FOREWORD

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

First Regular Session, 2015

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

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

The Governor vetoed thirty-one bills (Com. Sub. for H. B. 2010, Requiring the elections of justices of the West Virginia Supreme Court of Appeals, circuit court judges, family court judges and magistrates be nonpartisan and by division; Com. Sub. for H. B. 2160, WV Schools for the Deaf and Blind eligible for School Building Authority funding; H. B. 2161, Adopting the Uniform Act on Prevention of and Remedies for Human Trafficking; Com. Sub. for H. B. 2187, Encouraging public officials to display the national motto on all public property and public buildings; H. B. 2201, Requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards; Com. Sub. for H. B. 2240, Providing that an act of domestic violence or sexual offense by strangling is an aggravated felony offense; Com. Sub. for H. B. 2568, The Pain-Capable Unborn Child Protection Act; Com. Sub. for H. B. 2571, Creating a fund for pothole repair contributed to by private businesses or entities; H. B. 2576, Creating new code sections which separate the executive departments; H. B. 2627, Providing protection against property crimes committed against coal mines, utilities and other industrial facilities; Com. Sub. for H. B. 2648, Allowing authorized entities to maintain a stock of epinephrine auto-injectors to be used for emergency; H. B. 2664, Creating “Andrea and Willy’s Law”; increasing certain penalties
There were 224 Concurrent Resolutions introduced during the session, 156 House and 68 Senate, of which 32 House and 36 Senate were adopted. There were 26 House Joint Resolutions and 6 Senate Joint Resolutions introduced, none of which were adopted by the Legislature. The House introduced 22 House Resolutions, and the Senate introduced 59 Senate Resolutions, of which 17 House and 58 Senate were adopted.

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

STEPHEN J. HARRISON
Clerk of the House and
Keeper of the Rolls.
# TABLE OF CONTENTS

## ACTS

Regular Session, 2015

---

### GENERAL LAWS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(*SB423)</td>
<td>Amending Aboveground Storage Tank Act..</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>(SB489)</td>
<td>Imposing Statute of Limitations on Civil Actions Derived from Surveying of Real Property.</td>
<td>36</td>
</tr>
<tr>
<td>3</td>
<td>(SB3)</td>
<td>Relating to Real Property Possessor’s Liability for Trespasser Harm.</td>
<td>38</td>
</tr>
<tr>
<td>4</td>
<td>(*SB13)</td>
<td>Reinstating Open and Obvious Doctrine for Premises Liability.</td>
<td>39</td>
</tr>
<tr>
<td>5</td>
<td>(*SB421)</td>
<td>Relating to Punitive Damages in Civil Actions.</td>
<td>40</td>
</tr>
<tr>
<td>6</td>
<td>(*SB344)</td>
<td>Relating to Duty to Mitigate Damages in Employment Claims.</td>
<td>42</td>
</tr>
<tr>
<td>7</td>
<td>(HB2726)</td>
<td>Clarifying Choice of Laws Issues in Product’s Liability Actions.</td>
<td>45</td>
</tr>
<tr>
<td>8</td>
<td>(*SB37)</td>
<td>Creating Revised Uniform Arbitration Act.</td>
<td>46</td>
</tr>
</tbody>
</table>

[VII]
# TABLE OF CONTENTS

## ADMINISTRATION PROCEDURES ACT

| 9. | (*SB140) | Amending State Administrative Procedures Act. | 70 |

## AGRICULTURE

| 10. | (HB2657) | Allowing Members of the Livestock Care Standards Board to be Reimbursed for Expenses Consistent with the West Virginia Department of Agriculture Travel Policy and Procedure. | 80 |
| 11. | (HB2888) | Allowing the Use of Rotary Drum Composters to Destroy or Dispose of the Carcass of Any Animal to Prevent the Spread of Disease. | 81 |
| 12. | (HB2658) | Relating to the Inspection and Slaughter of Nontraditional Agriculture. | 84 |

## ALCOHOL

| 13. | (*SB273) | Relating to Brewer, Resident Brewer, Brewpub, Class A and B Retail Dealer, Private Club and Class A and B Retail Licensee Licensing and Operations. | 85 |
| 14. | (SB574) | Relating to Liquor Sales by Distilleries and Mini-distilleries. | 105 |

