for use of records when inmate is charged with crimes based on conversations; authorizing establishment of trustee accounts; providing for handling of money and personal property of inmates or residents; requiring certain
incarcerated offenders make reimbursement toward cost of incarceration; requiring certain reports concerning the average cost per inmate; authorizing facility superintendent expend up to one half of inmate’s money to satisfy certain obligations; providing for distribution of funds upon inmate departure or death; providing for notice of credit of money credited to former inmate or resident under certain circumstances; directing establishment of inmate or resident benefit funds for each institution; requiring reports on inmate benefit funds; continuing special revenue account; identifying sources of moneys for inmate or resident benefit funds; providing for use of funds in inmate or resident benefit funds; requiring division assist inmates in developing financial plans to meet any child support obligations; directing deduction by superintendent from inmate earnings for all legitimate court-ordered financial obligations; providing for civil judgments awarded to inmate to be subject to deductions for child support, restitution or other court-ordered obligations; directing investment of remaining funds with Municipal Bond Commission; limiting reimbursement rate to medical service providers for services outside division facilities; authorizing assessment of certain reasonable charges against inmates for certain services provided by the state; providing exceptions to authority to assess charges; authorizing interpretive rules; directing preparation and preservation of records for indictment and conviction, or charges and adjudication, and a register containing certain information; authorizing establishment of plant for the manufacture of license plates, road signs, or markers; making it unlawful for state employee or official to obtain license plates, road signs, or markers other than through plant; prohibiting certain persons from making gifts to or receiving gifts from inmates or residents; directing commissioner promulgate disciplinary rules and policies; setting penalties for violations; requiring commutation of certain sentences for good conduct; providing exceptions; setting conditions and procedures for commutation of sentences; authorizing Governor to authorize commissioner to consent to transfer or exchange of inmates in his or her custody in accordance with treaty between United States and
a foreign country; providing for handling of mentally ill patients; disallowing mentally ill patients being denied parole or a parole hearing based upon condition; providing for facts to be presented to superintendent if convicted person is believed to be mentally ill, intellectually disabled, or addicted; providing for application of transfer to be filed; providing for appointment of special counsel for convict who is indigent; providing for notice to convicted person; setting forth process after application for transfer is filed; authorizing establishment of work program for qualified inmates; setting conditions on work program; providing immunity for certain persons and entities; authorizing employment of Director of Employment and Director of Housing for released inmates; setting authority and duties of directors; directing commissioner establish Bureau of Prisons and Jails; directing appointment of assistant commissioner to oversee Bureau of Prisons and Jails; transferring duties and funds of Division of Corrections to Bureau of Prisons and Jails; directing appointment of superintendents for facilities within Bureau of Prisons and Jails; requiring superintendents post bond; setting authority of superintendents; authorizing establishment of imprest fund; authorizing appointment of deputy superintendents; requiring deputy superintendents post bond; authorizing hiring of other assistants and employees by superintendents with approval of commissioner; providing for oversight of employees; requiring commissioner to make space in every adult institution for both jail and prison populations; setting limitations on requirement to house both jail and prison populations in each adult institution; requiring division conduct pretrial risk assessment of person within three calendar days of arrest and placement in jail; directing pretrial risk assessment be provided to magistrate and circuit clerks; making pretrial risk assessment inadmissible evidence; requiring person committed to be housed in jail pay processing fee; directing where processing fee to be credited; directing refund of fee if person is not convicted; authorizing commissioner or employee to refuse certain offenders if offender appears to need medical attention; directing commissioner establish Bureau of Juvenile Services;
transferring duties and funds of Division of Juvenile Services to Bureau of Juvenile Services; directing appointment of assistant commissioner to oversee Bureau of Juvenile Services; directing appointment of superintendents for facilities within Bureau of Juvenile Services; requiring superintendents post bond; setting authority of superintendents; authorizing establishment of imprest fund; authorizing appointment of deputy superintendents; requiring deputy superintendents post bond; authorizing hiring of other assistants and employees by superintendents with approval of commissioner; providing for oversight of employees; directing commissioner establish Bureau of Community Corrections; directing appointment of assistant commissioner to oversee Bureau of Community Corrections; directing appointment of superintendents for facilities within Bureau of Community Corrections; requiring superintendents post bond; authorizing hiring of other assistants and employees by superintendents; providing for supervision of persons on probation or released on parole; directing rules regarding supervision of probationers and parolees; clarifying authority retained by Parole Board; setting powers and duties of state parole officers; authorizing issuance of certificates for state parole officers under certain conditions; continuing Parole Supervision Benefit Fund; authorizing use of money for payment to community corrections program; continuing Regional Jail and Correctional Facility Authority Board; continuing certain powers; transferring certain power and authority to Division of Corrections and Rehabilitation; abolishing certain powers; modifying composition of Regional Jail and Correctional Facility Authority Board; providing for appointment and qualifications of board members; providing for governance by and operation of board; directing authority review per diem cost set by state Budget Office; providing procedures if amount is challenged or believed incorrect; providing certain employees of State Board of Education not subject to supervision and approval of employees of division; making certain employees members of classified service; exempting Division of Corrections and Rehabilitation from requirement to buy certain products from
Department of Agriculture; repealing provisions of code related to Division of Corrections; repealing provisions of code related to state correctional and penal institutions; repealing provisions of code related to West Virginia Regional Jail and Correctional Facility Authority; repealing provisions of code related to probation and parole; repealing provisions of code related to corrections management; updating code references; eliminating obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

*§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer is as follows:

Commissioner, Division of Highways, $92,500; Commissioner, Division of Corrections and Rehabilitation, $90,000; Director, Division of Natural Resources, $75,000; Superintendent, State Police, $85,000; Commissioner,

*NOTE: This section was also amended by H. B. 4006 (Chapter 105), which passed prior to this act.
Division of Financial Institutions, $75,000; Commissioner, Division of Culture and History, $65,000; Commissioner, Alcohol Beverage Control Commission, $75,000; Commissioner, Division of Motor Vehicles, $75,000; Director, Human Rights Commission, $55,000; Commissioner, Division of Labor, $70,000; Chairperson, Board of Parole, $55,000; members, Board of Parole, $50,000; members, Employment Security Review Board, $17,000; and Commissioner, Workforce West Virginia, $75,000. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, $95,000: Provided, That effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be paid an annual salary not to exceed $175,000; Transportation, $95,000: Provided, however, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid $120,000; Revenue, $95,000; Military Affairs and Public Safety, $95,000; Administration, $95,000; Education and the Arts, $95,000; Commerce, $95,000; Veterans’ Assistance, $95,000; and Environmental Protection, $95,000: Provided further, That any officer specified in this subsection whose salary is increased by more than $5,000 as a result of the amendment and reenactment of this section during the 2011 regular session of the Legislature shall be paid the salary increase in increments of $5,000 per fiscal year beginning July 1, 2011, up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code and shall be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, $80,000; Director, Division of Rehabilitation Services, $70,000; Director, Division of Personnel, $70,000; Executive Director, Educational Broadcasting Authority, $75,000; Secretary, Library Commission, $72,000; Director, Geological and Economic Survey, $75,000;
Executive Director, Prosecuting Attorneys Institute, $80,000; Executive Director, Public Defender Services, $70,000; Commissioner, Bureau of Senior Services, $75,000; Executive Director, Women’s Commission, $45,000; Director, Hospital Finance Authority, $35,000; member, Racing Commission, $12,000; Chairman, Public Service Commission, $85,000; members, Public Service Commission, $85,000; Director, Division of Forestry, $75,000; and Executive Director of the Health Care Authority, $80,000.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, $92,500; Insurance Commissioner, $92,500; Director, Lottery Commission, $92,500; Director, Division of Homeland Security and Emergency Management, $65,000; and Adjutant General, $125,000.

(d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any
general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

ARTICLE 1. DEFINITIONS.


Whenever in this chapter, or in any rule or regulation authorized by it, any of the words, terms, or phrases defined in this article are used, they shall be taken and construed to have the meaning, application, and effect ascribed to them in this article, unless otherwise specified or clearly intended.


“Department” means the Department of Military Affairs and Public Safety.

§15A-1-3. “Secretary.”

“Secretary” means the Secretary of the Department of Military Affairs and Public Safety.

§15A-1-4. “Commissioner” defined.

“Commissioner” means the Commissioner of the Division of Corrections and Rehabilitation within the Department of Military Affairs and Public Safety.

§15A-1-5. “Inmate” defined.

“Inmate” means an adult incarcerated person.


“Resident” means a juvenile within the custody of the Division of Corrections and Rehabilitation.

ARTICLE 2. DIVISION OF ADMINISTRATIVE SERVICES.
§15A-2-1. Division of Administrative Services.

(a) The Division of Administrative Services is created within the department to perform the administrative services for identified agencies within the department.

(b) The Division of Administrative Services shall provide fiscal services, payroll services, human resources services, and procurement services for the Division of Corrections and Rehabilitation, created in §15A-3-1 et seq. of this code, and any other agencies or boards required by the secretary: Provided, That the secretary may not require the administrative services of the State Police, the West Virginia National Guard, or the West Virginia Military Authority be provided by the Division of Administrative Services.

(c) The State Police, the West Virginia National Guard, and the West Virginia Military Authority may elect to utilize the services of the Division of Administrative Services. The director of the Division of Administrative Services is authorized to enter into a memorandum of understanding with the head of the State Police, the West Virginia National Guard, or the West Virginia Military Authority to effectuate this utilization.

§15A-2-2. Division director; appointment and qualifications; powers and duties.

(a) The secretary shall appoint a director for the Division of Administrative Services who shall serve at the will and pleasure of the secretary. The director shall have extensive knowledge in the field of public safety and the principles and practices of administration and experience in the civil service system.

(b) The director shall have control and supervision of the Division of Administrative Services and shall be responsible for the work of each of its employees.
(c) The director shall have the authority to employ all personnel necessary to perform the functions of the Division of Administrative Services. The director shall also have the authority to employ assistants and attorneys as may be necessary for the efficient operation of the Division of Administrative Services.

(d) The director shall perform the duties herein specified and shall also perform other duties as the secretary may prescribe.

(e) Where reference in this article is made to the “director”, it shall mean the Director of the Division of Administrative Services.

§15A-2-3. Transfer of employees; continuation of programs; transfer of equipment and records; protection.

(a) Effective July 1, 2018, all persons employed on the effective date of this article by the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority or the Division of Corrections whose current employment responsibilities include those to be provided by the Division of Administrative Services are hereby assigned and transferred to the Division of Administrative Services.

(1) The Division of Administrative Services shall assume all responsibilities of the administrative services sections of the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority and the Division of Corrections, including those related to ongoing programs, benefits, litigation or grievances.

(2) All equipment and records necessary to effectuate the purposes of this article shall be transferred to the Division of Administrative Services.

(b) Any person transferred to the office of the director of the division of administrative services who on the effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-1 et
seq. of this code, remain in the civil service system as a covered employee. Any person transferred to the office of the director of the division of administrative services who on the effective date of this article is a classified exempt civil service employee, other than the Director, and his or her Deputy Directors, and one exempt assistant, shall, within the limits contained in §29-6-1 et seq. of this code, be transferred into the civil service system as a permanent covered employee, and is no longer exempt: Provided, That any transferred employee that has been employed in his or her position for less than the required probationary period must first complete the probationary period prior to becoming a permanent covered employee.

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-1. Purpose and legislative intent.

(a) The primary purpose of the Division of Corrections and Rehabilitation is to enhance public safety by providing for the detention of juvenile offenders, both pretrial and adjudicated, pretrial detention of adult persons facing criminal charges, and incarceration and care of adult convicted offenders who have been sentenced by courts of proper jurisdiction to serve terms of incarceration.

(b) It is the intent of the Legislature:

(1) That juveniles and adult offenders be afforded appropriate education and treatment to reestablish their ability to live peaceably, consistent with the protection of the community;

(2) That persons held in pretrial detention, and committed to jails and correctional institutions of the state for whom release is available for crimes, be afforded appropriate treatment to reestablish their ability to live peaceably, consistent with the protection of the community;
(3) That persons committed to jails and correctional institutions of the state be released at the earliest possible date, consistent with public safety;

(4) To establish a just, humane, and efficient corrections program; and

(5) To avoid duplication and waste of effort and money on the part of public and private agencies.

c) This chapter shall be construed in favor of public safety.

§15A-3-2. Division of Corrections and Rehabilitation established.

(a) The Division of Corrections and Rehabilitation is hereby established within the Department of Military Affairs and Public Safety. The executive and administrative head of the Division of Correction and Rehabilitation shall be the Commissioner appointed pursuant to §15A-3-3 of this code.

(b) Effective July 1, 2018, the Division of Corrections and the Division of Juvenile Services are hereby abolished. Except as otherwise provided in this chapter, the powers and authority of those divisions are hereby transferred to the Division of Corrections and Rehabilitation.

(c) Effective July 1, 2018, the powers and authority of the Regional Jail and Correctional Facility Authority Board, in relation to all functions of correctional operations, are hereby transferred to the Division of Corrections and Rehabilitation. The Regional Jail and Correctional Facility Authority Board shall only retain the powers authorized in §15A-8-1 et seq. of this code.

(d) Whenever in this code a reference is made to the Division of Corrections, it shall be construed to mean the Division of Corrections and Rehabilitation. Wherever in this code a reference is made to the Division of Juvenile Services, it shall be construed to mean the Division of
Corrections and Rehabilitation. Whenever in this code reference is made to the Regional Jail and Correctional Facility Authority Board in relation to operations of any of the regional jails, it shall be construed to mean the Division of Corrections and Rehabilitation.

(e) Any person employed by the Division of Corrections and Rehabilitation who on the effective date of this article is a classified service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the classified service system as a covered employee.

(f) Where reference in this article is made to the “division”, it shall mean the Division of Corrections and Rehabilitation.

§15A-3-3. Commissioner of division; qualifications, oath and bond.

(a) A commissioner of the Division of Corrections and Rehabilitation shall be appointed by the Governor, by and with the advice and consent of the Senate, as provided in §6-7-2a of this code.

(b) Effective July 1, 2018, the offices of Commissioner of Division of Corrections, the Director of Juvenile Services, and the Executive Director of the Regional Jail and Correctional Facility Authority are hereby abolished. Except as otherwise provided in this chapter, the powers and authority of those officers are vested in the Commissioner of the Division of Corrections and Rehabilitation.

(c) The commissioner shall take and subscribe to the oath prescribed by the Constitution for public officials and shall execute an official bond in a penalty of $15,000, conditioned as required by law. Premiums on the bond shall be paid from appropriations made for the commissioner’s office. The bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor and, when fully executed and approved, shall be filed in the office of the Secretary of State.
(d) Whenever in this code, reference is made to the Commissioner of the Division of Corrections or the Director of the Division of Juvenile Services, it shall be construed to mean the Commissioner of the Division of Corrections and Rehabilitation. Whenever in this code reference is made to the Executive Director of the Regional Jail and Correctional Facility Authority, in relation to operations of any of the regional jails, it shall be construed to mean the Commissioner of the Division of Corrections and Rehabilitation.

§15A-3-4. Powers and duties of commissioner generally.

(a) The commissioner, in order to carry out the purposes and intent of this chapter, shall:

(1) Exercise general supervision over the administration of the institutions under the jurisdiction of the division;

(2) Establish separate subdivisions, including a Bureau of Prisons and Jails, a Bureau of Juvenile Services, and a Bureau of Community Corrections, each to be headed by assistant commissioners, and other subdivisions as he or she deems advisable, which may be headed by one of the assistant commissioners, or by deputy directors. Nothing herein shall prohibit the commissioner from appointing the same person to head more than one subdivision;

(3) Establish rules, policies, and regulations in writing governing all subdivisions and institutions within the division;

(4) Establish an appropriate training program for personnel of the division;

(5) Classify the institutions of the division, varying according to the factors as security features, program, age, and sex of inmates, physical stature or size, character of inmates;
(6) Establish a system of classification of inmates and residents, through a reception and examination procedure;

(7) Cooperate with the Department of Education in providing for the education of inmates and residents in all institutions within the division, as provided in §18-2-13f of this code and any other provision of this code;

(8) Supervise the treatment, custody, and discipline of all inmates and residents and the maintenance of the institutions and their industries;

(9) Establish a system of compensation for inmates and residents of the institutions of the state who perform good and satisfactory work either within the industrial program or in the servicing and maintenance of the institutions or any other institutions or camps within the state. The commissioner, or his or her designee, may establish a graduated scale of compensation to be paid to inmates and residents in accordance with their skill in industry; and

(10) Subject to the provisions in §25-1A-5 of this code, provide for the transportation of inmates between the jails and local holding facilities for court appearances.

(b) The commissioner, in order to carry out the purposes and intent of this chapter, may:

(1) Appoint a deputy commissioner to assist in the day to day operations of the division;

(2) Employ professional and support staff, including, but not limited to, certified public accountants, attorneys, assistants, and other employees as necessary for the efficient operation of the division;

(3) Acquire, own, hold, and dispose of property, real and personal, tangible and intangible;

(4) Lease property, whether as a lessee or lessor;
(5) Conduct examinations and investigations and hear testimony and take proof, under oath or affirmation;

(6) Issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before the commissioner, or his or her designee, to conduct any hearing;

(7) Apply to the circuit court having venue of the offense to have punished for contempt any witness who refuses to obey a subpoena, refuses to be sworn or affirmed, or refuses to testify, or who commits any contempt after being summoned to appear;

(8) Sue and be sued, implead and be impleaded, and complain and defend in any court;

(9) Propose rules for legislative approval for the management and regulation of the affairs of the division pursuant to the provisions of §29A-3-1 et seq. of this code;

(10) Make policies for the management and regulation of the affairs of the divisions;

(11) Make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership, or corporation to affect any or all of the purposes of this chapter;

(12) Accept gifts or grants of property, funds, security interests, money, materials, labor, supplies, or services from the United States of America or from any governmental unit or any person, firm, or corporation, acceptance or disposition of gifts or grants; and

(13) Designate a facility as a rehabilitation facility; a rehabilitation facility may utilize recommendations on programming from West Virginia higher education
institutions and share statistical data with the same institutions for study on the effectiveness of services provided by the institution.

§15A-3-5. Officers and employees of corrections institutions.

(a) The commissioner, or his or her designee, has the authority to manage and administer the finances, business, operations, security, and personnel affairs of correctional units and juvenile facilities under the jurisdiction of the division.

(b) The superintendent of each institution or correctional unit has the power to hire all assistants and employees required for the management of the institution in his or her charge, but the number of the assistants and employees, and their compensation, shall first be approved by the commissioner.

(c) It is the duty of the commissioner to investigate any complaint made against the superintendent of any institution, and against any other officer or employee thereof, if the same has not been investigated.

(d) All prospective correctional employees shall pass a preemployment drug screening prior to being hired.

(e) All persons employed at a state-operated correctional institution or correctional unit are subject to the supervision and approval of the superintendent and the authority of the commissioner, or his or her designee, except those persons employed by the State Board of Education, pursuant to §18-2-13f of this code.

§15A-3-6. Hiring of correctional officer without regard to position on the register.

Notwithstanding any provision of law to the contrary or any rule promulgated under the provisions of this code, the Division of Corrections and Rehabilitation may hire any person listed on the Correctional Officer I Register for
employment as a Correctional Officer I without regard to the person’s position on the register: Provided. That no person on the Correctional Officer I Register may be offered employment or hired before an otherwise qualified person on a preference register who is willing to accept the position.

§15A-3-7. Compensation of employees; traveling and other expenses.

The commissioner shall, in accordance with the provisions of §29-6-1 et seq. of this code, approve the salaries of all employees of the division. Salaries shall be commensurate with their duties and responsibilities, but no meals or other emoluments of any kind shall be furnished, given, or paid to the employee as all or part of their salary. The employees may be provided meals, household facilities, and supplies as may be necessary for them to perform their duties, if the employees agree to pay the reasonable cost as established by the commissioner. In the event of an emergency, such as a riot or other disturbance, the commissioner may authorize meals to be provided to employees at no cost. Additionally, the commissioner may establish a procedure to reimburse employees reasonable costs in the event the employee’s personal property is stolen or damaged by an inmate or resident. All persons employed under this article are entitled to be reimbursed for necessary traveling and other expenses.

§15A-3-8. Reports by commissioner and chief officers of institutions to Auditor.

The commissioner shall, from time to time, as may be necessary, make a report to the Auditor, which shall state the name of each person employed at any of the institutions named in §15A-3-12 of this code, his or her official designation and biweekly rate of compensation, and out of what funds or appropriation the same is payable. The superintendent of the institution, or other person who may have been appointed for the purpose by the commissioner,
shall make and certify to the Auditor at the end of each month a list of persons to whom any payments may be due, stating for what purpose due, the amount due each person, and the fund or appropriation from which payable; one copy thereof shall be filed in the office of the institution where made, and one in the office of the commissioner. If the Auditor finds the list correct and in accordance with the reports made to him or her by the commissioner, he or she may pay to the persons entitled thereto the amounts so certified as due each.

§15A-3-9. Special compensation of officers and employees prohibited; penalty.

No officer or employee shall receive, directly or indirectly, any other compensation for his or her services than that provided by law, or by the commissioner before his or her appointment, nor shall he or she receive any compensation whatever, directly or indirectly, for any act or service which he or she may do or perform for or on behalf of any contractor, or agent, or employee of a contractor. For any violation of this section the officer, agent, or employee of the state engaged therein shall be dismissed from his or her office or service, and every contractor, or employee, or agent of a contractor, engaged therein shall be expelled from the grounds of an institution, and not again employed in any institution as a contractor, agent, or employee.

§15A-3-10. Law-enforcement powers of employees.

(a) Other than as outlined in this section, a correctional officer employed by the division is not a law-enforcement officer as that term is defined in §30-29-1 of this code.

(b) The commissioner is a law-enforcement official, and has the authority to use, and permit and allow or disallow his or her designated employees to use, publicly provided carriage to travel from their residences to their workplace and return. Provided, That the usage is subject to the supervision of the Commissioner and is directly connected
with and required by the nature and in the performance of
the official’s or designated employee’s duties and
responsibilities.

(c) All employees of the division are responsible for
enforcing rules and laws necessary for the control and
management of correctional units and the maintenance of
public safety that is within the scope of responsibilities of
the division.