## APPROPRIATIONS

<p>| 15. | (*HB2016) | Budget Bill, Making Appropriations of Public Money out of the Treasury in Accordance with Section Fifty-one, Article Six of the Constitution. | 109 |
| 16. | (HB2760) | Making a Supplementary Appropriation to the Bureau of Senior Services - Lottery Senior Citizens Fund. | 351 |</p>
<table>
<thead>
<tr>
<th></th>
<th>Bill Number</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>17.</td>
<td>(HB2764)</td>
<td>Making a Supplementary Appropriation to the State Department of Education-School Building Authority.</td>
<td>352</td>
</tr>
<tr>
<td>18.</td>
<td>(*HB2766)</td>
<td>Expiring Funds to the Unappropriated Balance in the State Fund, General Revenue from the Joint Expenses, and from the Department of Health and Human Resources.</td>
<td>354</td>
</tr>
<tr>
<td>19.</td>
<td>(*HB2769)</td>
<td>Expiring Funds to the Unappropriated Surplus Balance in the State Fund, General Revenue from Various Agencies.</td>
<td>359</td>
</tr>
<tr>
<td>20.</td>
<td>(HB2770)</td>
<td>Making a Supplementary Appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Division of Human Services.</td>
<td>365</td>
</tr>
<tr>
<td>21.</td>
<td>(*HB2772)</td>
<td>Expiring Funds to the Unappropriated Surplus Balance in the State Fund, General Revenue, from the Auditor’s Office - Purchasing Card Administration Fund.</td>
<td>367</td>
</tr>
<tr>
<td>22.</td>
<td>(HB2933)</td>
<td>Making a Supplementary Appropriation to the Department of Administration, Public Defender Services.</td>
<td>369</td>
</tr>
<tr>
<td>23.</td>
<td>(HB3020)</td>
<td>Making a supplementary appropriation to the Department of Military Affairs and Public Safety, Division of Corrections.</td>
<td>371</td>
</tr>
<tr>
<td>24.</td>
<td>(HB3021)</td>
<td>Making a Supplementary Appropriation to the Department of Health and Human Resources.</td>
<td>373</td>
</tr>
<tr>
<td>25.</td>
<td>(HB3022)</td>
<td>Making a Supplementary Appropriation to the Treasurer’s Office, to the State Board of Education, to Mountwest Community and Technical College, to the West Virginia School of Osteopathic Medicine, and to West Virginia State University.</td>
<td>375</td>
</tr>
<tr>
<td>Number</td>
<td>Bill</td>
<td>Description</td>
<td>Page</td>
</tr>
<tr>
<td>--------</td>
<td>--------</td>
<td>------------------------------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>26</td>
<td>(SB463)</td>
<td>Making Supplementary Appropriation to DHHR, DHS, Health Care Provider Tax, Medicaid State Share Fund</td>
<td>381</td>
</tr>
<tr>
<td>27</td>
<td>(SB466)</td>
<td>Making Supplementary Appropriation of Federal Funds to Department of Commerce</td>
<td>383</td>
</tr>
<tr>
<td>28</td>
<td>(SB467)</td>
<td>Making Supplementary Appropriation of Federal Funds to Department of Agriculture, State Conservation Committee</td>
<td>385</td>
</tr>
<tr>
<td>29</td>
<td>(SB469)</td>
<td>Making Supplementary Appropriation of Federal Funds to DEP, Division of Environmental Protection</td>
<td>386</td>
</tr>
<tr>
<td>30</td>
<td>(SB471)</td>
<td>Making Supplementary Appropriation of Federal Funds to DHHR, Human Rights Commission, and DHHR, DHS</td>
<td>388</td>
</tr>
<tr>
<td>31</td>
<td>(SB472)</td>
<td>Making Supplementary Appropriation to DOT, DMV, Motor Vehicle Fees Fund</td>
<td>390</td>
</tr>
<tr>
<td>32</td>
<td>(SB473)</td>
<td>Making Supplementary Appropriation of Federal Funds to DMAPS, WV State Police</td>
<td>392</td>
</tr>
<tr>
<td>33</td>
<td>(SB475)</td>
<td>Making Supplementary Appropriation to DMAPS, Division of Corrections, Parolee Supervision Fees, and WV State Police, Motor Vehicle Inspection Fund</td>
<td>393</td>
</tr>
<tr>
<td>34</td>
<td>(SB476)</td>
<td>Making Supplementary Appropriation to Department of Administration, Division of Purchasing, Purchasing Improvement Fund</td>
<td>396</td>
</tr>
<tr>
<td>35</td>
<td>(SB477)</td>
<td>Supplementing, Amending, Decreasing and Increasing Appropriation from State Road Fund to DOH</td>
<td>398</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