(d) Persons employed by the Division of Corrections
and Rehabilitation as correctional officers are hereby
authorized and empowered to make arrests of persons
already charged with a violation of law who surrender
themselves to the correctional officer, to arrest persons
already in the custody of the division for violations of law
occurring in the officer’s presence, to detain persons for
violations of state law committed on the property of any
facility under the jurisdiction of the commissioner, and to
conduct investigations, pursue, and apprehend escapees
from the custody of a facility of the division.

(e) The commissioner may designate correctional
employees as correctional peace officers who have the
authority:

(1) To detain persons for violations of state law
committed on the property of any state correctional
institution;

(2) To conduct investigations regarding criminal
activity occurring within a correctional facility;

(3) To execute criminal process or other process in
furtherance of these duties; and

(4) To apply for, obtain, and execute search warrants
necessary for the completion of his or her duties and
responsibilities.
(f) The Corrections Special Operations Team is hereby established and shall consist of the Corrections Emergency Response Team, the K9 unit, and the Crisis Negotiations team created under the former Division of Corrections. The Corrections Special Operations Team serves as the first responder necessary for the protection of life, liberty, and property. It shall have limited law-enforcement authority regarding matters occurring at jails, correctional centers, and juvenile centers, and arrest powers to apprehend escapees, absconders, and in all matters arising on the grounds of a facility under the care and control of the commissioner: Provided, That at any time the Corrections Special Operations Team is apprehending an escapee or an absconder outside the confinement of the facility grounds, it does so with the assistance and cooperation of local law enforcement or the West Virginia State Police.

§15A-3-11. Unauthorized use of uniform, badge, identification card, or other insignia; impersonation of member; and penalty.

(a) The commissioner shall prescribe the design, or designs, of uniforms used by employees of the division, which shall be dissimilar to the design of the uniform worn by the members of the State Police or the established statewide uniform of a sheriff or deputy sheriffs. A municipality shall not adopt for its police officers or other employees a uniform which is similar in design to the uniform adopted by the commissioner.

(b) No person who is not an officer or employee of the Division of Corrections and Rehabilitation, and no officer or employee of the division who is not authorized to do so, may, with intent to deceive, wear, use, order to be used or worn, copy, or imitate in any respect or manner the uniform, badge, identification card, or other insignia prescribed for employees of the division.

(c) No person who is not an officer or employee of the Division of Corrections and Rehabilitation may falsely
represent himself or herself to be an officer or employee of
the Division of Corrections and Rehabilitation or to be
under the order or direction of any officer or employee of
the division.

(d) No person employed as an officer or employee of the
Division of Corrections and Rehabilitation may use his or
her position as such to threaten or coerce any other person
in order to receive any favoritism, employment, or thing of
favor by virtue of his or her employment with the division:
Provided, That this subsection does not apply to violations
of the Prison Rape Elimination Act.

(e) Any person who violates the provisions of §15A-3-
11(b), §15A-3-11(c), or §15A-3-11(d) of this code is guilty
of a misdemeanor and, upon conviction thereof, shall be
fined not more than $200, or confined in the county or
regional jail for not more than six months, or both fined and
confined.

§15A-3-12. Institutions managed by commissioner.

(a) The commissioner shall manage, direct, control, and
govern the prisons, jails, or correctional institutions of this
state, and the juvenile facilities of this state, including, but
not limited to:

Mount Olive Correctional Complex and Jail;
Huttonsville Correctional Center and Jail;
Anthony Correctional Center and Jail;
Denmar Correctional Center and Jail;
Pruntytown Correctional Center and Jail;
Northern Regional Jail and Correctional Center;
Saint Marys Correctional Center and Jail;
Lakin Correctional Center and Jail;
<table>
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<th>Description</th>
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<tbody>
<tr>
<td>13</td>
<td>Ohio County Correctional Center and Jail;</td>
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<tr>
<td>14</td>
<td>Beckley Correctional Center and Jail;</td>
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<td>15</td>
<td>Martinsburg Correctional Center and Jail;</td>
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<td>16</td>
<td>Salem Correctional Center and Jail;</td>
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<td>17</td>
<td>Parkersburg Correctional Center and Jail;</td>
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<td>Charleston Correctional Center and Jail;</td>
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<td>Central Regional Jail and Corrections Facility;</td>
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<td>20</td>
<td>Eastern Regional Jail and Corrections Facility;</td>
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<td>21</td>
<td>North Central Regional Jail and Corrections Facility;</td>
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<td>22</td>
<td>Potomac Highlands Regional Jail and Corrections Facility;</td>
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<td>South Central Regional Jail and Corrections Facility;</td>
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<td>Southern Regional Jail and Corrections Facility;</td>
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<td>25</td>
<td>Southwestern Regional Jail and Corrections Facility;</td>
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<td>26</td>
<td>Tygart Valley Regional Jail and Corrections Facility;</td>
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<td>27</td>
<td>Western Regional Jail and Corrections Facility;</td>
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<tr>
<td>28</td>
<td>Donald R. Kuhn Juvenile Center;</td>
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<td>29</td>
<td>Gene Spadaro Juvenile Center;</td>
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<td>30</td>
<td>J.M. Chick Buckbee Juvenile Center;</td>
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<td>31</td>
<td>Kenneth “Honey” Rubenstein Juvenile Center;</td>
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<tr>
<td>32</td>
<td>Lorrie Yeager Juvenile Center;</td>
</tr>
<tr>
<td>33</td>
<td>Robert L. Shell Juvenile Center;</td>
</tr>
<tr>
<td>34</td>
<td>Sam Perdue Juvenile Center;</td>
</tr>
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Tiger Morton Juvenile Center; 
Vicki Douglas Juvenile Center; and 
Any other juvenile or adult facility later transferred to 
the commissioner.

(b) The commissioner may contract with the county 
commission of McDowell County to house and incarcerate 
inmates at the Stevens Correctional Center consistent with 
all requirements and standards governing the division.

(c) The commissioner may contract with Youth Services 
System to house and detain juveniles at the Ronald 
Mulholland Juvenile Center consistent with all the 
requirements and standards governing the division.

(d) The commissioner may establish work and study 
release units as extensions and subsidiaries of those state 
institutions under his or her control and authority. The work 
and study release units may be coeducational and shall be 
managed, directed, and controlled as provided in this article.

(e) The commissioner may contract with nonprofit or 
charitable entities including, but not limited to, nonprofit 
community mental health clinics, operating half-way 
houses, or transitional housing facilities for the placement 
of persons in the commissioner’s custody, whether confined 
or under parole supervision, as long as the facilities meet 
standards and criteria established by the commissioner.

(1) The commissioner may direct that a person who is 
placed in a half-way house or transitional housing facility 
under this section make reimbursement to the state in the 
amount of a reasonable sum calculated to offset all or part 
of the costs of the placement. Prior to ordering the person to 
make the reimbursement, the commissioner, or his or her 
designee, shall consider the following:

(A) The person’s ability to pay;
(B) The nature and extent of the person’s responsibilities to his or her dependents, if any;

(C) The length of probable incarceration under the court’s sentence; and

(D) The effect, if any, that reimbursement might have on the person’s rehabilitation.

(2) The division shall provide the number of persons placed in a half-way house or a transitional housing facility as authorized in this section in its report made pursuant to §5-1-20 of this code, and shall describe its plans to use the authority provided under the provisions of §15A-3-12(g) of this code in furtherance of the duties and responsibilities imposed by this article.

(f) All adult persons sentenced by a court to serve a sentence of incarceration in a prison, jail, or correctional institution under the jurisdiction of the commissioner shall be deemed to be sentenced to the custody of the commissioner. The commissioner, or his or her designee, has the authority to and may order the transfer of any adult to any appropriate institution within the division.

(g) The commissioner has full discretionary authority to contract with any county jail, or other appropriate facility or institution for the incarceration and care of adult inmates. If a felony sentenced inmate is held in a jail facility or unit, under the jurisdiction of the commissioner, the commissioner shall pay a per diem rate, not subject to the limitations set forth in §15A-3-16(g) of this code.

(h) The commissioner, or his or her designee, may transfer any adult prisoner or inmate who is mentally disturbed and who would more appropriately be treated in an institution under the jurisdiction of the Bureau of Health, to the Bureau, subject to the approval of the Director of Health, and may transfer any adult prisoner or inmate to an
appropriate mental facility for specialized medical
treatment.

(i) The commissioner shall, no later than July 1, 2019,
complete an evaluation of all facilities within his or her
control for the most appropriate space to house each type of
inmate, and shall consult with the Juvenile Justice
Commission on any and all intended uses of current or
prospective juvenile facilities. This evaluation shall include
an assessment of the physical plant of each institution, the
inmate population size and type, and classification of
inmates. Following completion of the evaluation, the
commissioner shall develop a plan on how to best utilize the
institutional space, and shall report to the Joint Committee
on Government and Finance with recommendations
regarding implementation of that plan. The commissioner
may, from time to time, and as circumstances dictate,
reorganize the facilities, and units within the facilities, to
house pretrial inmates, convicted misdemeanants, and
convicted felons in the most appropriate manner. No facility
shall be converted from a juvenile to an adult facility, or
from an adult to a juvenile facility, without legislative
authorization.

§15A-3-13. Title to property of state institutions; custody of
deeds and other muniments of title; authority of
Commissioner.

The title to all property constituting or belonging to the
several institutions named in §15A-3-12 of this code is
vested in the state. The commissioner is custodian of all
deeds and other muniments of title and shall cause such as
are susceptible of recordation to be recorded in the proper
offices. The commissioner is authorized, as lessor, to lease
the West Virginia penitentiary in Moundsville, title to which
is vested in the state by prior act of the Legislature, for a
term of not more than five years: Provided, That this section
does not affect any lease in effect as of the effective date of
this section. Any agreement entered into under this section
shall be with the consent and approval of the Secretary of
the Department of Military Affairs and Public Safety, and shall include a provision within each agreement allowing for the immediate termination by the secretary or commissioner at any time.

§15A-3-14. Exempt from Purchasing Division; purchasing procedures.

(a) The provisions established in §5A-3-1 *et seq.* of this code do not apply to the division or any institution under the control of the division.

(b) When the cost under any contract or agreement entered into by the division, other than compensation for personal services, involves an expenditure of more than $2,500 and less than $25,000, the division shall solicit at least 3 bids, if possible, from vendors and make a written contract with the lowest responsible bidder. When the cost under any contract or agreement entered into by the division, other than compensation for personal services, involves an expenditure of $25,000 or more, the division shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, the publication area for the publication to be the county or counties wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids. But a contract for lease of a correctional facility is not subject to the foregoing requirements and the division may enter into the contract for lease pursuant to negotiation upon the terms and conditions and for the period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or efficient acquisition or construction of the projects. The division may reject any and all bids. A bond with good and sufficient surety, approved by the division, shall be required of all contractors in an amount equal to at
least 50 percent of the contract price, conditioned upon faithful performance of the contract.

(c) If the division has to make a purchase under emergency conditions, or an emergency situation, which jeopardizes the safe, secure, and orderly operations of the division, as deemed by the Commissioner, and approved by the Secretary, §15A-3-14(a) and §15A-3-14(b) of this code shall not apply.

(d) The commissioner may enter into agreements with medical schools and institutions of higher education in this state to develop standards for appropriate and innovative medical programming and care for inmates: *Provided*, That the division will follow the procedures set forth in §15A-3-14(b) of this code for delivery of regular and normal medical care within the facilities.


(a) The commissioner may enter into agreements to provide for the rendering of mutual aid with the political subdivisions of this state, other states, and the federal government to provide for the common defense, protect the public peace, health, and safety and to preserve the lives and property of the people of this state.

(b) Any agreement entered into under this section shall be with the consent and approval of the Secretary of the Department of Military Affairs and Public Safety, and shall include a provision within each agreement allowing for the immediate termination by the secretary or commissioner at any time.

§15A-3-16. Funds for operations of jails under the jurisdiction of the commissioner.

(a) Any special revenue funds previously administered by the Regional Jail and Correctional Facility Authority or its Executive Director are continued, and shall be administered by the commissioner.
(b) Funds that have been transferred by §15A-3-16(a) of this code shall be limited in use to operations of jail functions, and for payment to the Regional Jail and Correctional Facility Authority Board, for payment of indebtedness. In no case shall a fund be utilized to offset or pay operations of nonjail parts of the facility: Provided, that funds may be utilized on a pro rata basis for shared staff and for operational expenses of facilities being used as both prisons and jails.

(c) Whenever the commissioner determines that the balance in these funds is more than the immediate requirements of this article, he or she may request that the excess be invested until needed. Any excess funds so requested shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any moneys invested pursuant to this section shall be credited to these funds.

(d) These funds consist of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion in these funds;

(2) Contributions, grants, and gifts from any source, both public and private, specifically directed to the operations of jails under the control of the commissioner;

(3) All sums paid pursuant to §15A-3-16(g) of this code; and

(4) All interest earned on investments made by the state from moneys deposited in these funds.

(e) The amounts deposited in these funds shall be accounted for and expended in the following manner:

(1) Amounts deposited shall be pledged first to the debt service on any bonded indebtedness;
(2) After any requirements of debt service have been satisfied, the Commissioner shall requisition from these funds the amounts that are necessary to provide for payment of the administrative expenses of this article, as limited by this section;

(3) The commissioner shall requisition from these funds, after any requirements of debt service have been satisfied, the amounts that are necessary for the maintenance and operation of jails under his or her control. These funds shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs or fines required by law to be deposited in these funds and amounts from the jail improvement funds of the various counties;

(4) Notwithstanding any other provisions of this article, sums paid into these funds by each county pursuant to §15A-3-16(g) of this code for each inmate shall be placed in a separate account and shall be requisitioned from these funds to pay for costs incurred; and

(5) Any amounts deposited in these funds from other sources permitted by this article shall be expended based on particular needs to be determined by the commissioner.

(f)(1) After a jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the jail facility in the jail facility, except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the previously promulgated, and hereby transferred standards and procedures developed by the Jail Facilities Standards Commission, and whom the sheriff or the circuit court elects to incarcerate therein.

(2) Notwithstanding the provisions of §15A-3-16(f)(1) of this code, circuit and magistrate courts are authorized to:
(A) Detain persons who have been arrested or charged with a crime in a county or municipal jail specified as appropriate under the standards and procedures referenced in §15A-3-16(f)(1), for a period not to exceed 96 hours; or

(B) Commit persons convicted of a crime in a county or municipal jail, specified as appropriate under the standards and procedures referenced in §15A-3-16(f)(1) of this code, for a period not to exceed 14 days.

(g) When inmates are placed in a jail facility under the jurisdiction of the commissioner pursuant to §15A-3-16(f) of this code, the county, and municipality if the incarceration is a municipal violation, shall pay into this fund a cost per day for each incarcerated inmate to be determined by the state Budget Office, by examining the most recent three years of costs submitted by the commissioner for the cost of operating the jail facilities and units under his or her jurisdiction, and taking an average per day, per inmate cost of maintaining the operations of the jail facilities or units: Provided, That beginning July 1, 2018, and continuing through July 1, 2021, in no case shall any county or municipality be required to pay a rate that exceeds $48.25 per day, per inmate. Nothing in this section shall be construed to mean that the per diem cannot be decreased or be less than $48.25 per day per inmate.

(h) The per diem costs for incarcerating inmates may not include the cost of construction, acquisition, or renovation of the regional jail facilities: Provided, That each jail facility or unit operating in this state shall keep a record of the date and time that an inmate is incarcerated, and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than 24 hours. After that, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of 24 hours pass from the original time of incarceration.
(i) The county is responsible for costs incurred by the division for housing and maintaining inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of housing shall be borne by the division on a felony conviction on which an inmate is incarcerated beginning the calendar day following the day of sentencing: Provided, That beginning July 1, 2019, the costs of housing shall be borne by the division on a felony conviction when an inmate is incarcerated beginning the calendar day following the day of conviction. In no case shall the county be responsible for any costs of housing and maintaining felony convicted inmate populations.

(j) The county is responsible for the costs incurred by the authority for housing and maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and is awaiting transportation to a state correctional facility for a 60 day evaluation period as provided in §62-12-7a of this code.

(k) On or before July 1, 2020, the commissioner shall prepare a report on the feasibility of phasing out the county and municipal per diem charges required by §15A-3-16(g) of this code. This report shall include information regarding savings realized because of the consolidation of the former Division of Corrections, Division of Juvenile Services, and the operations of the Regional Jail and Correctional Facility Authority, as well as any other recommendations that might ease the burden of paying the per diem inmate costs by the counties or municipalities. On or before January 1, 2019, January 1, 2020 and January 1, 2021, the commissioner shall report to the Joint Committee on Government and Finance and the co-chairmen of the Joint Standing Committee on Finance the actual per diem rate as calculated pursuant to §15A-3-16(g) of this code and any amount not assessed to counties if the actual per diem cost is larger than the amount charged to the counties or municipalities pursuant to §15A-3-16(g) between July 1, 2018 and July 1, 2021.

(a) There is continued in the State Treasury the Jail Operations Partial Reimbursement Fund.

(b) Revenues deposited into this fund shall be composed of fees collected by magistrate courts pursuant to §50-3-2(a) of this code, and by circuit courts pursuant to §59-1-11 of this code.

(c) Revenues deposited into this fund shall be used to reimburse those counties and municipalities participating in the jail system for the cost of incarceration.

(d) The State Treasurer shall, in cooperation with the division, administer the fund. The State Treasurer shall determine the amount of funds available for reimbursement and, upon receiving a report from the commissioner containing the total number of inmate days in the fiscal year immediately concluded, the State Treasurer shall calculate the reimbursement to each participant based upon a pro rata share formula: *Provided,* That only counties and municipalities that, on July 1 of each year, are not more than 90 days delinquent in payments for moneys to incarcerate its offenders are eligible to receive this reimbursement: *Provided, however,* That the pro rata share formula shall not include the counties or municipalities which are not entitled to reimbursement pursuant to this section.

(e) A participant’s share shall be comparable with its total of inmate days, which shall consist of the number of inmates it contributed to the regional jail system and the number of days those inmates remained incarcerated.

(f) A participant’s share shall be disbursed annually, within 90 days of July 1 each year, as provided in §15A-3-17(d) of this section.


(a) The commissioner is authorized to propose rules for legislative authorization pursuant to §29A-3-1 *et seq.* of this
code or develop policies for the proper execution of his or her duties and powers; adopt rules or policies for the government of the institutions named or referred to in §15A-3-12 of this code; adopt rules or policies for the administration of the financial and business affairs of the institutions named or referred to in §15A-3-12 of this code, and establish policies regarding the treatment of mentally ill inmates, which reflect the safety and security concerns specific to jails and correctional facilities.

(b) All legislative rules and policies of the former Division of Corrections, the former Division of Juvenile Services, and the Regional Jail and Correctional Facility Authority shall remain effective until amended or terminated pursuant to the provisions of §29A-3-1 et seq. of this code by the Division of Correction and Rehabilitation: Provided, That these rules shall expire on July 1, 2021, if not superseded sooner.

(c) Notwithstanding any provisions of law to the contrary, the division is not subject to the rules promulgated by, nor any mandates upon, the board of health for the treatment of mentally ill patients.

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-1. Applicability of article.

(a) Except as otherwise provided herein, the provisions of this article relate to adult inmates housed in jails, prisons, and correctional facilities, and do not apply to juvenile residents housed in juvenile centers.

(b) Where reference in this article is made to the “division”, it shall mean the Division of Corrections and Rehabilitation.

§15A-4-2. Furlough programs.

(a) The commissioner may establish a furlough program for inmates committed to his or her custody for a felony
offense. The program may provide that selected inmates be permitted to reside outside an institution operated by the division pursuant to legislative rules promulgated pursuant to §29A-3-1 et seq. of this code.

(b) The commissioner, or his or her designee, is authorized to propose rules for legislative authorization, pursuant to §29A-3-1 et seq. of this code, or policy directives, promulgated by the commissioner, a furlough program for pretrial and misdemeanant inmates under his or her control and custody in accordance with the following provisions:

(1) The program may include, but is not limited to, granting furloughs or special escorts for specified inmates under the commissioner’s control and custody to attend funerals or make hospital visits to terminally ill family members.

(2) The commissioner shall establish criteria to be used in determining which inmates are not likely to jeopardize public safety and should be granted a furlough or a special escort through this program.

(3) The commissioner is authorized to establish any other guidelines he or she considers necessary to administer the program and to ensure public safety, including, but not limited to:

(A) Eligibility for consideration, restrictions, conditions, and procedures; and

(B) The family relationship an inmate must have with the deceased or terminally ill individual in order to qualify for consideration for a furlough.

(c)(1) The division, the commissioner, members of the Regional Jail and Correctional Facility Authority Board, and employees of the division are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal
injury or other civil liability caused or arising out of any actual or alleged act of an inmate while on a furlough granted under this section.

(2) The immunity from suit and liability provided in this subsection does not extend to liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any person identified in §15A-4-2(c)(1) of this code.

§15A-4-3. Electronic monitoring of offenders; special account.

(a) The commissioner may use electronic monitoring equipment to aid in the supervision of offenders.

(b) The commissioner shall charge offenders subject to supervision by means of electronic monitoring equipment a reasonable fee, to be established under a legislative rule proposed by the commissioner for legislative authorization pursuant to §29A-3-1 et seq. of this code, to help defray the costs of the purchase and use of the equipment and the division’s operational costs: Provided, That an offender’s inability to pay a fee does not preclude the offender from being eligible for this program.

(c) All fees collected shall be deposited in a special account in the State Treasury designated the “electronic monitoring program account.” The funds deposited in the account may be used by the commissioner only for the operation of the program and for the administration of the division.

(d) For purposes of this section, “electronic monitoring equipment” means an electronic device or apparatus approved by the division that is capable of recording or transmitting information regarding the offender’s presence or nonpresence in a designated area. The device shall be minimally intrusive. Except to the extent provided in this section, the division shall not approve any monitoring device which is capable of recording or transmitting: (1) Visual images, except for that of a still image of the offender
that can only be transmitted by the offender triggering the monitoring system; or (2) information as to the offender’s activities while he or she is within the designated area. A monitoring device may transmit information regarding blood alcohol levels. The monitoring device shall not be used to eavesdrop or record any conversation: Provided, That conversations between the offender and the person supervising the offender may be recorded solely for purpose of voice identification.