ASBESTOS

36. (*SB411) Creating Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act. 400

AVIATION

37. (HB2138) Adding Aircraft Operations on Private Airstrips and Farms to the Definition of Recreational Purpose. 428

BANKS AND BANKING

38. (SB545) Removing Certain Prior Bank Overdraft Approval by Director or Executive Officer. 430

39. (SB283) Relating to State Banking Institutions. 442

BOARDS AND COMMISSIONS

40. (SB294) Eliminating Certain Unnecessary, Inactive or Redundant Councils, Committees and Boards. 446

BROADBAND ENHANCEMENT COUNCIL

41. (*SB488) Creating Broadband Enhancement Council. 465

BUSINESS DEVELOPMENT

42. (*HB2878) Creating a One-stop Electronic Business Portal in West Virginia. 473

CAPTIVE CERVID FARMING ACT

43. (*SB237) Creating Captive Cervid Farming Act. 476

[XI]
# Table of Contents

## Charitable Organizations

44. (*SB351) Relating to Charitable Organization Contribution Levels Requiring Independent Audit Reports. 494

## Child Welfare


46. (HB2200) Revising, Rearranging, Consolidating and Recodifying the Laws of the State of West Virginia Relating to Child Welfare. 506

47. (*HB2939) Relating to Requirements for Mandatory Reporting of Sexual Offenses on School Premises Involving Students. 796

## Children’s Health Insurance Program

48. (SB262) Transferring CHIP and Children’s Health Insurance Agency from Department of Administration to DHHR. 807

## Claims

49. (HB2876) Finding and Declaring Certain Claims Against the State and its Agencies to Be Moral Obligations of the State. 810

50. (SB363) Establishing Maximum Rates and Service Limitations for Reimbursement of Health Care Services by Court of Claims. 867

51. (SB382) Declaring Claims Against State. 868

## Coal Mining

52. (*SB357) Creating Coal Jobs and Safety Act of 2015. 872

[XII]
TABLE OF CONTENTS

CODE REPEALED

53. (*SB255) Eliminating Certain Boards, Councils, Committees, Panels, Task Forces and Commissions................................. 926

54. (SB267) Repealing Code Relating to Governor’s Office of Health Enhancement and Lifestyle Planning................................. 931


56. (HB2492) Repealing the Requirement That an Entity Charging Admission to View Certain Closed Circuit Telecast or Subscription Television Events Needs to Obtain a Permit from the State Athletic Commission................. 933

57. (SB360) Repealing Code Sections Relating to Book Indexes and Claims Reports Required By Court Clerks. ......................... 933

COMMUNITY DEVELOPMENT

58. (*HB2810) Implementing the West Virginia Property Rescue Initiative to Reduce the Number of Properties Posing a Threat to Public Health and Safety......................... 934

COMPARATIVE FAULT STANDARD

59. (*HB2002) Predicking Actions for Damages upon Principles of Comparative Fault......................... 938

CONCEALED WEAPONS

60. (*HB2128) Permitting Those Individuals Who Have Been Issued Concealed Weapons Permits to Keep Loaded Firearms in Their Motor Vehicles on the State Capitol Complex Grounds......................... 945

[XIII]
# Table of Contents

## Conservation

61. (SB250) Relating to Conservation Agency Financial Assistance Applications from District Supervisors. .......................... 946

## Consumer Loans

62. (HB2926) Relating to Deferral Charges in Connection with a Consumer Credit Sale or Consumer Loan. ............... 948

## Consumer Protection

63. (*SB542) Clarifying Provisions of Consumer Credit and Protection Act Relating to Debt Collection. ......................... 950

64. (*SB315) Relating to Civil Actions Filed under Consumer Protection Act. ................................. 962

65. (*HB2395) Storm Scammer Consumer Protection Act.......... 970

## Controlled Substances

66. (HB2931) Adding Drugs to the Classification of Schedule I Drugs................................................. 976

67. (HB2733) Removing Certain Combinations of Drugs Containing Hydrocodone from Schedule III of the Controlled Substances Law. . . 995

## Cooperative Associations

68. (*SB352) Expanding Scope of Cooperative Associations to Goods and Services Including Recycling. ......................... 1009

## Corrections

69. (SB507) Relating to Monitoring Inmates’ Electronic Communications. ................................. 1020

[XIV]
TABLE OF CONTENTS

COUNTRIES

70. (SB518) Permitting County and Municipal Economic Development Authorities Invest Certain Funds. 1022

COUNTY COMMISSIONS AND OFFICERS

71. (*HB2549) Relating to the Preparation and Publication of County Financial Statements. 1027

COURTESY PATROL

72. (SB581) Relating to Courtesy Patrol Program. 1029

COURT AND THEIR OFFICERS

73. (SB415) Relating to Circuit Judges. 1033
74. (SB479) Adding Additional Family Court Judges. 1038

CPR

75. (*SB7) Requiring CPR and Care for Conscious Choking Instruction in Public Schools. 1044

CRIMES AND THEIR PUNISHMENT

76. (HB2607) Omitted. 1048
77. (HB2606) Clarifying the Potential Sentence for Disorderly Conduct. 1048
78. (*HB2502) Possessing Deadly Weapons on School Buses or on the Premises of Educational Facilities. 1050
79. (*SB284) Relating to Chief Law-enforcement Officer’s Requirement to Certify Transfer or Making of Certain Firearms. 1056

[XV]
### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>No.</th>
<th>Bill No.</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>80</td>
<td>(*HB2025)</td>
<td>Prohibiting Certain Sex Offenders from Loitering Within One Thousand Feet of a School or Child Care Facility</td>
<td>1059</td>
</tr>
<tr>
<td>81</td>
<td>(SB370)</td>
<td>Reorganizing Governor’s Committee on Crime, Delinquency and Correction and Certain Subcommittees</td>
<td>1067</td>
</tr>
<tr>
<td>82</td>
<td>(SB292)</td>
<td>Relating to Licenses for Business of Currency Exchange, Transportation or Transmission</td>
<td>1101</td>
</tr>
<tr>
<td>83</td>
<td>(*SB261)</td>
<td>Clarifying Definition of “Owner” of Dam</td>
<td>1105</td>
</tr>
<tr>
<td>84</td>
<td>(*HB2053)</td>
<td>Relating to the Form of Trust Deeds</td>
<td>1109</td>
</tr>
<tr>
<td>85</td>
<td>(*HB2902)</td>
<td>West Virginia ABLE Act</td>
<td>1112</td>
</tr>
<tr>
<td>86</td>
<td>(*HB2008)</td>
<td>Auditing the Division of Highways</td>
<td>1124</td>
</tr>
<tr>
<td>87</td>
<td>(*HB2234)</td>
<td>Requiring a Court to Permit a Party in a Divorce Proceeding to Resume Using the Name He or She Used Prior to the Marriage</td>
<td>1126</td>
</tr>
<tr>
<td>88</td>
<td>(*HB2586)</td>
<td>Allowing for an Alternative Form of Service of Process in Actions Against Nonresident Persons by Petitioners Seeking Domestic Violence or Personal Safety Relief</td>
<td>1127</td>
</tr>
</tbody>
</table>

[XVI]
TABLE OF CONTENTS

89. (*SB430) Permitting Mutual Protective Orders
Enjoining Certain Contact Between
Parties to Domestic Relations Actions. ............ 1132

90. (HB2608) Cleaning up Redundant Language in the
Statute Relating to Misdemeanor Offenses
For Violation of Protective Orders.................... 1135

ECONOMIC DEVELOPMENT

91. (*HB2562) Relating to Sales Tax Increment Financing. ...... 1137

EDUCATION

92. (*HB2377) Authorizing State Board of Education to
Approve Certain Alternatives with Respect
to Instructional Time........................................ 1143

93. (HB2370) Increasing the Powers of Regional
Councils for Governance of Regional
Education Service Agencies. ......................... 1148