§15A-4-4. Diagnostic and classification divisions.

(a) The commissioner may continue and establish diagnostic and classification subdivisions.

(b) Notwithstanding any provision of this code to the contrary, all persons committed to the custody of the division for presentence diagnosis and classification, and all persons sentenced to the custody of the division shall, upon transfer to the division, undergo diagnosis and classification, which shall include:

(1) Assessments of a person’s criminogenic risk and need factors that are reliable, validated, and normed for a specific population and responsive to cultural and gender-specific needs as well as individual learning styles and temperament;

(2) Application of a mental health preliminary screen; and

(3) If the mental health preliminary screen suggests the need for further assessment, a full psychological evaluation.

(c) The division shall perform mental health preliminary screens, appraisals, and evaluations according to standards provided by the American Correctional Association.

§15A-4-5. Transfer of inmates of state institutions or facilities.

(a) The commissioner shall have authority to cause the transfer of any inmate from any facility under his or her control to any other state or federal institution or facility
which is better equipped for the care or treatment of the
inmate, or for other good cause or reason.

(b) Whenever an inmate committed to the custody of the
division becomes mentally ill and his or her needs cannot be
properly met within the correctional facility, the
commissioner shall proceed in accordance with §15A-4-19
of this code.

(c) Whenever an inmate committed to the custody of
the division needs medical attention, other than mental
health care, not available at the prison, the superintendent
of the facility shall immediately notify the commissioner
who, after proper investigation, shall cause the transfer of
the inmate to a facility properly equipped to render the
medical attention necessary. The inmate, while receiving
treatment in the hospital, shall be under an appropriate
level of supervision at all times and shall forthwith be
returned to his or her correctional facility upon release
from the facility.

(d) In providing or arranging for the necessary medical
and other care and treatment of a pregnant inmate, the
superintendent of the facility shall take reasonable
measures to assure that pregnant inmates will not be
restrained after reaching the second trimester of pregnancy
until the end of the pregnancy: Provided, That if the
inmate, based upon her classification, discipline history, or
other factors deemed relevant by the superintendent poses
a threat of escape, or to the safety of herself, the public,
staff, or the fetus, the inmate may be restrained in a manner
reasonably necessary: Provided, however, That prior to
directing the application of restraints and where there is no
threat to the safety of the inmate, the public, staff, or the
fetus, the superintendent, or designee shall consult with an
appropriate health care professional to assure that the
manner of restraint will not pose an unreasonable risk of
harm to the inmate or the fetus.
§15A-4-6. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

(a) The commissioner, or his or her designee, is authorized to monitor, intercept, record, and disclose telephone calls to or from adult inmates of state institutions under his or her control, in accordance with the following provisions:

(1) All adult inmates of state institutions shall be notified in writing that their telephone conversations may be monitored, intercepted, recorded, and disclosed;

(2) Only the commissioner, superintendent, or their designee shall have access to recordings of inmates’ telephone calls unless disclosed pursuant to §15A-4-6(a)(4) of this code;

(3) Notice shall be prominently placed on, or immediately near, every telephone that may be monitored;

(4) The contents of inmates’ telephone calls may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the correctional institution. Disclosure may also be made in civil or administrative proceedings pursuant to an order of a court or an administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the correctional institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All recordings of telephone calls shall be retained for at least three years and maintained and destroyed in accordance with the record retention policy of the division adopted as required by §5A-8-1 et seq. of this code; or
(6) To safeguard the sanctity of the attorney-client privilege, a telephone line that is not monitored shall be made available for telephone calls to or from an attorney. These calls may not be monitored, intercepted, recorded, or disclosed in any matter.

(b) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) A copy of the contents of any inmate telephone conversation provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the contents of the telephone conversation were provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §29B-1-4(a)(4) of this code. The inmate’s telephone conversation and the information regarding law enforcement are law-enforcement records under that subdivision.

(c) Should an inmate be charged with a crime based, in whole or in part, on the inmate’s telephone conversation supplied to law enforcement, the inmate’s attorney in the criminal matter shall be entitled to access to and copies of the inmate’s telephone conversations in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(d) The provisions of this section apply only to those persons in the physical custody of the commissioner.

§15A-4-7. Monitoring inmate mail; procedures and restrictions; identifying mail from a state institution; mail to or from attorneys excepted.

(a) The commissioner, or his or her designee, is authorized to monitor, open, review, copy, and disclose mail sent to adult inmates of state institutions under his or her control, in accordance with the following provisions:
(1) All adult inmates of state institutions shall be notified in writing that their mail may be monitored, opened, reviewed, copied, and disclosed;

(2) Only the commissioner and his or her designee shall have access to copies of inmates’ mail unless disclosed pursuant to §15A-4-7(a)(4) of this code;

(3) Notice that the mail may be monitored shall be prominently placed on or immediately near every mail receptacle or other designated area for the collection or delivery of mail;

(4) The contents of inmate’s mail may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the institution. Disclosure may also be made in civil or administrative proceedings pursuant to an order of a court or administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All copies of mail shall be retained for at least three years and maintained and destroyed in accordance with the records retention policy of the division adopted as required by §5A-8-1 et seq. of this code; or

(6) The inmate whose mail has been copied and disclosed under this section shall be given a copy of that mail when it is determined by the commissioner, or superintendent, not to jeopardize the safe and secure operation of the facility or to be detrimental to an ongoing investigation or administrative action.
(b) To safeguard the sanctity of the attorney-client privilege, mail to or from an inmate’s attorney shall not be monitored, reviewed, copied, and kept by the institution, or disclosed in any manner unless required by an order of a court of competent jurisdiction. However, that mail may be checked for weapons, drugs, and other contraband provided it is done in the presence of the inmate and there is a reasonable basis to believe that any weapon, drug, or other contraband exists in the mail.

(c) All inmate’s outgoing mail must be clearly identified as being sent from an inmate at a state correctional institution and must include on the face of the envelope the name and full address of the institution.

(d) The commissioner or his or her designee is authorized to open, monitor, review, copy, and disclose an inmate’s outgoing mail in accordance with the provisions of §5A-4-7(a) of this code.

(e) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) All inmate mail provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the inmate mail was provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §15A-4-7(a)(5) of this code. The inmate mail and the information regarding law enforcement are law-enforcement records under §29B-1-4(a)(4) of this code.

(f) Should an inmate be charged with a criminal offense based, in whole or in part, on the inmate’s mail supplied to law enforcement, the inmate’s attorney in the criminal matter shall be entitled access to and copies of the inmate’s mail in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.
(g) The provisions of this section apply only to those persons in the physical custody of the commissioner.

§15A-4-8. Monitoring of inmate electronic correspondence; procedures and restrictions; to or from attorneys excepted.

(a) The commissioner, or his or her designee, is authorized to monitor, intercept, record, and disclose electronic communications to or from adult inmates of state institutions under his or her control, in accordance with the following provisions:

(1) All adult inmates of state institutions shall be notified in writing that their electronic communications may be monitored, intercepted, recorded, and disclosed;

(2) Only the commissioner, superintendent, or their designees, shall have access to copies or recordings of inmates’ electronic communications unless disclosed pursuant to §15A-4-8(a)(4) of this code;

(3) Notice shall be prominently placed on, or immediately near, every electronic communications device that may be monitored;

(4) The contents of inmates’ electronic communications may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the correctional institution. Disclosure may also be made in civil or administrative proceedings pursuant to an order of a court or an administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the correctional institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;
(5) All recordings or copies of electronic communications shall be retained for at least three years and maintained and destroyed in accordance with the record retention policy of the division adopted as required by §5A-8-1 et seq. of this code; or

(6) To safeguard the sanctity of the attorney-client privilege, a method of electronic communications that is not monitored shall be made available for communications to or from an attorney. These communications shall not be monitored, intercepted, recorded, or disclosed in any matter.

(b) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) A copy of the contents of any inmate electronic communication provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the contents of the communications were provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §15A-4-8(a)(5) of this code. The inmate’s electronic communication and the information regarding law enforcement are law-enforcement records under §29B-1-4(a)(4) of this code.

(c) Should an inmate be charged with a crime based, in whole or in part, on the inmate’s electronic communication supplied to law enforcement, the inmate’s attorney in the criminal matter shall be entitled to access to and copies of the inmate’s electronic communications in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(d) The provisions of this section shall apply only to those persons in the physical custody of the commissioner.

§15A-4-9. Trustee accounts and funds, earnings and personal property of inmates and residents.
(a) The commissioner is authorized to establish at each institution under his or her jurisdiction a “Trustee Fund”. The superintendent of each institution shall receive and take charge of the money and personal property, as defined by policy, of all inmates or residents in his or her institution and all money or personal property, as defined by policy, sent to the inmates or residents or earned by the inmates as compensation for work performed while they are domiciled there. The superintendent shall credit the money and earnings to the inmate or resident entitled to it and shall keep an accurate account of all the money and personal property so received, which account is subject to examination by the commissioner. The superintendent shall deposit the moneys in one or more responsible banks in accounts to be designated “Trustee Fund”.

(b) For all felony sentenced inmates, except those serving life without mercy and those the superintendent determines are likely to serve the remainder of their natural lives in the custody of the division due to their age and the length of their sentences, the superintendent shall keep in an account at least 10 percent of all money earned during the inmate’s or resident’s incarceration and pay the money to the inmate or resident at the time of the inmate’s or resident’s release. The superintendent may authorize the inmate to withdraw money from his or her mandatory savings for the purpose of preparing the inmate for reentry into society.

(c) The commissioner may direct that offenders who work in community work programs, including work release inmates who have obtained employment, make reimbursement to the state toward the cost of his or her incarceration.

(d)(1) Prior to ordering an incarcerated offender to make reimbursement toward the costs of his or her incarceration, the commissioner, or his or her designee, shall consider the following:
(A) The offender’s ability to pay;

(B) The nature and extent of the offender’s responsibilities to his or her dependents, if any;

(C) The length of probable incarceration under the court’s sentence; and

(D) The effect, if any, that reimbursement might have on the offender’s rehabilitation.

(2) No order of reimbursement entered pursuant to this section may exceed $500 per month unless the offender gives his or her express consent; and

(3) The commissioner shall, prior to the beginning of each fiscal year, prepare a report that details the average cost per inmate incurred by the division for the care and supervision of those individuals in his or her custody.

(e) The superintendent of any facility, on request of an inmate or resident, may expend up to one half of the money earned by the inmate or resident on behalf of the family of the inmate or resident if the 10 percent mandatory savings has first been set aside and other fees or court ordered obligations owed by the inmate or resident have been paid. The remainder of the money earned, after deducting amounts expended as authorized, shall be accumulated to the credit of the inmate or resident and be paid to the inmate or resident at times as may be prescribed by rules. The funds so accumulated on behalf of inmates or residents shall be held by the superintendent of each institution under a bond approved by the Attorney General.

(f) The superintendent shall deliver to the inmate or resident at the time he or she leaves the institution, or as soon as practicable after departure, all personal property, moneys, and earnings then credited to the inmate or resident, or in case of the death of the inmate or resident before authorized release from the institution, the superintendent shall deliver the property to the inmate’s or
resident’s personal representative. In case a conservator is appointed for the inmate or resident while he or she is domiciled at the institution, the superintendent shall deliver to the conservator, upon proper demand, all moneys and personal property belonging to the inmate or resident that are in the custody of the superintendent.

(g) If any money is credited to a former inmate or resident after remittance of the sum of money as provided in §15A-4-9(f) of this code, the commissioner shall notify the former inmate or resident within 30 days of receipt of the money. The former inmate or resident will be afforded the opportunity to collect the money if he or she pays the cost of the transaction. If the former inmate or resident does not claim the money within 30 days of receiving the notice and the sum of money is less than $10, the commissioner may place the money into the inmate benefit fund.

(h) The provisions of this section apply to both juveniles and adults within the custody of the commissioner.

§15A-4-10. Inmate or resident benefit funds.

(a) The commissioner shall establish an inmate, or resident, benefit fund for each of the institutions under his or her jurisdiction. The inmate, or resident, benefit fund is a fund held by the institutions for the benefit and welfare of inmates incarcerated, or juveniles placed in facilities under the jurisdiction of the commissioner, and for the benefit of victims.

(b) There is continued a special revenue account in the State Treasury for each inmate, or resident, benefit fund established by the commissioner. If an account does not currently exist for an institution, the commissioner may establish the account for that institution. Moneys received by an institution for deposit in an inmate, or resident, benefit fund shall be deposited with the State Treasurer to be credited to the special revenue account created for the institution’s inmate, or resident, benefit fund: Provided,
That commissions on any contract providing services to jail inmates shall not be deposited into this account. Moneys in a special revenue account established for an inmate benefit fund may be expended by the institution for the purposes set forth in this section. Moneys to be deposited into an inmate, or resident, benefit fund consist of, but are not limited to:

(1) All profit from the exchange or commissary operation and if the commissary is operated by a vendor, whether a public or private entity, the profit is the negotiated commission paid to the Division of Corrections and Rehabilitation by the vendor;

(2) All net proceeds from vending machines used for inmate or resident visitation;

(3) All proceeds from contracted inmate or resident telephone commissions;

(4) Any funds that may be assigned by inmates or donated to the institution by the general public or an inmate service organization on behalf of all inmates or residents;

(5) Any funds confiscated considered contraband; and

(6) Any unexpended balances in individual inmate or resident trustee funds if designated by the inmate upon his or her discharge from the institution.

(c) The inmate benefit fund may only be used for the following purposes at facilities:

(1) Open-house visitation functions or other nonroutine inmate or resident functions;

(2) Holiday functions which may include decorations and gifts for children of inmates or residents;

(3) Cable television service;

(4) Rental of movies;
(5) Payment of video license;

(6) Recreational supplies, equipment, or area surfacing;

(7) Reimbursement of employee wages for overtime incurred during open-house visitations and holiday functions;

(8) Post-secondary education classes;

(9) Reimbursement of a pro rata share of inmate or resident work compensation;

(10) Household equipment and supplies in day rooms or units as approved by superintendents of institutions, excluding supplies used in the daily maintenance and sanitation of the unit;

(11) Christmas or other holidays gift certificates for each inmate or resident to be used at the exchange or commissary;

(12) Any expense associated with the operation of the fund;

(13) Expenditures necessary to properly operate an automated inmate family and victim information notification system;

(14) Any expense for improvement of the facility which will benefit the inmate or resident population that is not otherwise funded;

(15) Any expense related to the installation, operation, and maintenance of the inmate or resident telephone system; and

(16) Restitution of any negative balance on any inmate’s trustee account for inmate medical copay, legal and ancillary related postage, and photocopy fees that are due the State of West Virginia, if the balance is uncollectible
from an inmate after one calendar year from an inmate’s release on parole or discharge date.

(d) The institution shall compile a monthly report that specifically documents inmate benefit fund receipts and expenditures and a yearly report for the previous fiscal year by September 1 of each year and submit the reports to the commissioner.

(e) The provisions of this section apply to both juveniles and adults within the custody of the commissioner.

§15A-4-11. Financial responsibility program for inmates.

(a) The Legislature finds that:

(1) There is an urgent need for vigorous enforcement of child support, restitution, and other court ordered obligations;

(2) The duty of inmates to provide for the needs of dependent children, including their necessary food, clothing, shelter, education, and health care should not be avoided because of where the inmate resides;

(3) A person owing a duty of child support who chooses to engage in behaviors that result in the person becoming incarcerated should not be able to avoid child support obligations; and

(4) Each sentenced inmate should be encouraged to meet his or her legitimate court-ordered financial obligations.

(b) As part of the initial classification process into a correctional facility, the division shall assist each inmate in developing a financial plan for meeting the inmate’s child support obligations, if any exist. At subsequent program reviews, the division shall consider the inmate’s efforts to fulfill those obligations as indicative of that individual’s acceptance and demonstrated level of responsibility.
(c)(1) The superintendent shall deduct from the earnings of each inmate all legitimate court-ordered financial obligations. The superintendent shall also deduct child support payments from the earnings of each inmate who has a court-ordered financial obligation. The commissioner shall develop a policy that outlines the formula for the distribution of the offender’s income and the formula shall include a percentage deduction, not to exceed 50 percent in the aggregate, for any court ordered victim restitution, court fees, and child support obligations owed under a support order, including an administrative fee, consistent with the provisions of §48-14-406(c) of this code, to support the division’s administration of this financial service;

(2) If the inmate worker’s income is subject to garnishment for child support enforcement deductions, it shall be calculated on the net wages after taxes, legal financial obligations, and garnishment;

(3) The division shall develop the necessary administrative structure to record inmates wages and keep records of the amount inmates pay for child support; and

(4) Nothing in this section limits the authority of the Bureau for Child Support Enforcement of the Department of Health and Human Resources from taking collection action against an inmate’s moneys, assets, or property.

(d) If an inmate is awarded a civil judgment which awards him or her monetary damages, the court in which those damages are awarded shall enter an order which deducts all outstanding child support, restitution, or other court-ordered obligations from the award to the inmate, and satisfies those obligations, prior to releasing any funds to the inmate.

(e) The accumulation of the total funds, not necessary for current distribution, shall be invested, with the approval of the commissioner or as appropriate, through the West Virginia Municipal Bond Commission, in short term bonds
or treasury certificates or equivalent of the United States. Bonds and certificates so purchased shall remain in the custody of the State Treasurer. The earnings from investments so made shall be reported to the principal officer of each institution from time to time, as earned, and shall be credited to the respective accounts of the institutions by the West Virginia Municipal Bond Commission. When the earnings are transferred to the respective institutions, they shall be credited by the superintendent to the credit of, and for the benefit of, the inmate, or resident, benefit fund.

§15A-4-12. Limitation on reimbursement rate to medical service providers for services outside division facilities.

The division, or its contracted medical providers, may not pay an amount to an outside provider of a medical service for an adult inmate residing in a jail or correctional facility greater than the reimbursement rate applicable to service providers established in the West Virginia state Medicaid plan by the Bureau for Medical Services: Provided, That critical access hospitals shall be reimbursed at 75 percent of the billed charges. These limitations apply to all medical care services, goods, prescription drugs, and medications provided to a person who is in the custody of a correctional facility and is provided these services outside of a correctional facility: Provided, however, That the Department of Military Affairs and Public Safety and the Department of Health and Human Resources effectuate an interagency agreement for the electronic processing and payment of medical services.

§15A-4-13. Charges assessed against inmates for services provided by state.

(a) The commissioner is authorized to assess inmates serving a sentence in any state jail, penal, or correctional facility reasonable charges for health care and treatment services provided to them by the state. The charges assessed against an inmate may be deducted directly from the
inmate’s trustee account without the inmate’s consent. The
inmate shall be notified of the amount deducted and the
charges to which it has been applied.

(b) As used in this section, a “reasonable charge” may
not exceed the sum of $25 for any billable service. Inmates
shall be notified of the fee schedule, billable services, and
exempt services. Services initiated by the inmate shall be
assessed a fee, except that no charge may be assessed for:
(1) a specific health care service required under the law of
this state, including, by way of illustration, tuberculin
testing; (2) an emergency service following a traumatic
injury other than a self-induced injury, or necessary to
prevent death or severe or permanent disability; (3)
diagnosis and treatment of communicable diseases,
including, by way of illustration, tuberculosis or hepatitis;
(4) treatment of diagnosed severe mental illness; (5)
treatment of specific chronic conditions identified by the
commissioner, including, by way of illustration, heart
disease and diabetes; (6) staff-initiated care, including
follow-up and referral visits; (7) preventive services that the
commissioner determines are to be provided or made
available to all inmates, including services related to disease
prevention and promotion of proper health habits; or (8)
other services as may be exempted by rule of the
commissioner. No inmate may be denied any necessary
billable medical service because of inability to pay the
charge.

(c) Any inmate who intentionally ingests, inhales,
injects, absorbs, applies, or otherwise exposes himself or
herself to, in any manner whatsoever not otherwise
specified herein, an illegal drug, a drug not legally
prescribed to him or her, a drug in quantities above that
recommended by a prescribing physician, a synthetic
intoxicant, or any substance for the purpose of causing an
excited, euphoric, or stupefied state, or altered perception,
including hallucinations or delusions, and the inmate
requires medical treatment due to the ingestion, inhalation,
injection, absorption, application, or exposure shall reimburse the cost of the medical treatment to the division.

(d) Each inmate shall be afforded an opportunity at least quarterly to review all deposits into, withdrawals from, and balance remaining in the inmate’s trustee account during the preceding three months.

(e) The commissioner shall promulgate interpretive rules implementing this section pursuant to §29A-3-1 et seq. of this code prior to making any assessment under this section. The policy directive rules may establish the fee schedule and list of billable services and further define services to be exempted.

§15A-4-14. Record of inmate or resident.

The commissioner shall file and preserve the record of the indictment and conviction, in the case of an adult, or the charges and adjudication, in the case of a juvenile, of each inmate or resident, and keep a register describing him or her, the term of his or her confinement, for what offense, and when received into the institution.

§15A-4-15. Manufacture of license plates, road signs or markers; securing signs and markers when federal government reimburses state for cost thereof.

For the purpose of obtaining license plates to be used upon motor vehicles licensed for operation in this state and road signs or markers of any description for state roads, the commissioner is hereby authorized and empowered on behalf of the state, to establish and operate a plant for the manufacture of the license plates and road signs or markers in his or her institution.

It shall be unlawful for any state official or employee to manufacture or obtain the license plates, road signs, or markers otherwise than as herein specified: Provided, That the Commissioner of Highways may originally secure road
signs or markers from sources other than that provided herein.

§15A-4-16. Gifts to or dealings with inmate or resident.

No officer or employee of the state, or contractor, or employee of a contractor shall make any gift or present to an inmate or resident, or receive any from an inmate or resident, or have any barter or dealings with a convict, except as allowed and permitted by the commissioner.

For every violation of this section, the party engaged therein shall be dismissed from his or her office or service, and every contractor, or employee, or agent of a contractor engaged therein shall be expelled from any facility within the jurisdiction of the commissioner, and not again employed in any institution as a contractor, agent, or employee.

§15A-4-17. Deduction from sentence for good conduct; mandatory supervision.

(a) All current and future adult inmates sentenced to a felony and, placed in the custody of the division, except those committed pursuant to §25-4-1 et seq. of this code, shall be granted commutation from their sentences for good conduct in accordance with this section: Provided, That nothing in this section shall be considered to recalculate the “good time” of inmates currently serving a sentence or of giving back good time to inmates who have previously lost good time earned for a disciplinary violation, except for those inmates currently serving a sentence for a misdemeanor.

(b) The commutation of sentence, known as “good time”, shall be deducted from the maximum term of indeterminate sentences or from the fixed term of determinate sentences.

(c) Each inmate committed to the custody of the commissioner and incarcerated in a facility pursuant to that
commitment shall be granted one day good time for each
day he or she is incarcerated, including any and all days in
jail awaiting sentence which are credited by the sentencing
court to his or her sentence pursuant to §61-11-24 of this
code or for any other reason relating to the commitment. An
inmate may not be granted any good time for time served
either on parole or bond or in any other status when he or
she is not physically incarcerated.

(d) An inmate sentenced to serve a life sentence is not
eligible to earn or receive any good time pursuant to this
section.

(e) An inmate under two or more consecutive sentences
shall be allowed good time as if the several sentences, when
the maximum terms of the consecutive sentences are added
together, were all one sentence.

(f) The commissioner shall promulgate disciplinary
rules and policies. The rules and policies shall describe acts
that inmates are prohibited from committing, procedures for
charging individual inmates for violation of the rules, and
for determining the guilt or innocence of inmates charged
with the violations, and the sanctions which may be
imposed for the violations. A copy of the rules shall be given
to each inmate. For each violation, by a sanctioned inmate,
any part or all of the good time which has been granted to
the inmate pursuant to this section may be forfeited and
revoked by the superintendent of the institution in which the
violation occurred. The superintendent when appropriate
and with approval of the commissioner, may restore any
forfeited good time.

(g) Each inmate, upon his or her commitment to, and
being placed into the custody of the commissioner, or upon
his or her return to custody as the result of violation of
parole pursuant to §62-12-19 of this code, shall be given a
statement setting forth the term or length of his or her
sentence or sentences and the time of his or her minimum
discharge computed according to this section.
(h) Each inmate shall be given a revision of the statement described in §15A-4-17(g) of this code when any part or all of the good time has been forfeited and revoked or restored pursuant to §15A-4-17(f) of this code, by which the time of his or her earliest discharge is changed.

(i) The superintendent may, with the approval of the commissioner, allow extra good time for inmates who perform exceptional work or service.

(j) There shall be no grants or accumulations of good time or credit to any current or future inmate serving a sentence in the custody of the Division of Corrections and Rehabilitation except in the manner provided in this section.

(k) Prior to the calculated discharge date of an inmate serving a sentence for a felony crime of violence against the person, a felony offense where the victim was a minor child or a felony offense involving the use of a firearm, one year shall be deducted from the inmate’s accumulated good time to provide for one year of mandatory post-release supervision following the first instance in which the inmate reaches his or her calculated discharge date. All inmates released pursuant to this subsection shall be subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013.

(l) Upon sentencing of an inmate for a felony offense not referenced in §15A-4-17(k) of this code, the court may order that 180 days of the sentence, or some lesser period, be served through post-release mandatory supervision if the court determines supervision is appropriate and in the best interest of justice, rehabilitation, and public safety. All inmates released pursuant to this subsection shall be subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013.
(m) The commissioner shall adopt policies and procedures to implement the mandatory supervision provided for in §15A-4-17(k) and §15A-4-17(l) of this code, which may include terms, conditions, and procedures for supervision, modification, and violation applicable to persons on parole.

(n) As used in this section, “felony crime of violence against the person” means felony offenses set forth in §61-2-1 et seq., §61-3E-1 et seq., §61-8B-1 et seq., or §61-8D-1 et seq. of this code, and the felony offenses of arson and burglary of a residence where an individual is physically located at the time of the offense as set forth in §61-3-1 et seq. of this code.

(o) As used in this section, “felony offense where the victim was a minor child” means any felony crime of violence against the person and any felony offense set forth in §61-8-1 et seq., §61-8A-1 et seq., §61-8C-1 et seq., or §61-8D-1 et seq. of this code.

§15A-4-18. Governor’s authority to authorize commissioner to consent to transfer of inmates under a federal treaty.

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which they are citizens or nationals, the Governor may, on behalf of the state and subject to the terms of the treaty and with the consent of the offender, authorize the commissioner to consent to the transfer or exchange of inmates in his or her custody and take any other action necessary to initiate the participation of this state in the treaty. No transfer may occur pursuant to the provisions of this section until the inmate is informed of his or her rights and the procedures involved in his or her native language unless it is determined that the inmate’s knowledge of English is sufficient.
§15A-4-19. Mentally ill inmates; treatment; transfer between correctional and mental health facilities; correctional facility procedures.

(a) No person who is, or was considered to be, mentally ill, intellectually disabled, or addicted shall be denied parole or a parole hearing based upon the past or present condition. In the event a convicted person is deemed to be an appropriate candidate for parole, but for a condition warranting involuntary hospitalization of the person, shall be paroled, and proceedings instituted pursuant to §27-5-4 of this code. Any time spent in such a facility shall be considered part of the term, and any person whose sentence expires while receiving treatment for a mental condition shall be discharged unless proceedings have been instituted and a determination made pursuant to §27-5-4 of this code.

(b) When a convicted person in a jail, prison, or other facility is believed to be mentally ill, intellectually disabled, or addicted, as those terms are defined in §27-1-1 et seq. of this code, and in need of treatment, training, or other services, the facts relating to the illness, shall be presented to the superintendent of the facility. The facts may be presented by a correctional officer, member of a correctional institution medical staff, relative, or the convicted person. Immediately upon receipt of the facts, the superintendent shall arrange for psychiatric or psychological examination of the person alleged to be so afflicted. If the report of the examination is to the effect that the individual is mentally ill, intellectually disabled, or addicted and that treatment, training, or other services are required which cannot reasonably be provided at the correctional facility, the superintendent shall file within 20 days after presentation of the facts an application for transfer with the clerk of the circuit court of the county of location of the correctional facility. The application for transfer shall include a statement of the nature of the treatment which the person’s condition warrants and the facility to which transfer is sought.
Within 10 days of receipt of the application from the superintendent, the mental hygiene commissioner or circuit judge shall appoint counsel for the convicted person if the person is indigent.

The clerk of the circuit court shall forthwith notify the convicted person, by certified mail, return receipt requested, delivered only to addressee, that the application has been filed, enclosing therewith a copy of the application with an explanation of the place and purpose of the transfer and the type of treatment to be afforded, together with the name, address, and telephone number of any appointed counsel. The person shall be afforded reasonable telephone access to his or her counsel. The clerk shall also notify the superintendent or other chief administrative officer of the facility to which transfer is sought. Within 15 days after receipt of notice, the convicted person, through counsel, shall file a verified return admitting or denying the allegations and informing the court or mental hygiene commissioner as to whether the respondent wishes to oppose the transfer. Counsel shall file the return only after personal consultation with the convicted person. The superintendent of the facility to which transfer is sought shall also file a return within 15 days of the receipt of notice, informing the court or mental hygiene commissioner as to whether the needed treatment or other services can be provided within that facility. If the superintendent objects to receiving the convicted person for treatment or services, the reasons for the objection shall be specified in detail.

If the transfer is opposed by either the convicted person or by the superintendent of the facility to which transfer is sought, the matter shall forthwith be set for hearing, in no event to exceed 30 days from the date of the return opposing the transfer, and the clerk shall provide to the convicted person, the superintendent of the facility to which transfer is sought, and the superintendent of the correctional facility, at least 10 days written notice, by certified mail, return
receipt requested, of the purpose, time, and place of the
hearing.

The convicted person shall be present at the hearing, and
be afforded an opportunity to testify and to present and
cross-examine witnesses. Counsel for the convicted person
shall be entitled to copies of all medical reports upon
request. The person shall have the right to an examination
by an independent expert of the person’s choice and
testimony from the expert as a medical witness on the
person’s behalf. The cost of providing the medical expert
shall be borne by the state if the person is indigent. The
person shall not be required to give testimony which is self-
incriminating. The circuit court or mental hygiene
commissioner shall hear evidence from all parties, in accord
with the rules of evidence. A transcript or recording shall be
made of all proceedings, and transcript made available to
the person within 30 days, if the same is requested for the
purpose of further proceedings, and without cost if the
person is indigent.

Upon completion of the hearing, and consideration of
the evidence presented therein, the circuit court or mental
hygiene commissioner shall make findings of facts as to
whether or not: (1) The individual is mentally ill,
intellectually disabled, or addicted; (2) the individual
because of mental illness, mental retardation, or addiction is
likely to cause serious harm to self or others; (3) the
individual could not obtain the requisite treatment or
training at the correctional facility or another appropriate
correctional facility; and (4) the designated facility to which
transfer is sought could provide the treatment or training
with the security as the court finds appropriate; and, if all
the findings are in the affirmative, the circuit court may
order the transfer of the person to the appropriate facility.
The findings of fact shall be incorporated into the order
entered by the circuit court. In all proceedings hereunder,
proof of mental condition and of likelihood of serious harm
must be established by clear, cogent, and convincing
§15A-4-20. Work program.

(a) The commissioner is authorized to establish at each institution a work program for qualified inmates. The commissioner shall establish guidelines and qualifications to allow inmates sentenced to a regional jail facility to be gainfully employed with local businesses and governmental entities as part of a job program. A qualified inmate does not include an inmate convicted of a sexual offense or a violent felony.

(b) An inmate who works in work programs established under this section may be required to make reimbursement to the division toward the cost of his or her incarceration to be credited to the agency billed for that incarceration, pursuant to the conditions set forth in §15A-4-19 of this code.

(c) Notwithstanding any provision of this code to the contrary, the county commission, its members and agents, the Division of Corrections and Rehabilitation or designee, its employees, agents, or assigns, the Regional Jail and Correctional Facility Authority Board, its members, agents, or assigns, the sheriff, and his or her deputies, shall be immune from all liability of any kind except for accident, injury, or death resulting directly from gross negligence or malfeasance.

§15A-4-21. Director of employment; director of housing; released inmates; duties.

The commissioner may employ or contract for a Director of Employment and a Director of Housing for released inmates. The Director of Employment shall work with federal, state, county, and local government and private entities to negotiate agreements which facilitate employment opportunities for released inmates. The Director of Housing shall work with federal, state, county,
and local government and private entities to negotiate agreements which facilitate housing opportunities for released inmates. The Director of Employment shall investigate job opportunities and give every possible assistance in helping released inmates find employment. The Director of Housing shall work in conjunction with the Bureau of Community Corrections and the Parole Board to reduce release delays due to lack of a home plan, develop community housing resources, and provide short-term loans to released inmates for costs related to reentry into the community.

ARTICLE 5. BUREAU OF PRISONS AND JAILS.


(a) The commissioner shall establish a Bureau of Prisons and Jails. The commissioner shall determine what adult facilities or institutions shall appropriately be managed by the Bureau of Prisons and Jails.

(b) The commissioner shall appoint an assistant commissioner, who shall oversee the Bureau of Prisons and Jails.

(c) Where reference in this article is made to the “division”, it shall mean the Division of Corrections and Rehabilitation.

§15A-5-2. Transfer of duties and funds of Division of Corrections.

All prior conveyed responsibilities of the Division of Corrections, and its Commissioner are hereby transferred to the Division of Corrections and Rehabilitation. All funds, both general revenue and special revenue, are hereby transferred to the Division of Corrections and Rehabilitation. Any funds administered by the Division of Corrections are to be administered by the Division of Corrections and Rehabilitation, and its Commissioner.
§15A-5-3. Superintendents; duties and authority; bond; residence.

(a) The commissioner shall appoint a superintendent for each institution under the control of the division. Each superintendent shall be bonded by the Board of Risk and Insurance Management.

(b) The superintendent shall be the chief executive officer of his or her assigned correctional institution and, subject to the direction of the commissioner, has the responsibility for the overall management of all operations within his or her assigned institution. The superintendent shall be in charge of its internal police and management and shall provide for feeding, clothing, working and taking care of the inmates, subject to the control of the commissioner.

(c) The superintendent shall promptly enforce all orders and rules made by the commissioner. He or she shall protect and preserve the property of the state and may for that purpose punish the inmates in the manner authorized by the commissioner. The superintendent shall have the custody and control of all the real and personal property at the correctional institution, subject to the orders of the commissioner.

(d) The commissioner may authorize the superintendent to establish an imprest fund in accordance with the provisions of §12-2-2 of this code for the sole purpose of providing employees with funds to transport inmates for any purpose as determined by the superintendent, and any of the fund that currently exists is hereby continued. The employee is required to complete a travel reimbursement form for the travel within five days of returning to the correctional facility. The funds shall be used to reimburse the imprest fund for the amount expended by the employee.

§15A-5-4. Appointment of deputy superintendent; duties; bond.

Each superintendent, with the approval of the commissioner, may hire a deputy superintendent. The
3 deputy superintendent’s duties shall be fixed by the
4 superintendent, as approved by the commissioner. In the
5 absence of the superintendent, the deputy superintendent
6 shall perform all the duties required of the superintendent.
7 The deputy superintendent shall be bonded by the Board of
8 Risk and Insurance Management.

§15A-5-5. Hiring of other assistants and employees.

1 The superintendent of each correctional institution or
2 unit shall, in the manner provided in §15A-3-5 of this code,
3 hire all assistants and employees required for the
4 management of the correctional institutions or units,
5 including a sufficient number of correctional employees to
6 preserve order and enforce discipline among the inmates, to
7 prevent escapes, and to remove all persons convicted and
8 sentenced to the custody of the Division of Corrections and
9 Rehabilitation, from the place confined to a correctional
10 institution, all of whom shall be under the control of the
11 superintendent: Provided, That the number of the assistants
12 and employees, and their compensation, shall first be
13 approved by the commissioner.

14 All persons employed at a state-operated correctional
15 institution or correctional unit are subject to the supervision
16 and approval of the superintendent and the authority of the
17 commissioner, or his or her designee, except those persons
18 employed by the State Board of Education, pursuant to §18-
19 2-13f of this code.

§15A-5-6. Jail intake facilities; housing of adult inmates.

1 To the extent practicable, and in a manner consistent
2 with providing for the safety of the public, correctional
3 employees, and inmates, the commissioner will create space
4 in every adult institution for both jail and prison
5 populations: Provided, That in no case shall the
6 commissioner be required to provide jail space in every
7 institution in excess of space necessary for initial receiving,
8 booking, and holding of an inmate to await transport by the
Division of Corrections and Rehabilitation to the most appropriate housing placement for that inmate. In no case may a person who is a pretrial detainee, who is not currently serving a felony sentence in the custody of the commissioner, be held in a space designated as a prison unit. Further, no convicted misdemeanant actively serving a sentence on a misdemeanor shall be held in a space designated as a prison unit.


(a) Within three calendar days of the arrest and placement of any person in a jail, the division shall conduct a pretrial risk assessment using a standardized risk assessment instrument approved and adopted by the Supreme Court of Appeals of West Virginia. The results of all standardized risk and needs assessments are confidential and shall only be provided to the court, court personnel, the prosecuting attorney, defense counsel, and the person who is the subject of the pretrial risk assessment. Upon completion of the assessment, the Division of Corrections and Rehabilitation shall provide it to the magistrate and circuit clerks for delivery to the appropriate circuit judge or magistrate.

(b) The pretrial risk assessment and all oral or written statements made by an individual during risk assessment shall be inadmissible evidence at any criminal or civil trial.


(a) A person committed to be housed in jail by order of magistrate, circuit judge, or by temporary commitment order shall, at the time of initial booking into the jail, pay a processing fee of $30. If the person is unable to pay at the time of booking, the fee shall be deducted, at a rate of 50 percent, from any new deposits made into the person’s trust account until the jail processing fee is paid in full. The fee shall be credited to:
(1) The Jail’s operating budget if the person is committed to and housed in a jail;

(2) The county commission if the person is committed to and housed in a county jail; or

(3) The municipality if the person is committed to and housed in a municipal jail. The fee should be paid prior to the offender being released.

(b) A refund of a fee collected under this section shall be made to a person who has paid the fee if the person is not convicted of the offense for which the person was booked and the person provides documentation from the court showing that all charges for which the person was booked were dismissed, accurate current name and address and a valid photographic identification. In the case of multiple offenses, if the person is convicted of any of the offenses the fee may not be refunded. If the person is convicted of a lesser included offense or a related offense, no refund may be made.


Notwithstanding any other provision of this code, the commissioner, or any employee of the division, having authority to accept offenders in a jail is not required to accept those offenders if an offender appears to be in need of medical attention of a degree necessitating treatment by a physician. If an offender is refused pursuant to the provisions of this section, he or she may not be accepted for detention until a written clearance from a licensed physician reflecting that the offender has been examined and if necessary treated, and which states that it is the physician’s medical opinion that the offender can be safely housed in a jail.

ARTICLE 6. BUREAU OF JUVENILE SERVICES.

§15A-6-1. Creation of Bureau of Juvenile Services; organization of facilities.

(a) The Commissioner of Corrections and Rehabilitation shall establish a Bureau of Juvenile Services.
This bureau shall manage any juvenile facilities or units, as determined pursuant to §15A-3-12 of this code.

(b) The commissioner shall appoint an assistant commissioner, who shall oversee the Bureau of Juvenile Services.

(c) Where reference in this article is made to the “division”, it shall mean the Division of Corrections and Rehabilitation.

§15A-6-2. Transfer of duties and funds.

All prior conveyed responsibilities and duties of the Division of Juvenile Services, and the Director of Juvenile Services, outlined in §49-1-101 et seq. of this code, are hereby transferred and conveyed to the Division of Corrections and Rehabilitation, and to its Commissioner. Any funds administered by the Division of Juvenile Services are to be administered by the Division of Corrections and Rehabilitation, and its Commissioner.

§15A-6-3. Superintendents; duties and authority; bond; residence.

(a) The commissioner shall appoint a superintendent for each institution under the control of the division. Each superintendent shall be bonded by the Board of Risk and Insurance Management.

(b) The superintendent shall be the chief executive officer of his or her assigned correctional institution and, subject to the direction of the commissioner, has the responsibility for the overall management of all operations within his or her assigned institution. The superintendent shall be in charge of its internal police and management and shall provide for feeding, clothing, working and taking care of the inmates, subject to the control of the commissioner.

(c) The superintendent shall promptly enforce all orders and rules made by the commissioner. He or she shall protect
and preserve the property of the state and may for that purpose punish the inmates in the manner authorized by the commissioner. The superintendent shall have the custody and control of all the real and personal property at the correctional institution, subject to the orders of the commissioner.

(d) The commissioner may authorize the superintendent to establish an imprest fund in accordance with the provisions of §12-2-2 of this code for the sole purpose of providing employees with funds to transport inmates for any purpose as determined by the superintendent, and any of the fund that currently exists is hereby continued. The employee is required to complete a travel reimbursement form for the travel within five days of returning to the correctional facility. The funds shall be used to reimburse the imprest fund for the amount expended by the employee.

§15A-6-4. Appointment of deputy superintendent; duties; bond.

Each superintendent, with the approval of the commissioner, may hire a deputy superintendent. The deputy superintendent’s duties shall be fixed by the superintendent, as approved by the commissioner. In the absence of the superintendent, the deputy superintendent shall perform all the duties required of the superintendent. The deputy superintendent shall be bonded by the Board of Risk and Insurance Management.

§15A-6-5. Hiring of other assistants and employees; duties of correctional employees.

The superintendent of each juvenile institution or unit shall, in the manner provided in §15A-3-5 of this code, hire all assistants and employees required for the management of the juvenile institutions or units, including a sufficient number of correctional employees to preserve order and enforce internal rules among the juvenile inmates, to
prevent escapes, and carry out all other responsibilities as outlined in chapter 49 of this code.

All persons employed at a state-operated juvenile facility are subject to the supervision and approval of the superintendent and the authority of the commissioner, or his or her designee, except those persons employed by the State Board of Education, pursuant to §18-2-13f of this code.

ARTICLE 7. BUREAU OF COMMUNITY CORRECTIONS.

§15A-7-1. Creation of Bureau of Community Corrections; Organization of facilities.

(a) The commissioner shall establish a Bureau of Community Corrections. The commissioner shall establish which adult facilities or institutions shall appropriately be managed by the Bureau of Community Corrections.

(b) The commissioner shall appoint an assistant commissioner, who shall oversee the Bureau of Community Corrections.

(c) Where reference in this article is made to the “division”, it shall mean the Division of Corrections and Rehabilitation.

§15A-7-2. Duties of superintendents; bond; residence.

The commissioner shall appoint a superintendent for each institution under the control of the division. The superintendent of a community corrections facility shall have the same duties and responsibilities as described in §15A-3-1 et seq. of this code.

§15A-7-3. Hiring of other assistants and employees; duties of employees.

(a) Each superintendent of a community corrections facility shall, in the manner provided in §15A-3-5 of this code, hire all assistants and employees required for the management of these facilities or units, including a
sufficient number of correctional employees to preserve order and enforce discipline among the inmates or parolees, to prevent escapes, to enforce laws, rules, and policies, and to protect the public. Any person employed by the office of the Commissioner of the Division of Corrections and Rehabilitation who on the effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the civil service system as a covered employee.

(b) The commissioner shall, in the manner provided in §15A-3-5 of this code, hire all probation and parole officers, assistants, and employees required to carry out the duties as proscribed in this code for management of the parolee population, and probation population, as set forth in §15A-7-4 and §62-13-2(b) of this code, for the management of parolees, to preserve order, and enforce discipline among the parolees, to enforce laws, rules, and policies, and to protect the public. Any person employed by the office of the Commissioner of the Division of Corrections and Rehabilitation who on the effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the civil service system as a covered employee. Nothing in this section shall limit the abilities of the Supreme Court of Appeals of this state to carry forth their responsibilities and duties as proscribed in this code. All persons appointed or employed by the director shall be paid all necessary expenses incurred in the discharge of their duties.

§15A-7-4. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.