94. (*SB287) Providing Posthumous High School Diplomas... 1156

95. (HB2140) Building Governance and Leadership
Capacity of County Board During
Period of State Intervention. ......................... 1157

96. (*HB2755) Relating to Service and Professional
Employee Positions at Jointly Established
Schools. ....................................................... 1182

97. (SB238) Limiting Certain County Board of Education
Liability Arising from Unorganized
Recreation.................................................. 1187

98. (*HB2550) Increasing the Number of Unexcused
Absences of a Student Before Action
May be Taken Against the Parent................. 1191

99. (SB447) Allowing Issuance of Diploma by Public,
Private or Home School Administrator........... 1197

[XVII]
TABLE OF CONTENTS

10. (*HB2478) Relating to Public School Finance. ................. 1198

101. (HB2598) Ensuring that Teachers of Students with Disabilities Receive Complete Information about the School’s Plan for Accommodating the Child’s Disabilities. ....................... 1201

102. (*HB2381) Providing a Teacher Mentoring Increment for Classroom Teachers with National Board Certification Who Teach and Mentor at Certain Schools. ......................... 1204

ELECTIONS

103. (*HB2010) Requiring the Elections of Justices of the West Virginia Supreme Court of Appeals, Circuit Court Judges, Family Court Judges and Magistrates be Nonpartisan and by Division. ....................... 1207

104. (*SB249) Prohibiting Straight Party Voting in General Election. ......................... 1244

105. (SB322) Eliminating Mandatory Electronic Recount of Ballots in Recounts. .................... 1267

106. (SB312) Relating to Disqualification of General Election Nominees for Failure to File Campaign Finance Statements. .................... 1269

107. (*HB2157) Relating to Absentee Ballot Fraud. .................. 1272

ELECTRICIANS

108. (*SB378) Relicensing Electricians Without Retesting under Certain Circumstances. ........ 1274

ENVIRONMENTAL PROTECTION

109. (*HB2004) Providing a Procedure for the Development of a State Plan under Section 111(d) of the Clean Air Act. ..................... 1275
## TABLE OF CONTENTS

110. (*SB280) Allowing Well Work Permit Transfers............. 1282

### ENVIRONMENTAL RESOURCES

111. (HB2626) Relating to Use of the Abandoned Land Reclamation Fund......................... 1290
112. (HB2625) Continuing the Current Hazardous Waste Management Fee. ..................... 1295

### ESTATES

113. (*HB2266) Relating to the Publication Requirements of the Administration of Estates............. 1297

### FARMERS MARKETS

114. (SB304) Relating to Farmers Markets......................... 1304

### FREEDOM OF INFORMATION

115. (*HB2636) Exempting Information Contained in a Concealed Weapon Permit Application From the Freedom of Information Act ............ 1309

### GOVERNMENTAL CONSTRUCTION ACT

116. (*SB409) Establishing Fair and Open Competition in Governmental Construction Act............... 1325

### HATFIELD-McCOY REGIONAL RECREATIONAL AUTHORITY

117. (SB508) Reorganizing Hatfield-McCoy Regional Recreation Authority......................... 1329

### HEALTH

118. (HB2595) Relating to Certificates of Need for the Development of Health Facilities in this State .................... 1363
119. (*SB88) Creating WV Clearance for Access: Registry and Employment Screening Act......... 1380

[XIX]
**TABLE OF CONTENTS**

120. (*HB2999) Relating to Neonatal Abstinence Centers. .......... 1394

121. (*SB60) Regulating Food Handlers. ......................... 1405

122. (HB2669) Relating to Compulsory Tuberculosis Testing. .... 1407

123. (*SB286) Relating to Compulsory Immunizations of
Students; Exemptions. ..................................... 1409

124. (HB2100) Caregiver Advise, Record and Enable Act. ....... 1415

125. (*HB2652) Reducing the Assessment Paid by
Hospitals to the Health Care Authority. ................. 1420

126. (*SB336) Eliminating Health Care Authority’s Power to
Apply Certain Penalties to Future Rate
Applications. .............................................. 1423

127. (*SB335) Creating Access to Opioid Antagonists Act. ....... 1425

128. (*SB523) Creating Alcohol and Drug Overdose
Prevention and Clemency Act. .......................... 1435

129. (*HB2648) Allowing Authorized Entities to
Maintain a Stock of Epinephrine
Auto-injectors to be Used for Emergency............ 1442

**HIGHER EDUCATION**

130. (HB2780) Enhancing the Ability of Campus Police
Officers at Public Colleges to
Perform Their Duties. ................................. 1446

131. (*HB2867) Requiring Recommendations for
Higher Education Course Credit Transfer.............. 1451

132. (HB2884) Modifying Training and Development
Requirement for Certain Members
of Certain Higher Education Boards. ................. 1453

133. (HB2892) Authorizing Certain Legislative Rules
Regarding Higher Education. .......................... 1456
### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>134</td>
<td>(*SB455) Relating to Public Higher Education Procurement and Payment of Expenses.</td>
<td>1461</td>
</tr>
<tr>
<td>135</td>
<td>(*SB439) Relating to Higher Education Personnel.</td>
<td>1478</td>
</tr>
<tr>
<td>136</td>
<td>(HB2976) Expanding the Eligible Master’s and Doctoral Level Programs for Which a Nursing Scholarship May Be Awarded.</td>
<td>1512</td>
</tr>
</tbody>
</table>

#### HUMAN SERVICES

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>137</td>
<td>(SB295) Establishing Appeal Process for DHHR Board of Review and Bureau For Medical Services Decisions.</td>
<td>1515</td>
</tr>
<tr>
<td>138</td>
<td>(*SB274) Relating to TANF Program Sanctions.</td>
<td>1520</td>
</tr>
</tbody>
</table>

#### INFRASTRUCTURE

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>139</td>
<td>(HB2213) Reducing the Distributions to the West Virginia Infrastructure Fund.</td>
<td>1522</td>
</tr>
<tr>
<td>140</td>
<td>(HB2212) Changing the Amount of Severance Tax Revenue Annually Dedicated to the West Virginia Infrastructure General Obligation Debt Service Fund.</td>
<td>1524</td>
</tr>
</tbody>
</table>

#### INSURANCE

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>141</td>
<td>(*HB2790) Relating to Minimum Responsibility Limits of Car Insurance.</td>
<td>1526</td>
</tr>
<tr>
<td>142</td>
<td>(SB514) Relating to Investments of Local Policemen’s and Firemen’s Pension and Relief Funds.</td>
<td>1543</td>
</tr>
<tr>
<td>143</td>
<td>(*HB2557) Clarifying That an Insured Driver of a Motor Vehicle Is Covered by the Driver’s Auto Insurance Policy When Renting or Leasing a Vehicle.</td>
<td>1549</td>
</tr>
<tr>
<td>144</td>
<td>(HB2461) Relating to Delinquency Proceedings of Insurers...</td>
<td>1552</td>
</tr>
</tbody>
</table>
### Table of Contents

145. (*HB2536) Relating to Travel Insurance Limited Lines Producers. 1560

146. (*HB2493) Relating to Requirements for Insurance Policies and Contracts Providing Accident and Sickness Insurance or Direct Health Care Services That Cover Anti-cancer Medications. 1569

147. (*HB2811) Deleting Obsolete Provisions Regarding the Physicians’ Mutual Insurance Company. 1580

#### Investments

148. (SB425) Relating to Investments by MU, WVU and WVSOM. 1581

149. (SB577) Allowing Higher Education Governing Boards Invest Certain Funds with Nonprofit Foundations. 1584

#### Juvenile Justice Reform

150. (*SB393) Reforming Juvenile Justice System. 1587

#### Labor

151. (*HB2217) Relating to Qualifications of the Commissioner of Labor. 1649

152. (*SB12) Relating to Payment of Separated Employee’s Outstanding Wages. 1650

153. (SB318) Relating to Payment of Wages by Employers. 1655

#### Legislative Rule-Making

154. (*HB2233) Requiring That Legislative Rules be Reviewed Five Years after Initial Approval by the Legislative Rule-making Review Committee and the Legislative Auditor’s Office. 1657