The commissioner shall supervise all persons released on parole and placed in the charge of a state parole officer and all persons released on parole under any law of this state. He or she shall also supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into
pursuant to the uniform act for out-of-state probation and parolee supervision. The commissioner shall prescribe rules for the supervision of probationers and parolees under his or her supervision and control, and shall succeed to all administrative and supervisory powers of the Parole Board and the authority of the Parole Board in those matters only.

The commissioner shall administer all other laws affecting the custody, control, treatment, and employment of persons sentenced or committed to institutions under the supervision of the department or affecting the operation and administration of institutions or functions of the division.

The final determination regarding the release of inmates from penal institutions and the final determination regarding revocation of parolees from those institutions pursuant to the provisions of §62-12-1 et seq. of this code shall remain within the exclusive jurisdiction of the Parole Board.

§15A-7-5. Powers and duties of state parole officers.

(a) Each state probation and parole officer employed by the Division of Corrections and Rehabilitation shall:

(1) Investigate all cases referred to him or her for investigation by the Commissioner of Corrections and Rehabilitation and report in writing on the investigation;

(2) Update the standardized risk and needs assessment adopted by the Division of Corrections and Rehabilitation pursuant to §62-12-13(h) of this code for each parolee for whom an assessment has not been conducted for parole by a specialized assessment officer;

(3) Supervise each parolee according to the assessment and supervision standards determined by the Commissioner of Corrections and Rehabilitation;

(4) Furnish to each parolee under his or her supervision a written statement of the conditions of his or her parole together with a copy of the rules prescribed by the
Commissioner of Corrections and Rehabilitation for the supervision of parolees;

(5) Keep informed concerning the conduct and condition of each parolee under his or her supervision and report on the conduct and condition of each parolee in writing as often as required by the Commissioner of Corrections and Rehabilitation;

(6) Use all practicable and suitable methods to aid and encourage a parolee and to bring about improvement in his or her conduct and condition;

(7) Keep detailed records of his or her work;

(8) Keep accurate and complete accounts of, and give receipts for, all money collected from parolees under his or her supervision, and pay over the money to persons designated by a circuit court or the Commissioner of Corrections and Rehabilitation;

(9) Give bond with good security, to be approved by the Commissioner of Corrections and Rehabilitation, in a penalty of not less than $1,000 nor more than $3,000, as determined by the Commissioner of Corrections and Rehabilitation; and

(10) Perform any other duties required by the Commissioner of Corrections and Rehabilitation.

(b) Each probation and parole officer, as described in this article, may, with or without an order or warrant: (1) Arrest or order confinement of any parolee or probationer under his or her supervision; and (2) search a parolee or probationer, or a parolee or probationer’s residence or property, under his or her supervision. A probation and parole officer may apply for a search warrant, and execute the search warrant, in connection to a parolee’s whereabouts, or a parolee’s activities. He or she has all the powers of a notary public, with authority to act anywhere within the state.
(c) The Commissioner of Corrections and Rehabilitation may issue a certificate authorizing any state parole officer who has successfully completed the Division of Corrections and Rehabilitation’s training program for firearms certification, which is the equivalent of that required of any correctional employee under §15A-3-10 of this code, to carry firearms or concealed weapons. Any parole officer authorized by the Commissioner of Corrections and Rehabilitation may, without a state license, carry firearms and concealed weapons. Each state parole officer, authorized by the Commissioner of Corrections and Rehabilitation, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon bearing the official signature of the Commissioner of Corrections and Rehabilitation.

§15A-7-6. Parole supervision benefit fund.

(a) There is continued a special revenue account in the State Treasury designated the “Parole Supervision Benefit Fund”. The fund is to be used by the Division of Corrections and Rehabilitation for the benefit of parolee supervision with approval of the commissioner. The fund shall consist of moneys received from any source, including, but not limited to, funds donated by the general public or an organization dedicated to parole supervision improvement, and funds seized from parolees that are forfeited pursuant to the provisions of §60A-7-701 et seq. of this code.

(b) Notwithstanding any other provision of this code to the contrary, the commissioner may authorize use of the money in the fund created pursuant to this section for payment to a community corrections program established pursuant to §62-11C-1 et seq. of this code for providing enhanced supervision of parolees.
ARTICLE 8. REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY BOARD.

§15A-8-1. Powers and authority of the Regional Jail and Correctional Facility Authority Board; continuation of the Regional Jail and Correctional Facility Authority Board; payment of bonds; appeal of per diem rate.

(a) The Regional Jail and Correctional Facility Authority Board is continued, as follows:

(1) The powers and authority of the Regional Jail and Correctional Facility Authority Board, in relation to all functions of correctional operations, are hereby abolished, and these powers and authority are transferred to the Division of Corrections and Rehabilitation as of July 1, 2018. The Regional Jail and Correctional Facility Authority Board shall only retain the powers as now outlined in this chapter. Where reference in this code is made to the Regional Jail and Correctional Facility Authority, in relation to operations of any of the regional jails, it shall be construed to mean the Division of Corrections and Rehabilitation.

(2) The following powers and authority of the Regional Jail and Correctional Facility Board are hereby specifically abolished:

(A) To mortgage or otherwise grant security interests in its property;

(B) To borrow money and to issue its negotiable bonds, security interests, or notes and to provide for and secure the payment thereof, and to provide for the rights of the holders thereof, and to purchase, hold, and dispose of any of its bonds, security interests, or notes;

(C) To sell, at public or private sale, any bond or other negotiable instrument, security interest or obligation of the authority in a manner and upon terms that the authority considers would best serve the purposes of this article;
(D) To issue its bonds, security interests, and notes payable solely from the revenues or other funds available to the authority therefor; and the authority may issue its bonds, security interests, or notes in those principal amounts as it considers necessary to provide funds for any purposes under this article, including:

(i) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on, any bonds, security interests, or notes issued by it whether the bonds, security interests, notes, or interest to be funded or refunded have or have not become due; and

(ii) The establishment or increase of reserves to secure or to pay bonds, security interests, notes, or the interest thereon and all other costs or expenses of the Division of Corrections and Rehabilitation incident to and necessary or convenient to carry out its purposes and powers. Any bonds, security interests, or notes may be additionally secured by a pledge of any revenues, funds, assets, or moneys of the authority from any source whatsoever;

(E) To issue renewal notes or security interests, to issue bonds to pay notes or security interests and, whenever it considers refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no renewal notes shall be issued to mature more than 10 years from date of issuance of the notes renewed and no refunding bonds may be issued to mature more than 25 years from the date of issuance;

(F) To apply the proceeds from the sale of renewal notes, security interests, or refunding bonds to the purchase, redemption, or payment of the notes, security interests, or bonds to be refunded; and

(G) To sell security interests in the loan portfolio of the authority. The security interests shall be evidenced by instruments issued by the authority.
(3) The powers and duties of the board in relation to paying the current bond series, designated as The State Building Commission of West Virginia Lease Revenue Refunding Bonds (West Virginia Regional Jail and Correctional Facility Authority) Series 1998A, Series 1998B, and Series 1998C are specifically continued. The board, however, may not reissue these bonds, renegotiate the terms of the current bonds, or refinance these bonds. There is hereby created in the State Treasury a Regional Jail and Correctional Facility Board Fund. The fund shall be controlled by the board, and shall be utilized for the sole purpose of payment of the outstanding bond series as provided above. The Commissioner of the Division of Corrections and Rehabilitation shall, on or before the fifth day of every month, transfer to this fund the amount necessary for the monthly payment of the bond, as set forth by the yearly communication from the creditor of the bonds. Further, on the effective date of this section, the commissioner shall transfer to this fund the reserve amount required by the bonds. On the date that the bonds are satisfied in full, these obligations shall cease, and any funds left in the board fund shall be transferred to the Commissioner of the Division of Corrections and Rehabilitation: Provided, That the funds can only be used in the manner directed or established by the board. Further, the board retains the authority to be able, and with consent of the Secretary of the Department of Military Affairs and Public Safety, to the extent permitted under its contracts with the holders of bonds, security interests, or notes of the authority, consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interest, note, or contract or agreement of any kind to which the authority is a party.

(4) The Regional Jail Authority shall review the per diem cost set by the state Budget Office, pursuant to §15A-3-16 of this code. If the authority believes that the amount set by the state Budget Office is incorrect, or that the
amounts submitted by the Division of Corrections and Rehabilitation include more than what should be attributed to the efficient operation of jail facilities and units, the authority may institute an action in regard to this pursuant to §29A-5-1 et seq. of this code.

(5) The Regional Jail Authority retains the ability to sue, as defined in this article, and to be sued.

(b) Where reference in this article is made to the “division”, it shall mean the Division of Corrections and Rehabilitation.

§15A-8-2. West Virginia Regional Jail and Correctional Facility Authority Board; composition; appointment; terms; compensation and expenses.

The West Virginia Regional Jail and Correctional Facility Authority Board is continued. The members of the board in office on the date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

The authority shall be governed by a board of nine members, seven of whom are entitled to vote on matters coming before the authority. The complete governing board shall consist of the Commissioner of the Division of Corrections; the Assistant Commissioner for the Bureau of Juvenile Services; the Secretary of the Department of Military Affairs and Public Safety; the Secretary of the Department of Administration, or his or her designated representative; two county commissioners and one sheriff appointed by the Governor, no more than two of which may be of the same political party; and two citizens appointed by the Governor to represent the areas of law and medicine. The Commissioner of the Division of Corrections and Rehabilitation and the Assistant Commissioner for the Bureau of Juvenile Services shall serve in an advisory capacity and are not entitled to vote on matters coming
before the authority. Members of the Legislature are not eligible to serve on the board.

The Governor shall nominate and, by and with the advice and consent of the Senate, appoint the five appointed members of the authority for staggered terms of four years.

Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the board are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

All members of the board shall execute an official bond in a penalty of $10,000, conditioned as required by law. Premiums on the bond shall be paid from funds accruing to the Division of Corrections and Rehabilitation. The bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor and, when fully executed and approved, shall be filed in the office of the Secretary of State.

§15A-8-3. Governing body; organization and meetings; quorum; administrative expenses.

(a) The board shall consist of the voting members of the board as provided for in §15A-8-2 of this code and shall exercise all the powers given to the authority in this article. On the second Monday of July of each odd-numbered year, the board shall meet to elect a chairman and a secretary from among its own members. The Secretary of the Department of Administration or his or her designated representative shall serve as treasurer of the board. The board shall otherwise meet two times a year, unless a special meeting is called by its chairman.
(b) A majority of the members of the board constitute a quorum, and a quorum must be present for the board to conduct business. Unless the bylaws require a larger number, action may be taken by majority vote of the members present.

(c) The board shall prescribe, amend, and repeal bylaws and rules governing the manner in which the business of the authority is conducted and shall review and approve the budget prepared by the executive director annually.

(d) All costs incidental to the administration of the board shall be paid from the jail operation fund by the Commissioner of Corrections and Rehabilitation.

CHAPTER 19. AGRICULTURE.

ARTICLE 12A. LAND DIVISION.


(a) On or before July 1, 1990, the commission shall meet and confer with respect to the development of a management plan to determine the optimum use or disposition of all institutional farms, at which time the Farm Management Director shall provide the commission with a complete inventory of all institutional farms, and such information relating to easements, mineral rights, appurtenances, farm equipment, agricultural products, livestock, inventories, and farm facilities as may be necessary to develop such management plan. The commission shall complete and provide to the Governor a management plan, which plan shall set forth the objectives of the commission with respect to institutional farms, the criteria by which the commission shall determine the optimum use or disposition of such property, and determinations as to whether each institutional farm shall be used in production, sold, or leased, in whole or in part. Prior to the adoption of any plan, the commission shall consult with the secretaries of the various departments of state government and shall request from such secretaries
suggestions for land use and resource development on farm
commission lands. On or before December 1, 1990, such
management plan shall be presented to the Legislature, by
providing a copy to the President of the Senate and the
Speaker of the House of Delegates. The commission may
confer with any other agency or individual in implementing
and adjusting its management plan. The management plan
established pursuant to this subsection may be amended,
from time to time, as may be necessary.

(b) The commission shall manage its institutional farms,
equipment, and other property in order to most efficiently
produce food products for state institutions and shall
implement the intent of the Legislature as set forth by this
article. From the total amount of food, milk and other
commodities produced on institutional farms, the
commission shall sell, at prevailing wholesale prices, and
each of the institutions under the control of the Bureau of
Public Health shall purchase, a proportionate amount of
these products based on the dietary needs of each institution.

(c) If requested by the Commissioner of Corrections and
Rehabilitation, the commission may authorize the Division
of Corrections and Rehabilitation to operate a farm or other
enterprise using inmates as labor on those lands. The
Commissioner of Corrections and Rehabilitation is
responsible for the selection, direction, and supervision of
the inmates and shall assign the work to be performed by
inmates.

(d) The commission is hereby authorized and
empowered to:

(1) Lease to public or private parties, for purposes
including agricultural production or experimentation, public
necessity, or other purposes permitted by the management
plan, any land, easements, equipment, or other property,
except that property may not be leased for any use in any
manner that would render the land toxic for agricultural use,
or may toxic or hazardous materials as identified by the
Commissioner of Agriculture be used or stored upon such property unless all applicable state and federal permits necessary are obtained. Any lease for an annual consideration of $1,000 or more shall be by sealed bid auction and the commission shall give notice of such auction by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, and the publication area for such publication is the county in which the property to be leased is located;

(2) Transfer to the public land corporation land designated in its management plan as land to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §5A-11-4 and §5A-11-5 of this code: Provided, That the net proceeds of the sale of farm commission lands shall be deposited in the General Revenue Fund of the state: Provided, however, That no sale may be concluded until on or after March 15, 1991, except with respect to: (A) Properties located at institutions closed on or before the effective date of this section, March 10, 1990; or (B) properties conveyed to or from the farm management commission to or from any other entity in order to facilitate the construction of a regional jail or correctional facility by the Regional Jail and Correctional Facilities Authority or the State Building Commission, with the decision to execute any such conveyance being solely within the discretion of, and at the direction of, the Regional Jail and Correctional Facilities Authority;

(3) Develop lands to which it has title for the public use including forestation, recreation, wildlife, stock grazing, agricultural production, rehabilitation and/or other conservation activities and may contract or lease for the proper development of timber, oil, gas, or mineral resources, including coal by underground mining or by surface mining where reclamation as required by specifications of the Division of Environmental Protection will increase the beneficial use of such property. Any such contract or lease shall be by sealed bid auction as provided for in subdivision (1) above;
(4) Exercise all other powers and duties necessary to effectuate the purposes of this article.

(e) Notwithstanding the provisions of subsection (d) of this section, no timberland may be leased, sold, exchanged, or otherwise disposed of unless the Division of Forestry of the Department of Commerce, Labor and Environmental Resources certifies that there is no commercially salable timber on the timberland, an inventory is provided, an appraisal of the timber is provided, and the sale, lease, exchange, or other disposition is accomplished by the sealed bid auction procedure provided above in subdivisions (1) or (2), as applicable.

(f) The commission shall promulgate, pursuant to §29-1-1 et seq. of this code, rules and regulations relating to the powers and duties of the commission as enumerated in this section.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-1. Office of commissioner of public institutions abolished; department and commissioner of corrections established; qualifications, oath and bond.

1 [Repealed.]

§25-1-1a. Purpose and legislative intent.

1 [Repealed.]

§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to Department of Health and Human Resources; establishment of work and study release units; contracting with certain entities for reentry and direct placement services; reports to Governor.

1 [Repealed.]
§25-1-3a. Trustee accounts and funds, earnings and personal property of inmates.

1  [Repealed.]

§25-1-3b. Inmate benefit funds.

1  [Repealed.]

§25-1-3c. Financial responsibility program for inmates.

1  [Repealed.]

§25-1-4. Limitation on reimbursement rate to medical service providers for services provided for services outside division facilities.

1  [Repealed.]

§25-1-5. Rules and regulations.

1  [Repealed.]


1  [Repealed.]

§25-1-6. Title to property of state institutions; custody of deeds and other muniments of title; authority of commissioner.

1  [Repealed.]

§25-1-7. Pruntytown Correctional Center established as a minimum security facility; limitations on type of residents therein.

1  [Repealed.]

§25-1-8. Charges assessed against inmates for services provided by state.

1  [Repealed.]
§25-1-11. Officers and employees of corrections institutions.

1 [Repealed.]

§25-1-11a. Duties of wardens and administrators; bond; residence.

1 [Repealed.]

§25-1-11b. Appointment of deputy warden; duties; bond.

1 [Repealed.]

§25-1-11c. Hiring of other assistants and employees; duties of correctional employees; right to carry weapons; powers of correctional peace officers.

1 [Repealed.]

§25-1-11d. Compensation of employees approved by commissioner; traveling and other expenses; payment of salaries.

1 [Repealed.]

§25-1-11e. Unauthorized use of uniform, badge, identification card or other insignia; impersonation of member; and penalty.

1 [Repealed.]

§25-1-11f. Hiring of correctional officer without regard to position on the register.

1 [Repealed.]


1 [Repealed.]

§25-1-14. Electronic monitoring of offenders; special account.

1 [Repealed.]

1 [Repealed.]

§25-1-16. Transfer of inmates of state institutions or facilities.

1 [Repealed.]

§25-1-16a. Governor’s authority to authorize commissioner of corrections to consent to transfer of inmates under a federal treaty.

1 [Repealed.]

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

1 [Repealed.]

§25-1-18. Monitoring inmate mail; procedures and restrictions; identifying mail from a state correctional institution; mail to or from attorneys excepted.

1 [Repealed.]

§25-1-19. Reports by Commissioner of Public Institutions and chief officers of institutions to Auditor.

1 [Repealed.]

§25-1-20. Reports to Governor.

1 [Repealed.]


1 [Repealed.]

§25-1-22. Task Force to Study the Feasibility of Establishing a Correctional Facility for the Incarceration and Treatment of Sex Offenders; members; duties.

1 [Repealed.]
CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

§28-5-7. Record of convict.

[Repealed.]

§28-5-8a. Manufacture of license plates, road signs or markers; securing signs and markers when federal government reimburses state for cost thereof.

[Repealed.]

§28-5-23. Special compensation of officers and employees prohibited; penalty.

[Repealed.]

§28-5-24. Gifts to or dealings with convicts.

[Repealed.]

§28-5-27. Deduction from sentence for good conduct; mandatory supervision.

[Repealed.]

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-1. Short title.

[Repealed.]

§31-20-1a. Legislative findings and purposes.

[Repealed.]

§31-20-2. Definitions.

[Repealed.]
§31-20-3. West Virginia Regional Jail and Correctional Facility Authority; composition; appointment; terms; compensation and expenses.

[Repealed.]

§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.

[Repealed.]

§31-20-5. Powers and duties of the authority; bidding procedures.

[Repealed.]

§31-20-5a. Bidding procedures.

[Repealed.]

§31-20-5b. Prohibition against use or possession of tobacco products by inmates held by regional facility authority in regional jails operated solely by the authority; authorization to establish smoking cessation program.

[Repealed.]

§31-20-5c. Additional powers and duties of the authority; juvenile detention facilities.

[Repealed.]

§31-20-5d. Good-time credit.

[Repealed.]

§31-20-5e. Monitoring of inmate telephone calls and electronic communications; procedures and restrictions; attorney-client privilege protected and exempted.

[Repealed.]
§31-20-5f. Charges assessed against inmates for services provided by the authority.

[Repealed.]

§31-20-5g. Pretrial risk assessment.

[Repealed.]

§31-20-5h. Programs for inmates committed to prison.

[Repealed.]

§31-20-8. Jail facilities standards commission; appointment; compensation; vacancies; quorum.

[Repealed.]

§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.

[Repealed.]


[Repealed.]

§31-20-9a. Juvenile facilities standards commission; purpose; powers; and duties.

[Repealed.]

§31-20-10. Regional jail and correctional facility authority funds.

[Repealed.]

§31-20-10a. Criteria and procedures for determining the cost per day for inmates incarcerated in facilities operated by the authority and allocating cost.

[Repealed.]
§31-20-10b. Regional Jail Operations Partial Reimbursement Fund.

1 [Repealed.]


1 [Repealed.]

§31-20-12. Notes, security interests and bonds as general obligations of authority.

1 [Repealed.]

§31-20-13. Notes, security interests and bonds as negotiable instruments.

1 [Repealed.]


1 [Repealed.]

§31-20-15. Redemption of notes, security interests or bonds.

1 [Repealed.]

§31-20-20. Authorized limit on borrowing.

1 [Repealed.]

§31-20-22. Money of the authority.

1 [Repealed.]

§31-20-23. Conflict of interest; when contracts void.

1 [Repealed.]

§31-20-24. Agreement with federal agencies not to alter or limit powers of authority.

1 [Repealed.]
§31-20-27. Correctional officers; regional jails; priority of hiring.

1 [Repealed.]

§31-20-27a. Regional jail employees right to carry firearm; arrest authority of correctional officers.

1 [Repealed.]

§31-20-28. Limitations on contracts for sale of bonds or other securities.

1 [Repealed.]

§31-20-29. Furlough program.

1 [Repealed.]

§31-20-30. Limitation on reimbursement rate to medical service providers for services outside regional jail facilities.

1 [Repealed.]

§31-20-30a. Mechanical restraints during pregnancy.

1 [Repealed.]

§31-20-31. Work program.

1 [Repealed.]

§31-20-32. Jail processing fee.

1 [Repealed.]

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2. Costs in criminal proceedings.

1 (a) In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial,
there is imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law: (1) Costs in the amount of $60, of which $5 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code; (2) an amount equal to the one-day per diem provided for in §15A-3-16(g) of this code; and (3) costs in the amount of $30 to be deposited in the Regional Jail Operations Partial Reimbursement Fund created by §15A-3-16 of this code. A magistrate may not collect costs in advance. Notwithstanding any other provision of this code, a person liable for fines and court costs in a criminal proceeding in which the defendant is confined in a jail or prison and not participating in a work release program shall not be held liable for the fines and court costs until one hundred eighty days after completion of the term in jail or prison. A magistrate court shall deposit $5 from each of the criminal proceedings fees collected pursuant to this section in the Court Security Fund created in section fourteen, article three, chapter fifty-one of this code. A magistrate court shall, on or before the tenth day of the month following the month in which the fees imposed in this section were collected, remit an amount equal to the one-day per diem provided for in §15A-3-16(g) of this code from each of the criminal proceedings in which the fees specified in this section were collected to the magistrate court clerk, or if there is no magistrate court clerk to the clerk of the circuit, together with information as may be required by the rules of the Supreme Court of Appeals and the rules of the Office of Chief Inspector. These moneys are paid to the sheriff who shall distribute the moneys solely in accordance with the provisions of section fifteen, article five, chapter seven of this code. Amendments made to this section during the 2001 regular session of the Legislature, are effective after June 30, 2001.