[XXII]
# Table of Contents

## Legislative Rules

| 155. (*SB142) | Authorizing Department of Administration Promulgate Legislative Rules | 1659 |
| 156. (*HB2283) | Authorizing the Department of Environmental Protection to Promulgate Legislative Rules | 1662 |
| 157. (*SB175) | Authorizing DHHR Promulgate Legislative Rules | 1667 |
| 158. (*SB182) | Authorizing Department of Military Affairs and Public Safety Promulgate Legislative Rules | 1671 |
| 159. (*SB187) | Authorizing Department of Revenue Promulgate Legislative Rules | 1675 |
| 160. (*SB192) | Authorizing Department of Transportation Promulgate Legislative Rules | 1679 |
| 161. (SB195) | Authorizing Conservation Committee Promulgate Legislative Rule Relating to Financial Assistance Programs | 1683 |
| 162. (*SB199) | Authorizing Miscellaneous Agencies and Boards Promulgate Legislative Rules | 1684 |
| 163. (*SB170) | Authorizing Bureau of Commerce Promulgate Legislative Rules | 1699 |

## Levyng Bodies

| 164. (*HB2099) | Extending the Time of Meetings of Local Levyng Bodies When Meetings Are Delayed | 1706 |

## Liability

| 165. (SB532) | Relating to Civil Liability Immunity for Clinical Practice Plans and Medical And Dental School Personnel | 1708 |

[XXIII]
# Table of Contents

## Liens

166. (SB403) Increasing Period During Which Recorded and Refiled Motor Vehicle Liens Are Valid. ........................................... 1715

167. (SB418) Relating to Trustee Real Estate Sale under Deed of Trust. ................................. 1716

## Medical Professional Liability

168. (*SB6) Relating to Medical Professional Liability. ........................................ 1717

## Mental Health

169. (HB2797) Changing the Term “Mentally Retarded” to “Intellectually Disabled”; and Changing the Term “Handicapped” to “Disabled” ..................... 1740

## Military Organizations

170. (HB2224) Providing that Historical Reenactors Are Not Violating the Provision Prohibiting Unlawful Military Organizations. ........................ 1756

## Motor Vehicles

171. (*SB486) Authorizing Special License Plates for Civil Air Patrol Vehicles. ..................... 1757

172. (*SB453) Relating to Motor Vehicle Dealers, Distributors, Wholesalers and Manufacturers. ................................. 1763

173. (HB2664) Creating “Andrea and Willy’s Law”; Increasing Certain Penalties for Driving under the Influence of Alcohol, Controlled Substances or Drugs. .......... 1809

174. (*HB2148) Conforming the Motor Vehicle Law of this State to the Requirements of Section 1405(a) of the Federal Transportation Equity Act for the Twenty-first Century. 1830
<table>
<thead>
<tr>
<th>Section</th>
<th>Bill Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1838</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Municipal Home Rule</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1840</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Municipalities</strong></td>
</tr>
<tr>
<td>177.</td>
<td>(SB515)</td>
<td>Relating to Municipal Pensions Oversight Board Fund Investments.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1848</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Mutual Aid Agreements</strong></td>
</tr>
<tr>
<td>178.</td>
<td>(HB2274)</td>
<td>Authorizing the Commissioner of Corrections to Enter into Mutual Aid Agreements.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1856</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>National Coal Heritage Area Authority</strong></td>
</tr>
<tr>
<td>179.</td>
<td>(*HB2227)</td>
<td>Relating to the National Coal Heritage Area Authority.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1857</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Net Metering</strong></td>
</tr>
<tr>
<td>180.</td>
<td>(HB2201)</td>
<td>Requiring the Public Service Commission to Adopt Certain Net Metering and Interconnection Rules and Standards.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1863</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Pain-Capable Unborn Child Protection Act</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1866</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Patient Protection and Transparency Act</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1875</td>
</tr>
</tbody>
</table>

[XXV]
# Table of Contents

## Prevailing Wage

183. (*SB361) Eliminating Prevailing Hourly Wage Requirement for Construction of Public Improvements. 1878

##Probation and Parole

184. (*SB374) Permitting in Absentia Parole Hearings in Certain Instances. 1887

185. (*SB375) Specifying Who Receives Parole Hearing Notices Via Regular or Certified Mail. 1897