(b) A magistrate shall assess costs in the amount of $2.50 for issuing a sheep warrant and the appointment and swearing appraisers and docketing the proceedings.
(c) In each criminal case which must be tried by the circuit court but in which a magistrate renders some service, costs in the amount of $10 shall be imposed by the magistrate court and is certified to the clerk of the circuit court in accordance with the provisions of section six, article five, chapter sixty-two of this code.

§50-3-4a. Disposition of criminal costs and civil filing fees into State Treasury account for Regional Jail and Prison Development Fund.

(a) The clerk of each magistrate court shall, at the end of each month, pay into the Regional Jail and Prison Development Fund in the state Treasury an amount equal to $40 of the costs collected in each criminal proceeding and all but $10 of the costs collected for the filing of each civil action.

(b) The clerk of each magistrate court shall, at the end of each month, pay into the Regional Jail Operations Partial Reimbursement Fund established in §15A-3-17 of this code the fees collected pursuant to subsection (g), section one and subdivision (3), subsection (a), section two of this article.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-14. Appointment of probation and parole officers and clerical assistants; qualifications of officers; salaries and expenses.

[Repealed.]

§62-12-14a. Director of employment; director of housing; released inmates; duties.

[Repealed.]


[Repealed.]
§62-12-25. Parole supervision benefit fund.

1 [Repealed.]

ARTICLE 13. CORRECTIONS MANAGEMENT.


1 [Repealed.]

§62-13-4. Powers and duties of commissioner or director generally; compensation and funds of inmates.

1 [Repealed.]


1 [Repealed.]

§62-13-6a. Payment of jail fees to county commissions.

1 [Repealed.]

CHAPTER 108

(Com. Sub. for H. B. 4347 - By Delegates Moore, Shott, Hanshaw, Kessinger, Harshbarger, Summers, Sobonya, Fast, Queen, Byrd and Capito)

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17B-2-6a, relating to voluntary contributions to the West Virginia State Police Forensic Laboratory Fund; permitting each person applying for the issuance of or renewal of a driver’s license to voluntarily contribute to the State Police Forensic Laboratory
Fund; requiring the Division of Motor Vehicles to provide a form through which such voluntary contributions can be made; and requiring the Division of Motor Vehicles to remit the voluntary contributions on a monthly basis to the State Treasurer for deposit in the State Police Forensic Laboratory Fund.

Be it enacted by the Legislature of West Virginia:

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

§17B-2-6a. Voluntary contribution to State Police Forensic Laboratory Fund.

(a) Each person applying for the issuance or renewal of a driver’s license under this article, when paying the fee therefor may voluntarily contribute an additional amount to the State Police Forensic Laboratory Fund established in §15-2-24d of this code by designating the additional amount on the form provided by the Division of Motor Vehicles.

(b) The Division of Motor Vehicles shall prepare and provide to each applicant for the issuance or renewal of a driver’s license under this article, a form through which the applicant may voluntarily contribute an additional amount to the State Police Forensic Laboratory Fund. The applicant may include an additional amount as part of the payment made for the fee or may make a separate payment.

(c) The Division of Motor Vehicles shall remit voluntary contributions made under this section on a monthly basis to the State Treasurer for deposit into the State Police Forensic Laboratory Fund.
CHAPTER 109

(H. B. 4410 - By Delegates Moore, Westfall, Lane and White)

[Passed March 5, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §29-22B-1107 of the Code of West Virginia, 1931, as amended, relating to removing the requirement that the State Auditor receive copies of the Limited Video Lottery bids.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-1107. Bidding process.

(a) Bids for issuance of permits shall be obtained by public notice published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code.

(b) The second publication of the notice shall appear more than 60 days next preceding the final day for submitting bids.

(c) Each bid shall indicate the number of video lottery terminals for which the permit is sought. The bid shall state the amount bid for each video lottery terminal for which the permit is sought.

(d) No bid may be altered or withdrawn after the appointed hour for the opening of the bids.
Subject to the provisions of subsection (f) of this section, permits shall be awarded to the persons submitting the highest per terminal bids, except that no person may be authorized to directly or indirectly own or lease more than seven and one half percent of the total number of video lottery terminals authorized in §29-22B-1101 of this code. If a high bidder already holds a permit issued under this section, the bid shall be awarded to that bidder, but only to the extent the total number of video lottery terminals the operator or limited video lottery retailer is authorized to directly or indirectly own or lease does not exceed seven and one half percent of the number of video lottery terminals authorized for the entire state specified in §29-22B-1101 of this code.

No bid shall be considered unless the bond required by §29-22B-1109 of this code accompanies the bid or was submitted to the State Treasurer before the time designated for opening of the bid.

No bid shall be considered unless the amount of the bid equals or exceeds the minimum bid amount for a video lottery terminal specified by the commission.

All bids for a permit may be rejected by the commission if the commission determines that the bids are inadequate. In this event, the director shall begin anew the bidding process for the permits.

Whenever there are two or more bids of the same dollar amount and the number of authorizations for which the bids were submitted exceeds the number of authorizations still available to fill the bids, the director shall award the permit based upon the drawing of lots among the bidders.

A person submitting a bid under this article shall deliver one copy to the director of purchasing of the Purchasing Division within the Department of Administration. The bid must be received at the designated
office location prior to the specified date and time of the bid opening.

(k) The failure to deliver or the nonreceipt of the bid forms at the designated office location prior to the appointed date and hour are grounds for rejection of the bid.

(l) After the award of a permit, the director of the lottery shall indicate upon the successful bid that it was the successful bid and the number of video lottery terminals for which a permit is awarded to the bidder. This shall be the number of video lottery terminals for which the bid was submitted, or the remaining number of video lottery terminals to be awarded when the number of video lottery terminals remaining is less than the number of terminals for which the bid was submitted. Thereafter, a copy of the bid and the bidder’s application for an operator’s license or a limited video lottery retailer license shall be maintained as a public record at the commissions’ offices and shall be open to public inspection during its normal business hours. These documents may not be destroyed without the prior written consent of the Legislative Auditor.

(m) Prior to issuing a permit to a successful bidder, the bid price for the number of video lottery terminals authorized in the permit plus the amount of the operator’s annual license fee or the limited video lottery retailer’s annual license fee for the first license year, as specified in §29-22B-518 of this code shall be paid to the commission by money order, certified check or cashier’s check. If the operator’s annual license fee or the limited video lottery retailer’s license fee was paid for the current license year before the due date of the bid amount, the license fee shall not be collected a second time for the same license year. The amount paid shall be deposited into the fund established in §29-22-18a of this code.

(n) All permits shall be signed by the director of the lottery in the name of the state.
(o) If the successful bidder fails to pay to the commission the bid price and the operator’s annual license fee or the limited video lottery retailer's license fee for the first license year, at the time specified by the commission, the bond provided for in §29-22B-1109 of this code shall be forfeited and the bidder shall not be issued the permit.

(p) In the event of a default, as provided in subsection (h) of this section, the commission shall then issue the permit to the next highest bidder for video lottery terminals, or reject all remaining bids and start anew the bidding procedure for the remaining number of video lottery terminals.

(q) If after a permit is awarded, an operator or limited video lottery retailer surrenders the permit, in whole or in part, or the permit is revoked or canceled by operation of law, the commission may seek bids for video lottery terminals for which authorization was surrendered or revoked, subject to the limitations and requirements of this article.

(r) During the fiscal year of the state ending June 30, 2011, the commission shall seek bids for the 10-year period beginning July 1, 2011, and ending June 30, 2021.

CHAPTER 110

(Com. Sub. for H. B. 4236 - By Delegates Nelson, Hanshaw and Shott)
[By Request of the Department of Administration]

[Passed March 3, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]
provide an annual inventory of real property holdings to the Real Estate Division; removing the exemption of certain agencies from reporting property holdings to the Real Estate Division; clarifying the information to be reported annually by agencies; and requiring an annual report by the Real Estate Division to the Governor and Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. REAL ESTATE DIVISION.


(a) All real property owned or leased by the state shall be accounted for by the state spending unit that owns, leases or is in the possession of the real property.

(b) Each state spending unit shall establish and maintain a record of each item of real property it owns and/or leases and annually furnish its records to the Real Estate Division.

(c) Beginning July 1, 2019, and every year thereafter, the Real Estate Division shall report to the Governor and Joint Committee on Government and Finance those agencies that have not provided a complete annual record pursuant to subsection (b).

(d) With regard to public lands, rivers or streams, that may be by law specifically allocated to and used by any state agency, institution, division or department, such agency, institution, division or department shall provide an inventory of such public land(s), rivers or streams, to the Public Land Corporation in accordance with the provisions of §5A-11-1 et seq. of this code.

(e) The records furnished to the Real Estate Division shall include a description of each item of real property including address, lot number, and if available, the following identifying information:
§29-3-5b of the Code of West Virginia, 1931, as amended, relating to clarifying the authority of the State Fire Commission; modifying requirement that State Fire Commission propose certain building energy codes; and making stylistic and technical changes.

Be it enacted by the Legislature of West Virginia:
ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5b. Promulgation of rules and statewide building code.

(a) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a State Building Code. The rules shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and have force and effect in those counties and municipalities adopting the State Building Code: Provided, That each county or municipality may adopt the code to the extent that it is only prospective and not retroactive in its application.

(b) The State Fire Commission may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code, regarding building construction, renovation and all other aspects as related to the construction and mechanical operations of a structure. The rules shall be known as the State Building Code.

(c) The State Fire Commission shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to include building energy codes in the State Building Code.

(d) (1) The State Fire Commission may propose rules for legislative approval, in accordance with the provisions of §29A-3-1 et seq. of this code, establishing state standards and fee schedules for the licensing, registration, certification, regulation and continuing education of persons which will conduct inspections relating to the State Building Code, which include, but are not limited to, building code officials, inspectors, plans examiners and home inspectors.

(2) The State Fire Commission shall propose rules for legislative approval requiring applicants for home inspector
licensing, registration or certification to submit to a state and national criminal history record check as set forth in this section and may deny licensing, registration or certification based upon the results of the criminal history record check.

(e) The State Fire Commission may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the State Building Code or related construction or renovation practices.

(f) For the purpose of this section, the term “building code” is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county or municipal ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Building Code, the provisions of the state law, county or municipal ordinance or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance or regulation of any agency thereof and determines compliance with State Building Code by officials of the state, counties, municipalities and political subdivisions of the state.

(g) Enforcement of the provisions of the State Building Code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: Provided, That any county or municipality may adopt the State Building Code with or without adopting the BOCA National Property Maintenance Code.
(h) After the State Fire Commission has promulgated rules as provided in this section, each county or municipality intending to adopt the State Building Code shall notify the State Fire Commission of its intent.

(i) The State Fire Commission may conduct public meetings in each county or municipality adopting the State Building Code to explain the provisions of the rules.

(j) The provisions of the State Building Code relating to the construction, repair, alteration, restoration and movement of structures are not mandatory for existing buildings and structures identified and classified by the State Register of Historic Places under the provisions of section eight, article one of this chapter or the National Register of Historic Places, pursuant to 16 U. S. C. §470a.

Prior to renovations regarding the application of the State Building Code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the Division of Culture and History, State Historic Preservation Office. The final decision is vested in the State Fire Commission. Additions constructed on a historic building are not excluded from complying with the State Building Code.

CHAPTER 112

(Com. Sub. for H. B. 4618 - By Delegates Shott and Hanshaw)

[Passed March 9, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2018.]
Protective Services to compel dispersal of a riot or unlawful assemblage; to the authority of the Division of Protective Services to control riots and unlawful assemblages; to include officers of the Division of Protective Services among those officers on whom the penalty for failure to exercise power at riots and unlawful assemblages may be imposed; allowing Division of Protective Services officers to summon persons to suppress unlawful assemblages; to hold harmless Division of Protective Services officers from liability for the death of persons in riots and unlawful assemblages; correcting references to the State Police; removing language making all persons unlawfully assembled criminally liable for deaths of persons quelling unlawful assembly or riot; and to make technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-1. Suppression of riots and unlawful assemblages.

All members of the West Virginia State Police, the Division of Protective Services, all sheriffs within their respective counties and all mayors within their respective jurisdiction, may suppress riots, routs and unlawful assemblages. It shall be the duty of each of them to go among, or as near as may be with safety, to persons riotously, tumultuously, or unlawfully assembled, and in the name of the law command them to disperse; and if they shall not thereupon immediately and peaceably disperse, such member of the West Virginia State Police, or of the Division of Protective Services, sheriff or mayor giving the command, and any other present, shall command the assistance of all persons present, and of all or any part of other law-enforcement personnel available to him or her, as need be, in arresting and securing those so assembled. If any person present, on being required to give his or her assistance, depart, or fail to obey, he or she shall be deemed a rioter.
§61-6-1a. Control of riots and unlawful assemblages.

Members of the West Virginia State Police, the Division of Protective Services, sheriffs and mayors, and those acting under their order, may, when engaged in suppressing a riot, rout or unlawful assemblage, cordon off any area or areas threatened by such riot, rout or unlawful assemblage, and may take all actions which are necessary and reasonable under the emergency to restore law and order, and such actions may be, but are not limited to, the following:

(a) Prohibit the sale, offering for sale, dispensing, furnishing, or transportation of firearms or other dangerous weapons, ammunition, dynamite, or other dangerous explosives in, to or from such areas.

(b) Prohibit the sale, offering for sale, dispensing, furnishing, or consumption of alcoholic beverages or nonintoxicating beer in a public place in such areas, and prohibit the transportation of alcoholic beverages or nonintoxicating beer in, to, or from such areas.

(c) Impose curfews, as required, to control movement of persons in, to, and from such areas.

(d) Enter a private dwelling or other building or other private place in such areas when in fresh pursuit of a rioter, when in search of a sniper who has fired upon a person from such a dwelling or other building or place or when in search of firearms, other dangerous weapons, ammunition, dynamite, or other dangerous explosives when there is reason to believe that such items are stored in the said dwelling, building, or place and that they will be removed therefrom before a search warrant could be obtained.

No person shall willfully fail to obey a lawful order of any mayor, sheriff, deputy sheriff, municipal police officer, member of the West Virginia State Police, or the Division of Protective Services, or other officer, given pursuant to this section.
Any person who violates an order given pursuant to the authority of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $500, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

§61-6-3. Failure of member of West Virginia State Police officer, officer of the Division of Protective Services, mayor, or sheriff to exercise powers at riots and unlawful assemblages; penalty.

If any member of the West Virginia State Police, the Division of Protective Services, sheriff, or mayor have notice of a riotous, tumultuous, or unlawful assemblage in his or her respective jurisdiction as provided in section one of this article, and fail to proceed immediately to the place of such assemblage, or as near as he or she may safely go, or fail to exercise his or her authority for suppressing it and arresting the offenders, he or she shall be fined not to exceed $100.

§61-6-4. Summoning of persons to aid in suppressing riots and unlawful assemblages.

If any person engaged in such assemblage, being commanded, as hereinbefore provided, to disperse or to peaceably leave the scene of such assemblage, fail to do so without delay, any such member of the West Virginia State Police, the Division of Protective Services, sheriff or mayor may require the aid of a sufficient number of persons, in arms or otherwise, and proceed, in such manner as he or she may deem expedient, to disperse and suppress such assemblage, and arrest and secure those engaged in it.

§61-6-5. Death of person in suppression of riots and unlawful assemblages.

If, by any means taken under the authority of this article to disperse any such assemblage or arrest those engaged in it, any person present, as spectator or otherwise, be killed or
wounded, and neither malice, nor premeditation be present, any member of the West Virginia State Police, the Division of Protective Services, sheriff, or mayor exercising such authority, and everyone acting under his or her order, shall be held guiltless.

CHAPTER 113

(Com. Sub. for S. B. 319 - By Senators Rucker, Azinger, Drennan, Gaunch, Karnes, Smith, Sypolt, Trump, Unger, Cline, Boso, Plymale, Clements, Maroney and Takubo)

[Passed March 7, 2018; in effect July 1, 2018.]
[Approved by the Governor on March 20, 2018.]

AN ACT to amend and reenact §18C-7-6 of the Code of West Virginia, 1931, as amended, relating to allowing, in certain instances, individuals completing a secondary education program in a public, private, or home school and individuals obtaining a GED or equivalent to be eligible for the PROMISE scholarship.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-7-6. PROMISE Scholarship Program requirements; legislative rule.

(a) A PROMISE scholarship annual award shall meet the following conditions:

(1) For a student enrolled in a state institution of higher education, the annual award is equal to the lesser of the cost of tuition or $4,750, except that a student who was awarded
and used a PROMISE scholarship annual award prior to January 1, 2010, shall continue to receive the annual award calculated under the same terms and conditions that applied on the day before the effective date of this article;

(2) For a student enrolled in an eligible institution other than a state institution of higher education, the annual award is equal to, but may not exceed, the lesser of the cost of tuition or $4,750, except that a student who was awarded and used a PROMISE scholarship annual award prior to January 1, 2010, shall continue to receive the annual award calculated under the same terms and conditions that applied on the day before the effective date of this article;

(3) The annual award may exceed $4,750, if the commission determines that adequate funds are available, but in any case may not be greater than the actual cost of tuition;

(4) The annual award shall be used by an eligible institution to supplement, but may not supplant, a tuition and fee waiver for which the individual is eligible pursuant to §18B-10-5, §18B-10-6a, §18B-10-7, or §18B-10-7b of this code.

(b) The total cost of all scholarships awarded by the commission in any year may not exceed the amount of funds available to the commission during that fiscal year.

(c) In order to be eligible to receive a PROMISE scholarship award, an individual shall:

(1) Submit a scholarship award application to the commission:

(A) Within two years of completing a secondary education program in a public, private, or home school or within two years of obtaining a GED or equivalent; or

(B) Within seven years of initially entering military service, and within one year of discharge from military
service, if the individual has entered the United States armed services within two years after completing a secondary education program in a public, private, or home school or obtaining a GED or equivalent;

(2) Apply for and submit a Free Application for Federal Student Aid;

(3) Maintain a grade point average of at least 3.0 on a 4.0 grading scale in the required core and elective course work necessary to prepare students for success in post-secondary education at the associate and baccalaureate degree levels as determined by the commission, if the individual has completed not more than one semester or term at an institution of higher education, excluding credits earned in advanced placement, international baccalaureate, dual credit, and comparable courses while the student is enrolled in high school;

(4) Maintain appropriate academic progress toward the completion of a degree at the undergraduate education level as determined by the commission if the individual has completed more than one semester or term at an institution of higher education, excluding credits earned in advanced placement, international baccalaureate, dual credit and comparable courses while the student is enrolled in high school;

(5) Be a United States citizen or legal immigrant to the United States;

(6) Meet additional objective standards the commission considers necessary to promote academic excellence and to maintain the financial stability of the fund; and

(7) Enroll in an eligible institution. A student enrolled at an eligible institution who receives a PROMISE scholarship award may retain and renew the scholarship to complete his or her undergraduate education at that
institution or any other eligible institution under the following circumstances:

(A) The institution at which the student is enrolled loses its status as an eligible institution pursuant to the provisions of §18B-7-3(b)(1) of this code; and

(B) The student meets all other renewal requirements of this code and of commission rules.

(d) It is the intent of the Legislature that the commission shall strongly encourage prospective candidates for the PROMISE scholarship to perform at least 20 hours of unpaid community service while in high school to help prepare them for success in post-secondary education. The community service may include, but is not limited to, participation with nonprofit, governmental or community-based organizations designed with any or all of the following purposes:

(1) Improving the quality of life for community residents;

(2) Meeting the needs of community residents; or

(3) Fostering civic responsibility.

(e) The commission shall promulgate a legislative rule in accordance with the provisions of §29A-3A-1 et seq. of this code.

(1) The rule shall include at least the following provisions:

(A) The amount of a PROMISE scholarship award in combination with aid from all other sources may not exceed the cost of education at the institution the recipient is attending. This provision does not apply to members of the West Virginia National Guard, recipients of an Underwood-Smith teacher scholarship and recipients of a West Virginia engineering, science and technology scholarship;
(B) Additional objective standards the commission considers necessary:

(i) To promote academic excellence;

(ii) To maintain the financial stability of the fund; and

(iii) To operate the program within the limits of available funds;

(C) Provisions for making the highest and best use of the PROMISE Scholarship Program in conjunction with the West Virginia College Prepaid Tuition and Savings Program Act set forth in §18-30-1 et seq. of this code;

(D) A provision defining the relationship of PROMISE scholarship awards to all other sources of student financial aid to ensure maximum coordination. The provision shall include the following:

(i) Methods to maximize student eligibility for federal student financial aid;

(ii) A requirement that PROMISE scholarship awards not supplant tuition and fee waivers; and

(iii) Clarification of the relationship between the PROMISE Scholarship Program, tuition savings plans and other state-funded student financial aid programs;

(E) A method for awarding scholarships within the limits of available appropriations, including circumstances when program funds are not sufficient to provide awards to all eligible applicants. The commission may not use any of the following methods:

(i) Providing for an annual PROMISE scholarship award that is less than the amounts provided for in this section; or

(ii) Eliminating any current recipient from eligibility; and
(F) A method for applicants to appeal determinations of eligibility and renewal.

(2) The rule may provide for or require the following at the commission’s discretion:

(A) Requiring repayment of the amount of the scholarship, in whole or in part, if a scholarship recipient chooses to work outside the state after graduation. The rule may not require a recipient to repay a scholarship, in whole or in part, unless the prospective recipient has been informed of this requirement in writing before initial acceptance of the PROMISE scholarship award;

(B) Targeting a portion of the scholarship funds to be used for applicants enrolled in an engineering, science, technology or other designated program;

(C) Determining what other sources of funding for higher education are to be deducted from the PROMISE scholarship award; and

(D) Providing additional criteria as determined by the commission.

(3) The Legislature finds that an emergency exists and, therefore, the commission shall file a rule to implement the provisions of this section as an emergency rule pursuant to the provisions of §29A-3A-1 et seq. of this code. The rule is subject to the prior approval of the Legislative Oversight Commission on Education Accountability.

(4) Any rule promulgated by the commission pursuant to previous enactments of this article in effect on the effective date of the amendment and reenactment of this article in the year 2009 remains in effect until amended, modified, repealed, or replaced by the commission.
CHAPTER 114

(Com. Sub. for H. B. 4251 - By Delegates Shott, Ellington and Gearheart)

AN ACT to amend and reenact §18B-2A-1 of the Code of West Virginia, 1931, as amended, relating to certain higher education institution boards of governors membership; permitting officers, employees, or members of any other board of governors outside of this state and employees of any institution of higher education outside of this state to be appointed to a board of governors; and including, for institutions that have no classified employees, a member from the nonclassified employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Findings; composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

1 (a) Findings. –

2 The Legislature finds that the State of West Virginia is served best when the membership of each governing board includes the following:

3 (1) The academic expertise and institutional experience of faculty members and a student of the institution governed by the board;
(2) The technical or professional expertise and institutional experience of a classified employee or, as appropriate, nonclassified employee of the institution governed by the board;

(3) An awareness and understanding of the issues facing the institution governed by the board; and

(4) The diverse perspectives that arise from a membership that is balanced in terms of gender and varied in terms of race and ethnic heritage.

(b) Boards of governors established. –

A board of governors is continued at each of the following institutions: Bluefield State College, Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Concord University, Eastern West Virginia Community and Technical College, Fairmont State University, Glenville State College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, Marshall University, New River Community and Technical College, Pierpont Community and Technical College, Shepherd University, Southern West Virginia Community and Technical College, West Liberty University, West Virginia Northern Community and Technical College, the West Virginia School of Osteopathic Medicine, West Virginia State University, West Virginia University and West Virginia University at Parkersburg.

(c) Board membership. –

(1) An appointment to fill a vacancy on the board or reappointment of a member who is eligible to serve an additional term is made in accordance with the provisions of this section.

(2) The Board of Governors for Marshall University consists of sixteen persons. The Board of Governors for West Virginia University consists of seventeen persons. The
boards of governors of the other state institutions of higher education consist of twelve persons.

(3) Each board of governors includes the following members:

(A) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution;

(B) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution; and

(C) A member from the institutional classified employees duly elected by the classified employees of the respective institution or, if the respective institution does not have classified employees, a member from the institutional nonclassified employees duly elected by the nonclassified employees of the respective institution.

(4) For the Board of Governors at Marshall University, thirteen lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section;

(5) For the Board of Governors at West Virginia University, twelve lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section, and additionally:

(A) The Chairperson of the Board of Visitors of West Virginia University Institute of Technology;

(B) A full-time faculty member representing the extension service at the institution or a full-time faculty member representing the health sciences, selected by the faculty senate.

(6) For each board of governors of the other state institutions of higher education, nine lay members
appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section.

(A) Of the nine members appointed by the Governor, no more than five may be of the same political party. Of the thirteen members appointed by the Governor to the governing board of Marshall University, no more than eight may be of the same political party. Of the twelve members appointed by the Governor to the governing board of West Virginia University, no more than seven may be of the same political party.

(B) Of the nine members appointed by the Governor, at least five shall be residents of the state. Of the thirteen members appointed by the Governor to the governing board of Marshall University, at least eight shall be residents of the state. Of the twelve members appointed by the Governor to the governing board of West Virginia University, at least seven shall be residents of the state.

(7) In making lay appointments, the Governor shall consider the institutional mission and membership characteristics including the following:

(A) The need for individual skills, knowledge and experience relevant to governing the institution;

(B) The need for awareness and understanding of institutional problems and priorities, including those related to research, teaching and outreach;

(C) The value of gender, racial and ethnic diversity; and

(D) The value of achieving balance in gender and diversity in the racial and ethnic characteristics of the lay membership of each board.

(d) Board member terms. –

(1) The student member serves for a term of one year. Each term begins on July 1.
(2) The faculty member serves for a term of two years. Each term begins on July 1. Faculty members are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(3) The member representing classified employees or, as appropriate, nonclassified employees serves for a term of two years. Each term begins on July 1. Members representing classified employees or, as appropriate, nonclassified employees are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(4) The appointed lay citizen members serve terms of four years each and are eligible to succeed themselves for no more than one additional term, except that citizen members who are appointed to fill unexpired terms are eligible to succeed themselves for two full terms after completing an unexpired term.

(5) A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections are held and all appointments are made no later than June 30 preceding the commencement of the term. Each board of governors shall elect one of its appointed lay members to be chairperson in June of each year. A member may not serve as chairperson for more than four consecutive years.

(6) The appointed members of the boards of governors serve staggered terms of up to four years except that four of the initial appointments to the governing boards of community and technical colleges that became independent July 1, 2008, are for terms of two years and five of the initial appointments are for terms of four years.

(e) Board member eligibility, expenses. –
(1) A person is ineligible for appointment to membership on a board of governors of a state institution of higher education under the following conditions:

(A) For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee or member of any other board of governors within this state; an employee of any institution of higher education within this state; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to article twelve of this chapter; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or commission: Provided, That if an appointee is an employee or board member of an out-of-state higher education institution, there is no apparent conflict of interest caused by the individual serving in both capacities. This subsection does not prevent the representative from the faculty, classified employees or, as appropriate, nonclassified employees, students or the superintendent of a county board of education from being members of the governing boards.

(B) For a community and technical college, a person is ineligible for appointment who is an officer, employee or member of any other board of governors within this state; a member of a board of visitors of any public institution of higher education; an employee of any institution of higher education within this state; an officer or member of any political party executive committee; the holder of any other public office, other than an elected county office, or public employment, other than employment by the county board of education, under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to §18B-12-1 et seq. of this code; an employee of any affiliated foundation
organized and operated in support of one or more state institutions of higher education; or a member of the council or commission: Provided, That if an appointee is an employee or board member of an out-of-state higher education institution, there is no apparent conflict of interest caused by the individual serving in both capacities. This subsection does not prevent the representative from the faculty, classified employees or, as appropriate, nonclassified employees or students from being members of the governing boards.

(2) Before exercising any authority or performing any duties as a member of a governing board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the Secretary of State.

(3) A member of a governing board appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.

(4) The members of the board of governors serve without compensation, but are reimbursed for all reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of expenses.

(5) The president of the institution shall make available resources of the institution for conducting the business of its board of governors. All expenses incurred by the board of governors and the institution under this section are paid from funds allocated to the institution for that purpose.
AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding Tuition and Fee Policy, Human Resources Administration, and Capital Project Management; and authorizing legislative rules for the Council for Community and Technical College Education regarding Human Resources Administration, and Capital Project Management.

Be it enacted by the Legislature of West Virginia:


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

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

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

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

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

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

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

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

On page 2, subsection 5.1, following the words “financial aid office” by inserting a new subdivision 5.1.3 to read as follows: “United States citizenship or legal immigrant status while actively pursuing United States citizenship.”
(j) The legislative rule filed in the State Register on December 1, 2008, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.

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

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

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

(n) The legislative rule filed in the State Register on December 8, 2010, relating to the Higher Education Policy Commission (Authorization of Degree Granting Institutions) is authorized.

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

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

(p) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (Authorization of Degree Granting Institutions) is authorized.

(q) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (Annual Reauthorization of Degree Granting Institutions) is authorized.
(r) The legislative rule filed in the State Register on March 20, 2013, relating to the Higher Education Policy Commission (Human Resources Administration) is authorized.

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

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

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

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

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

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

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

(z) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Research Trust Fund Program) is authorized.
(aa) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Annual Reauthorization of Degree-Granting Institutions) is authorized.

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

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

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

On page 1, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: “Efficient use of existing classroom and other space by institutions, while maintaining an appropriate deference to the value judgments of the institutional governing boards.”;

On page 7, subsection 4.2, by striking out all of subdivision 4.2.d.5. and inserting in lieu thereof a new subdivision 4.2.d.5., to read as follows: “Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.”;

On page 7, subsection 4.2, by striking out all of subdivision 4.2.d.6. and inserting in lieu thereof a new subdivision 4.2.d.6., to read as follows: “Facility utilization rates will be an important factor in prioritizing capital projects across the systems.”

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

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

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

(a) The legislative rule filed in the State Register on September 29, 2004, relating to the West Virginia Council for Community and Technical College Education (performance indicators) is authorized.

(b) The legislative rule filed in the State Register on October 13, 2005, relating to the West Virginia Council for Community and Technical College Education (Authorization of degree-granting institutions) is authorized.

(c) The legislative rule filed in the State Register on October 30, 2006, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program) is authorized.
(d) The legislative rule filed in the State Register on December 4, 2008, relating to the West Virginia Council for Community and Technical College Education (Employing and Evaluating Presidents) is authorized.

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

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

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

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

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

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

(k) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (Annual Reauthorization of Degree Granting Institutions) is authorized.
(l) The legislative rule filed in the State Register on March 21, 2013, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration) is authorized.

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

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

(o) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and Technical College Education (Annual Reauthorization of Degree-Granting Institutions) is authorized.

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

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

(r) The legislative rule filed in the State Register on January 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management) is authorized, with the following amendments:

On page 1, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: “Efficient use of existing classroom and other space by institutions, while
maintaining an appropriate deference to the value judgments of the institutional governing boards.”;

On page 7, subsection 4.2, by striking out all of subdivision 4.2.d.5. and inserting in lieu thereof a new subdivision 4.2.d.5., to read as follows: “Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.”;

On page 7, subsection 4.2, by striking out all of subdivision 4.2.d.6. and inserting in lieu thereof a new subdivision 4.2.d.6., to read as follows: “Facility utilization rates will be an important factor in prioritizing capital projects across the systems.”

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

On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof a new subdivision 5.6., to read as follows: “A governing board may not implement a campus development plan or plan update that has not been confirmed by the Commission or approved by the Council, as appropriate. The purchase of any property for the construction of a facility that is not included in the campus development plan creates an update to the campus development plan that must be confirmed by the Commission or approved by the Council, as appropriate, prior to its purchase. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise.”.
CHAPTER 116

(Com. Sub. for S. B. 261 - By Senators Carmichael
(Mr. President) and Preziosso)
[By Request of the Executive]

[Passed March 10, 2018; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2018.]

AN ACT to repeal §31-18D-1, §31-18D-2, §31-18D-3, §31-18D-4, §31-18D-5, §31-18D-6, §31-18D-7, §31-18D-8, §31-18D-9, §31-18D-10, §31-18D-11, §31-18D-12, §31-18D-13, §31-18D-14, and §31-18D-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15-4c of said code; to amend and reenact §11-22-2 of said code; to amend and reenact §31-18-3, §31-18-6, §31-18-22, and §31-18-24 of said code; and to amend said code by adding thereto two new sections, designated §31-18-20d and §31-18-29, all relating generally to the elimination of the West Virginia Affordable Housing Trust Fund; transferring current responsibilities and duties of West Virginia Housing Trust Fund to the West Virginia Housing Development Fund; eliminating the West Virginia Affordable Housing Trust Fund and the West Virginia Affordable Housing Trust Fund Board of Directors; creating Affordable Housing Fund of the West Virginia Housing Development Fund and providing for uses therefor; providing for assessment of fees on all sales by licensed dealers of factory-built homes to be deposited in the Affordable Housing Fund of the West Virginia Housing Development Fund; providing for assessment of fees upon the privilege of transferring real estate for consideration to be deposited in the Affordable Housing Fund of the West Virginia Housing Development Fund; prohibiting use of funds in Affordable Housing Fund from being used to defray administrative and operating costs and expenses of Housing
Development Fund; defining “Affordable Housing Fund”; authorizing the West Virginia Housing Development Fund to provide funding to increase the capacity of nonprofit community housing organizations; providing for uses of funds in the Affordable Housing Fund; providing for disposition of the Affordable Housing Fund in the event of termination or dissolution of West Virginia Housing Development Fund; providing for windup of West Virginia Affordable Housing Trust Fund; repealing code related to West Virginia Affordable Housing Trust Fund; eliminating obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-4c. Collection of fee in addition to the consumers sales tax for sales of mobile factory-built homes; deposit of additional fee in West Virginia Affordable Housing Trust Fund.

(a) There is imposed, in addition to the sales tax imposed by the provisions of this article and §11-15A-1 et seq. of this code, a fee of $20 on all sales by licensed dealers of factory-built homes as that term is defined in §37-15-2 of this code to be collected as provided in §11-15B-1 et seq. of this code and remitted to the Tax Commissioner to be deposited by the commissioner in the Affordable Housing Fund, as provided in §31-18-20d of this code.

(b) The moneys collected from this additional fee shall be segregated from other funds of the West Virginia Housing Development Fund and shall be accounted for separately. None of these moneys may be expended by the West Virginia Housing Development Fund to defray administrative and operating costs and expenses actually incurred by the West Virginia Housing Development Fund.
ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.

§11-22-2. Rate of tax; when and by whom payable; additional county tax.

(a) Every person who delivers, accepts, or presents for recording any document, or in whose behalf any document is delivered, accepted, or presented for recording, is subject to pay for, and in respect to the transaction or any part thereof, a state excise tax upon the privilege of transferring title to real estate at the rate of $1.10 for each $500 value or fraction thereof as represented by the document as defined in §11-22-1 of this code. The state tax is payable at the time of delivery, acceptance, or presenting for recording of the document. In addition to the state excise tax described in this subsection, there is assessed a fee of $20 upon the privilege of transferring real estate for consideration. The clerk of the county commission shall collect the additional $20 fee before recording a transfer of title to real estate and shall deposit the moneys from the additional fees into the Affordable Housing Fund as provided in §31-18-20d of this code. The moneys collected from this additional fee shall be segregated from other funds of the West Virginia Housing Development Fund and shall be accounted for separately. None of these moneys may be expended by the West Virginia Housing Development Fund to defray administrative and operating costs and expenses actually incurred by the West Virginia Housing Development Fund. The West Virginia Housing Development Fund shall publish monthly on the Internet site an accounting of all revenue deposited into the fund during the month and a full disclosure of all expenditures from the fund including the group receiving funds, their location and any contractor awarded the construction contract.

(b) Effective January 1, 1968, and thereafter, there is imposed an additional county excise tax for the privilege of transferring title to real estate at the rate of 55 cents for each $500 value or fraction thereof as represented by such
document as defined in §11-22-1 of this code, which county
tax shall be payable at the time of delivery, acceptance, or
presenting for recording of such document: Provided, That
after July 1, 1989, the county may increase said excise tax to
an amount equal to the state excise tax. The additional tax
hereby imposed is declared to be a county tax and to be used
for county purposes: Provided, however, That after July 1, 2017,
the county may increase the excise tax to an amount
not to exceed $1.65 for each $500 value, or fraction thereof,
as represented by a document as defined in §11-22-1 of this
code: Provided further, That only one such state tax and one
such county tax shall be paid on any one document and shall
be collected in the county where the document is first
admitted to record and the tax shall be paid by the grantor
therein unless the grantee accepts the document without such
tax having been paid, in which event such tax shall be paid
by the grantee: And provided further, That on any transfer of
real property from a trustee or a county clerk transferring real
estate sold for taxes, such tax shall be paid by the grantee.
The county excise tax imposed under this section may not be
increased in any county unless the increase is approved by a
majority vote of the members of the county commission of
such county. Any county commission intending to increase
the excise tax imposed in its county shall publish a notice of
its intention to increase such tax not less than 30 days nor
more than 60 days prior to the meeting at which such increase
will be considered, such notice to be published as a Class I
legal advertisement in compliance with the provisions of §59-
3-1 et seq. of this code and the publication area shall be the
county in which such county commission is located.

CHAPTER 31. CORPORATIONS.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.


As used in this article, unless the context otherwise
requires:
(1) “Affordable Housing Fund” means the affordable housing fund created and established by the Housing Development Fund in accordance with §31-18-20d of this code.

(2) “Annual sinking fund payment” means the amount of money specified in the resolution or resolutions authorizing term bonds as payable into a sinking fund during a particular calendar year for the retirement of term bonds at maturity after such calendar year, but shall not include any amount payable by reason only of the maturity of a bond.

(3) “Development costs” means the costs approved by the Housing Development Fund as appropriate expenditures by the Housing Development Fund or by sponsors, for land development, residential housing, or nonresidential projects within this state, including, but not limited to:

(a) Payments for options to purchase proposed sites, necessary easements, and other related property rights, deposits on contracts of purchase, or, with prior approval of the Housing Development Fund, payments for the purchase of such properties;

(b) Legal and organizational expenses, including payments of attorneys’ fees, utility and governmental application and filing fees and expenses, project manager and clerical staff salaries, office rent, and other incidental expenses;

(c) Payment of fees and expenses for preliminary feasibility studies and costs estimates and advances for planning, engineering, and architectural work;

(d) Expenses for tenant surveys and market analyses;

and

(e) Necessary application, approval, and other fees.

(4) “Eligible persons and families” means:
(a) Persons and families of low and moderate income; or

(b) Persons or families of higher income to the extent the Housing Development Fund shall find and determine, by resolution, that construction of new or rehabilitated residential housing for occupancy by them will cause to be vacated existing sanitary, decent, and safe residential housing available at prices or rentals which persons and families of low and moderate income can afford; or

(c) Persons or families of higher income to the extent the Housing Development Fund shall find and determine, by resolution, that construction of new or rehabilitated multifamily rental housing or new, rehabilitated, or existing home ownership housing in the state for occupancy by them will further economic growth, increase the housing stock in the state by eliminating substandard or deteriorating housing conditions, or provide additional housing opportunities in the state; or

(d) Persons who because of age or physical disability are found and determined by the Housing Development Fund, by resolution, to require residential housing of a special location or design in order to provide them with sanitary, decent, and safe residential housing; or

(e) Persons and families for whom, as found and determined by the Housing Development Fund by resolution, construction of new or rehabilitated residential housing in some designated area or areas of the state is necessary for the purpose of retaining in, or attracting to, such area or areas qualified manpower resources essential to modern mining, industrial and commercial operations, and development in such area or areas.

(5) “Federally insured construction loan” means a construction loan for land development, residential housing, or nonresidential projects, which are either secured or guaranteed, in whole or in part, by a federally insured
mortgage or a federal mortgage, or which are insured or guaranteed, in whole or in part, by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to insure such loan.

(6) “Federally insured mortgage” means a mortgage loan for land development, residential housing, or nonresidential projects with a commitment by the United States or an instrumentality thereof to insure or guarantee such a mortgage.

(7) “Federal mortgage” means a mortgage loan for land development, residential housing, or nonresidential projects made by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to make such a mortgage loan.

(8) “Housing Development Fund” means the West Virginia Housing Development Fund heretofore created and established by §31-18-4 of this code.

(9) “Land development” means the process of acquiring land for residential housing construction or nonresidential projects or of making, installing, or constructing improvements, including waterlines and water supply installations, sewer lines and sewage disposal installations, steam, gas, telephone, and telecommunications and electric lines and installations, roads, railroad spurs, docking and shipping facilities, streets, curbs, gutters, sidewalks, drainage, and flood control facilities, whether on or off the site, which the Housing Development Fund deems necessary or desirable to prepare such land for construction within this state.

(10) “Land Development Fund” means the land development fund which may be created and established by the Housing Development Fund in accordance with §31-18-20a of this code.
(11) “Minimum bond insurance requirement” means, as of any particular date of computation, an amount of money equal to the greatest of the respective amounts, for the then current or any future calendar year, of annual debt service of the Housing Development Fund on all outstanding mortgage finance bonds, such annual debt service for any calendar year being the amount of money equal to the aggregate of: (a) All interest payable during such calendar year on such mortgage finance bonds on said date of computation; plus (b) the principal amount of such mortgage finance bonds outstanding which matures during such calendar year, other than mortgage finance bonds for which annual sinking fund payments have been or are to be made in accordance with the resolution authorizing such bonds; plus (c) the amount of all annual sinking fund payments payable during such calendar year with respect to any such mortgage finance bonds, all calculated on the assumption that bonds will after said date of computation cease to be outstanding by reason, but only by reason, of the payment of bonds when due, and the payment when due and application in accordance with the resolution authorizing such bonds of all such sinking fund payments payable at or after said date of computation.

(12) “Mortgage finance bonds” means bonds issued or to be issued by the Housing Development Fund and secured by a pledge of amounts payable from the mortgage finance bond insurance fund in the manner and to the extent provided in §31-18-20b of this code.

(13) “Mortgage Finance Bond Insurance Fund” means the special trust fund created and established in the State Treasury in accordance with §31-18-20b of this code.

(14) “Nonresidential project” means a project in the state, whether or not directly related to the providing of residential housing, determined by the Housing Development Fund as likely to foster and enhance economic growth and development in the area of the state in which such project is developed, for retail, commercial, industrial,
community improvement, or preservation or other proper purpose, including tourism and recreational housing, land, air, or water transportation facilities, facilities for vocational or other training or to provide medical care and other special needs of persons residing in the state, sports complexes and cultural, artistic, and other exhibition centers, industrial or commercial projects and facilities, mail order, wholesale, and retail sales facilities, and other real or personal properties including facilities which are owned or leased by this state, any county or municipality or other public body within the state, and includes, without limitation, the process of acquiring, holding, operating, planning, financing, demolition, construction, renovation, leasing, or otherwise disposing of such project or any part thereof or interest therein. Any such project may include appurtenant machinery and equipment.

(15) “Operating Loan Fund” means the operating loan fund which may be created and established by the Housing Development Fund in accordance with §31-18-19 of this code.

(16) “Persons and families of low and moderate income” means persons and families, irrespective of race, creed, national origin, or sex, determined by the Housing Development Fund to require such assistance as is made available by this article on account of personal or family income not sufficient to afford sanitary, decent, and safe housing, and to be eligible or potentially eligible to occupy residential housing constructed and financed, wholly or in part, with federally insured construction loans, federally insured mortgages, federal mortgages, or with other public or private assistance, or with uninsured construction loans, or uninsured mortgage loans, and in making such determination the fund shall take into account the following: (a) The amount of the total income of such persons and families available for housing needs; (b) the size of the family; (c) the cost and condition of housing facilities available; (d) the eligibility of such persons and families for
federal housing assistance of any type predicated upon low
or moderate income basis; and (e) the ability of such persons
and families to compete successfully in the normal housing
market and to pay the amounts at which private enterprise is
providing sanitary, decent, and safe housing: Provided, That
to the extent found and determined by the Housing
Development Fund, by resolution, to be necessary or
appropriate for the purposes of eliminating undesirable social
conditions and permanently eliminating slum conditions, the
income limitation requirements of this article may be waived
as to any persons or families who are eligible to occupy
residential housing constructed in whole, or in part, with
federally insured construction loans, federally insured
mortgages or federal mortgages under housing assistance or
mortgage insurance programs of the United States, or an
instrumentality thereof, predicated upon any low- or
moderate-income basis.

(17) “Residential housing” means a specific work or
improvement within this state undertaken primarily to
provide dwelling accommodations, including the
acquisition, construction, or rehabilitation of land,
buildings, and improvements thereto, for residential
housing for occupancy by eligible persons and families,
including, but not limited to, facilities for temporary
housing and emergency housing, nursing homes and
intermediate care facilities, and such other nonhousing
facilities as may be incidental or appurtenant thereto.

(18) “Special bond insurance commitment fee” means a
fee in the amount of one per centum of the total principal
amount of each loan which is to be temporarily or
permanently financed from the proceeds of mortgage
finance bonds, other than a federally insured construction
loan, a federally insured mortgage or a federal mortgage, or
an amount equal to an equivalent discount on each loan
purchased or invested in by the Housing Development Fund
from the proceeds of mortgage finance bonds, other than a
federally insured construction loan, a federally insured
mortgage or a federal mortgage, and which may be payable from the proceeds of such bonds or any other source available to the Housing Development Fund for such use: Provided, That if the period of time between the first disbursement of proceeds of such loan and the date upon which it is specified that the first repayment of principal of such a loan shall be payable exceeds 12 months, an additional amount computed on the basis of one twelfth of one per centum per month on the total principal amount of such loan over the number of months of such period of time in excess of 12 months shall be included in such fee.

(19) “Special bond insurance premium” means: (i) A fee at the rate of one half of one percent per annum on the outstanding principal balance which the Housing Development Fund shall charge the borrower of a mortgage loan, or of a loan secured by a mortgage, financed from the proceeds of mortgage finance bonds, other than a federally insured construction loan, a federally insured mortgage or a federal mortgage, which shall accrue from a date which is one month prior to the date on which the first installment payment of principal of such a loan is payable and which shall be payable thereafter in monthly installments on the same day of each successive month that installment payments of principal of such a loan are payable; and (ii) with respect to any loan, other than a federally insured construction loan, a federally insured mortgage or a federal mortgage, purchased, or invested in with such proceeds, an equivalent amount which the Housing Development Fund shall set aside from payments it receives on such loan or from any other source available to the Housing Development Fund for such use.

(20) “State sinking fund commission” means the commission known as such and continued in existence pursuant to §13-3-1 et seq. of this code and any body, board, person, or commission which shall, by law, hereafter succeed to the powers and duties of such commission.
(21) “Temporary housing” means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction, or rehabilitation of land, buildings, and improvements thereto, for temporary residential housing, including, but not limited to, shelters for homeless people, housing for victims of floods and other disasters, shelters for abused or battered persons and their children, housing for families with hospitalized family members, housing for students and student families, and housing for the handicapped and such other nonhousing facilities as may be incidental or appurtenant thereto.

(22) “Uninsured construction loans” means a construction loan for land development, residential housing or nonresidential projects which is not secured by either a federally insured mortgage or a federal mortgage, and which is not insured by the United States or an instrumentality thereof, and as to which there is no commitment by the United States or an instrumentality thereof to provide insurance.

(23) “Uninsured mortgage” and “uninsured mortgage loan” means mortgage loans for land development, residential housing or nonresidential projects which are not insured or guaranteed by the United States or an instrumentality thereof, and as to which there is no commitment by the United States or an instrumentality thereof to provide insurance.

§31-18-6. Corporate powers.

The Housing Development Fund is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose, including, but not limited to, the following:

(1) To make or participate in the making of federally insured construction loans to sponsors of land development, residential housing, or nonresidential projects. Such loans
shall be made only upon determination by the Housing Development Fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(2) To make temporary loans, with or without interest, but with such security for repayment as the Housing Development Fund determines reasonably necessary and practicable, from the operating loan fund, if created, established, organized, and operated in accordance with the provisions of §31-18-19 of this code, to defray development costs to sponsors of land development, residential housing, or nonresidential projects which are eligible or potentially eligible for federally insured construction loans, federally insured mortgages, federal mortgages or uninsured construction loans or uninsured mortgage loans;

(3) To make or participate in the making of long-term federally insured mortgage loans to sponsors of land development, residential housing, or nonresidential projects. Such loans shall be made only upon determination by the Housing Development Fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(4) To establish residential housing and nonresidential and land development projects for counties declared to be in a disaster area by the Federal Emergency Management Agency or other agency or instrumentality of the United States or this state;

(5) To accept appropriations, gifts, grants, bequests, and devises and to utilize or dispose of the same to carry out its corporate purpose;

(6) To make and execute contracts, releases, compromises, compositions, and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purpose;
(7) To collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments, and other evidences of indebtedness, and in connection with providing technical, consultative, and project assistance services;

(8) To invest any funds not required for immediate disbursement in any of the following securities:

(i) Direct obligations of or obligations guaranteed by the United States of America or for the payment of the principal and interest on which the full faith and credit of the United States of America is pledged;

(ii) Bonds, debentures, notes, or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Tennessee Valley Authority; United States Postal Service; Inter-American Development Bank; International Bank for Reconstruction and Development; Small Business Administration; Washington Metropolitan Area Transit Authority; General Services Administration; Federal Financing Bank; Federal Home Loan Mortgage Corporation; Student Loan Marketing Association; Farmer’s Home Administration; the Federal National Mortgage Association or the Government National Mortgage Association; or any bond, debenture, note, participation certificate or other similar obligation to the extent such obligations are guaranteed by the Government National Mortgage Association or Federal National Mortgage Association or are issued by any other federal agency and backed by the full faith and credit of the United States of America;

(iii) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes, preliminary
loan notes, or project notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(iv) Certificates of deposit, time deposits, investment agreements, repurchase agreements, or similar banking arrangements with a member bank or banks of the federal reserve system or a bank the deposits of which are insured by the federal deposit insurance corporation, or its successor, or a savings and loan association or savings bank the deposits of which are insured by the federal savings and loan insurance corporation, or its successor, or government bond dealers reporting to, trading with and recognized as primary dealers by a federal reserve bank: Provided, That such investments shall only be made to the extent insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or to the extent that the principal amount thereof shall be fully collateralized by obligations which are authorized investments for the Housing Development Fund pursuant to this section;

(v) Direct obligations of or obligations guaranteed by the State of West Virginia;

(vi) Direct and general obligations of any other state, municipality, or other political subdivision within the territorial United States: Provided, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency;

(vii) Any bond, note, debenture, or annuity issued by any corporation organized and operating within the United States: Provided, That such corporation shall have a minimum net worth of $15 million and its securities or its parent corporation’s securities are listed on one or more of the national stock exchanges: Provided, however, That: (1) Such corporation has earned a profit in eight of the preceding 10 fiscal years as reflected in its statements; and
(2) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding 10 fiscal years; and (3) the bonds, notes, or debentures of such corporation to be purchased are rated “AA” or the equivalent thereof or better than “AA” or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor’s, Dunn & Bradstreet, Best’s, or Moody’s;

(viii) If entered into solely for the purpose of reducing investment, interest rate, liquidity, or other market risks in relation to obligations issued or to be issued or owned or to be owned by the Housing Development Fund, options, futures contracts (including index futures but exclusive of commodities futures, options, or other contracts), standby purchase agreements or similar hedging arrangements listed by a nationally recognized securities exchange or a corporation described in §31-18-6(8)(vii) of this code;

(ix) Certificates, shares, or other interests in mutual funds, unit trusts or other entities registered under section eight of the United States Investment Company Act of 1940, but only to the extent that the terms on which the underlying investments are to be made prevent any more than a minor portion of the pool which is being invested in to consist of obligations other than investments permitted pursuant to this section; and

(x) To the extent not inconsistent with the express provisions of this section, obligations of the West Virginia State Board of Investments or any other obligation authorized as an investment for the West Virginia State Board of Investments under §12-6-1 et seq. of this code or for a public housing authority under §16-15-1 et seq. of this code;

(9) To sue and be sued;

(10) To have a seal and alter the same at will;
(11) To make, and from time to time, amend, and repeal bylaws and rules and regulations not inconsistent with the provisions of this article;

(12) To appoint such officers, employees, and consultants as it deems advisable and to fix their compensation and prescribe their duties;

(13) To acquire, hold, and dispose of real and personal property for its corporate purposes;

(14) To enter into agreements or other transactions with any federal or state agency, any person and any domestic or foreign partnership, corporation, association, or organization;

(15) To acquire real property, or an interest therein, in its own name, by purchase or foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the Housing Development Fund has an interest and to sell, transfer, and convey any such property to a buyer and, in the event of such sale, transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease such property to a tenant;

(16) To purchase or sell, at public or private sale, any mortgage or other negotiable instrument or obligation securing a construction, rehabilitation, improvement, land development, mortgage, or temporary loan;

(17) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(18) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purpose, to the modification of the rate of interest, time of payment or any installment of principal or interest, or any other terms, of mortgage loan, mortgage loan commitment, construction loan, rehabilitation loan, improvement loan, temporary
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r, contract, or agreement of any kind to which the
Housing Development Fund is a party;

(19) To make and publish rules and regulations
respecting its federally insured mortgage lending, uninsured
mortgage lending, construction lending, rehabilitation
lending, improvement lending and lending to defray
development costs and any such other rules and regulations
as are necessary to effectuate its corporate purpose;

(20) To borrow money to carry out and effectuate its
corporate purpose and to issue its bonds or notes as evidence
of any such borrowing in such principal amounts and upon
such terms as shall be necessary to provide sufficient funds
for achieving its corporate purpose, except that no notes
shall be issued to mature more than 10 years from date of
issuance and no bonds shall be issued to mature more than
50 years from date of issuance;

(21) To issue renewal notes, to issue bonds to pay notes
and, whenever it deems refunding expedient, to refund any
bonds by the issuance of new bonds, whether the bonds to
be refunded have or have not matured except that no such
renewal notes shall be issued to mature more than 10 years
from date of issuance of the notes renewed and no such
refunding bonds shall be issued to mature more than 50
years from the date of issuance;

(22) To apply the proceeds from the sale of renewal
notes or refunding bonds to the purchase, redemption, or
payment of the notes or bonds to be refunded;

(23) To make grants and provide technical services to
assist in the purchase or other acquisition, planning,
processing, design, construction, or rehabilitation,
improvement, or operation of residential housing,
nonresidential projects, or land development: Provided, That
no such grant or other financial assistance shall be provided
except upon a finding by the Housing Development Fund that
such assistance and the manner in which it will be provided
will preserve and promote residential housing in this state or
the interests of this state in maintaining or increasing
employment or the tax base;

(24) To provide project assistance services for
residential housing, nonresidential projects, and land
development, including, but not limited to, management,
training, and social and other services;

(25) To promote research and development in scientific
methods of constructing low-cost land development,
residential housing, or nonresidential projects of high
durability including grants, loans, or equity contributions
for research and development purposes: Provided, That no
such grant or other financial assistance shall be provided
except upon a finding by the Housing Development Fund
that such assistance and the manner in which it will be
provided will preserve and promote residential housing in
this state or the interests of this state in maintaining and
increasing employment and the tax base;

(26) With the proceeds from the issuance of notes or
bonds of the Housing Development Fund, including, but not
limited to, mortgage finance bonds, or with other funds
available to the Housing Development Fund for such
purpose, to participate in the making of or to make loans to
mortgagees approved by the Housing Development Fund
and take such collateral security therefor as is approved by
the Housing Development Fund and to invest in, purchase,
acquire, sell, or participate in the sale of, or take
assignments of, notes and mortgages, evidencing loans for
the construction, rehabilitation, improvement, purchase, or
refinancing of land development, residential housing, or
nonresidential projects in this state: Provided, That the
Housing Development Fund shall obtain such written
assurances as shall be satisfactory to it that the proceeds of
such loans, investments, or purchases will be used, as nearly
as practicable, for the making of or investment in long-term
federally insured mortgage loans or federally insured
construction loans, uninsured mortgage loans, or uninsured
construction loans, for land development, residential housing, or nonresidential projects or that other moneys in an amount approximately equal to such proceeds shall be committed and used for such purpose;

(27) To make or participate in the making of uninsured construction loans for land development, residential housing, or nonresidential projects. Such loans shall be made only upon determination by the Housing Development Fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(28) To make or participate in the making of long-term uninsured mortgage loans for land development, residential housing, or nonresidential projects. Such loans shall be made only upon determination by the Housing Development Fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(29) To obtain options to acquire real property, or any interest therein, in its own name, by purchase, or lease or otherwise, which is found by the Housing Development Fund to be suitable, or potentially suitable, as a site, or as part of a site, for land development or the construction of residential housing or nonresidential projects; to hold such real property or to acquire by purchase or otherwise and to transfer by sale or otherwise any ownership or equity interests in any other legal entity which holds such real property; to finance the performance of land development, residential housing, or nonresidential projects on or in connection with any such real property or to perform land development, residential housing, or nonresidential projects on or in connection with any such real property; to own, operate, and sponsor or participate in the sponsorship of land development, residential housing, or nonresidential projects; or to sell, transfer and convey, lease, or otherwise dispose of such real property, or lots, tracts, or parcels of such real property, for such prices, upon such terms,
conditions, and limitations, and at such time or times as the Housing Development Fund shall determine;

(30) To make loans, with or without interest, but with such security for repayment as the Housing Development Fund determines reasonably necessary and practicable from the land development fund, if created, established, organized, and operated in accordance with the provisions of §31-18-20a of this code, to sponsors of land development, to defray development costs and other costs of land development;

(31) To exercise all of the rights, powers, and authorities of a public housing authority as set forth and provided in §16-15-1 et seq. of this code, in any area or areas of the state which the Housing Development Fund shall determine by resolution to be necessary or appropriate;

(32) To provide assistance to urban renewal projects in accordance with the provisions of §16-18-28 of this code and in so doing to exercise all of the rights, powers, and authorities granted in this article or in said article, in and for any communities of the state which the Housing Development Fund shall determine by resolution to be necessary or appropriate;

(33) To make or participate in the making of loans for the purpose of rehabilitating or improving existing residential and temporary housing or nonresidential projects, or to owners of existing residential or temporary housing for occupancy by eligible persons and families for the purpose of rehabilitating or improving such residential or temporary housing or nonresidential projects and, in connection therewith, to refinance existing loans involving the same property. Such loans shall be made only upon determination by the Housing Development Fund that rehabilitation or improvement loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;
(34) Whenever the Housing Development Fund deems it necessary in order to exercise any of its powers set forth in §31-18-6(29) of this code, and upon being unable to agree with the owner or owners of real property or interest therein sought to be acquired by the fund upon a price for acquisition of private property not being used or operated by the owner in the production of agricultural products, to exercise the powers of eminent domain in the acquisition of such real property or interest therein in the manner provided under §54-1-1 et seq. of this code, and the purposes set forth in said subdivision are hereby declared to be public purposes for which private property may be taken. For the purposes of this section, the determination of “use or operation by the owner in the production of agricultural products” means that the principal use of such real estate is for the production of food and fiber by agricultural production other than forestry, and the fund shall not initiate or exercise any powers of eminent domain without first receiving an opinion in writing from both the Governor and the Commissioner of Agriculture of this state that at the time the fund had first attempted to acquire such real estate or interest therein, such real estate or interest therein was not in fact being used or operated by the owner in the production of agricultural products;

(35) To acquire, by purchase or otherwise, and to hold, transfer, sell, assign, pool, or syndicate, or participate in the syndication of, any loans, notes, mortgages, securities, or debt instruments collateralized by mortgages or interests in mortgages or other instruments evidencing loans or equity interests in or for the construction, rehabilitation, improvement, renovation, purchase, or refinancing of land development, residential housing, and nonresidential projects in this state;

(36) To form one or more nonprofit corporations, whose board of directors shall be the same as the board of directors of the Housing Development Fund, which shall be authorized and empowered to carry out any or all of the
(37) To receive and compile data into an electronic database and make available the raw mortgage foreclosure data that is required to be reported to county clerks by trustees pursuant to the provisions of §38-1-8a of this code, including all data that has been received by the banking commissioner pursuant to §31A-2-4c(a) of this code, as of the effective date of the amendments made to said section during the regular session of the 2010 Legislature. This information shall be periodically forwarded by county clerks to the Housing Development Fund, in accordance with the provisions of §44-13-4a of this code; and

(38) Provide funding to increase the capacity of nonprofit community housing organizations to serve their communities.

§31-18-20d. Affordable Housing Fund.

(a) There is hereby created and established a special fund to be designated as the Affordable Housing Fund into which the Housing Development Fund shall deposit the funds received pursuant to §11-15-4c and §11-22-2 of this code. Such funds shall be governed, administered, and accounted for by the Housing Development Fund as a special purpose account separate and distinct from any other moneys, fund or funds owned or managed by the Housing Development Fund. Additionally, the Housing Development Fund shall deposit an additional amount at least equal to the funds received pursuant to §31-18-29 of this code. The moneys deposited in such fund may be invested and reinvested by the Housing Development Fund as authorized under §31-18-6(8) of this code.

(b) The Housing Development Fund shall use the moneys from the Affordable Housing Fund to make, or
participate in the making of, loans or grants for eligible activities that shall include, but not be limited to:

(1) Providing funds for new construction, rehabilitation, repair, or acquisition of housing to assist low or moderate income citizens including land and land improvements;

(2) Providing matching funds for federal housing moneys requiring a local or state match;

(3) Providing funds for administrative costs for housing assistance programs or nonprofit organizations eligible for funding pursuant to §31-18-20d(c) of this code if the grants or loans provided will substantially increase the recipient’s access to housing funds or increase its capacity to supply affordable housing;

(4) Providing loan guarantees and other financial mechanisms to facilitate the provision of housing products or services;

(5) Providing funds for down payments, closing costs, foreclosure prevention, home ownership counseling, and security bonds which facilitate the construction, rehabilitation, repair, or acquisition of housing by low to moderate income citizens;

(6) Providing risk underwriting products not provided by private sector entities to facilitate broader accessibility of citizens to other federal or state housing funds or loan programs. The products shall be established using professional risk underwriting standards and separate corporate vehicles may be created and capitalized by the Housing Development Fund to provide the products; and

(7) Providing start-up funds for initial operational expenses of local government programs to reduce substandard housing or inappropriate land use patterns.

(c) Organizations eligible for funding from the Affordable Housing Fund include: (1) Local governments;
(2) local government housing authorities; (3) nonprofit organizations recognized as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended, codified in 26 U.S.C. § 501(c)(3), and which are organized and operated exclusively for charitable purposes within the meaning of that section, and in accordance with those purposes provide assistance to low or moderate income citizens of this state; and (4) regional or statewide housing assistance organizations that have been recognized as exempt under Section 501(c)(3) of the Internal Revenue Code, as amended, and which provide assistance to low and moderate income or low income citizens of this state.

§31-18-22. Termination or dissolution.

Upon the termination or dissolution, all rights and properties of the Housing Development Fund, including the Operating Loan Fund, the Land Development Fund, the Mortgage Finance Bond Insurance Fund, and the Affordable Housing Fund, shall pass to and be vested in the State of West Virginia, subject to the rights of bondholders, lienholders, and other creditors.

§31-18-24. Annual audit; reports to Joint Committee on Government and Finance; information to joint committee or legislative Auditor.

The Housing Development Fund shall cause an annual audit to be made by an independent certified public accountant of its books, accounts, and records, with respect to its receipts, disbursements, contracts, mortgages, leases, assignments, loans, and all other matters relating to its financial operations, including those of the Operating Loan Fund, the Land Development Fund, and the Mortgage Finance Bond Insurance Fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration, where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the Speaker of the
In addition to the foregoing annual audit report, the Housing Development Fund shall also render every six months to the Joint Committee on Government and Finance a report setting forth in detail a complete analysis of the activities, indebtedness, receipts, and financial affairs of such fund and the Operating Loan Fund, the Land Development Fund, Affordable Housing Fund, and the Mortgage Finance Bond Insurance Fund. Upon demand, the Housing Development Fund shall also submit to the Joint Committee on Government and Finance or the Legislative Auditor any other information requested by such committee or the Legislative Auditor.

§31-18-29. Dissolution of West Virginia Affordable Housing Trust Fund.

Upon termination of the West Virginia Affordable Housing Trust Fund, the Housing Development Fund shall provide for the payment of all debts, obligations, or expenses of the Affordable Housing Trust Fund, and all assets remaining in the Affordable Housing Trust Fund shall be transferred to the West Virginia Housing Development Fund.

ARTICLE 18D. WEST VIRGINIA AFFORDABLE HOUSING TRUST FUND.

§31-18D-1. Short title.

[Repealed.]

§31-18D-2. Legislative finding and purpose.

[Repealed.]

§31-18D-3. Definitions.

[Repealed.]

§31-18D-4. Affordable housing trust fund.

[Repealed.]
§31-18D-5. Housing Trust Fund Board of Directors.

1 [Repealed.]

§31-18D-6. Powers and responsibilities of the board.

1 [Repealed.]

§31-18D-7. Eligible activities; eligible organizations.

1 [Repealed.]


1 [Repealed.]


1 [Repealed.]

§31-18D-10. Documentary materials concerning financial or personal information; confidentiality.

1 [Repealed.]


1 [Repealed.]

§31-18D-12. Tax exemption.

1 [Repealed.]


1 [Repealed.]

§31-18D-14. Exemption from certain requirements; audit.

1 [Repealed.]

§31-18D-15. Dissolution or liquidation of trust fund.

1 [Repealed.]
* The Senate’s March 10th legislative day ended with adjournment *sine die* at 12:01 a.m. on March 11th. The Governor had issued a proclamation on March 7, 2018, extending the session for a period not to exceed one day for the purpose of considering the Budget Bill.

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