##Professions and Occupations

186. (*HB2496) Adopting the Interstate Medical Licensure Compact. 1900

187. (*HB2098) Authorizing Those Health Care Professionals to Provide Services to Patients Or Residents of State-run Veterans’ Facilities Without Obtaining an Authorization to Practice. 1926

188. (HB2272) Relating to the Authority of the Board of Pharmacy. 1929

189. (*HB2432) Relating to the Licensure Requirements to Practice Pharmacist Care. 1935

190. (*HB2662) Eye Care Consumer Protection Law. 1937

191. (SB389) Relating to Board of Registration for Professional Engineers License Renewals and Reinstatements. 1942

##Public Moneys

192. (HB2879) Relating to Certain Limitations on Amount of State Funds on Deposit in Any Depository. 1946

[XXVI]
**TABLE OF CONTENTS**

**PUBLIC OFFICIALS**

193. (*HB2457) Prohibiting the Use of the Name or Likeness of Elected or Appointed Officials On Publicly-owned Vehicles. .......... 1947

**PUBLIC SAFETY**

194. (*SB243) Relating to School Nutrition Standards During State of Emergency or Preparedness. ......................... 1949


**PUBLIC SERVICE COMMISSION**

196. (*SB234) Relating to Operation and Regulation of Certain Water and Sewer Utilities Owned by Political Subdivisions. ........ 1952


**PURCHASING**

199. (HB2632) Exempting the Procurement of Certain Instructional Materials for Use in And in Support of Public Schools from the Division of Purchasing Requirements. ......................... 2017

**REAL ESTATE COMMISSION**

200. (SB412) Relating to Real Estate Commission Complaint Filings. ......................... 2032

[XXVII]
# TABLE OF CONTENTS

## REGULATION OF TRADE

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>201.</td>
<td>(SB454)</td>
<td>Criminalizing Trademark Counterfeiting</td>
</tr>
</tbody>
</table>

## REHABILITATION SERVICES

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>202.</td>
<td>(HB2663)</td>
<td>Creating the Rehabilitation Services Vending Program Fund</td>
</tr>
</tbody>
</table>

## RESORT AREA DISTRICTS

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>203.</td>
<td>(HB2914)</td>
<td>Providing for Voluntary Dissolution of Resort Area District</td>
</tr>
</tbody>
</table>

## RETIREMENT

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>204.</td>
<td>(*SB529)</td>
<td>Relating to PERS, SPRS and TRS Benefits and Costs</td>
</tr>
<tr>
<td>206.</td>
<td>(SB298)</td>
<td>Clarifying Funds Within Public Employees Retirement Fund</td>
</tr>
<tr>
<td>207.</td>
<td>(*SB342)</td>
<td>Clarifying Scope, Application and Requirements for Error Corrections by CPRB</td>
</tr>
<tr>
<td>208.</td>
<td>(SB302)</td>
<td>Relating to State Retirement Plans</td>
</tr>
<tr>
<td>209.</td>
<td>(SB483)</td>
<td>Relating to Municipal Policemen’s and Firemen’s Pension and Relief Funds’ Trustees</td>
</tr>
<tr>
<td>210.</td>
<td>(SB481)</td>
<td>Relating to Municipal Policemen’s and Firemen’s Pension and Relief Funds’ Investment</td>
</tr>
<tr>
<td>211.</td>
<td>(*HB2507)</td>
<td>Relating to Membership Provisions in the West Virginia Municipal Police and Firefighters Retirement System</td>
</tr>
<tr>
<td>Section</td>
<td>Bill Number</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>-------------</td>
</tr>
<tr>
<td>212.</td>
<td>(SB299)</td>
<td>Clarifying Start Date of State Police Duty-related and Nonduty Related Disability Payments. 2196</td>
</tr>
<tr>
<td>213.</td>
<td>(*HB2778)</td>
<td>State Infrastructure Fund Program. 2200</td>
</tr>
<tr>
<td>214.</td>
<td>(SB89)</td>
<td>Relating to Compensation for Certain Public Officials. 2204</td>
</tr>
<tr>
<td>215.</td>
<td>(SB106)</td>
<td>Excepting Professional Engineer Member from Sanitary Board When Project Engineer Is under Contract. 2208</td>
</tr>
<tr>
<td>216.</td>
<td>(HB2645)</td>
<td>Expanding the Availability of the Underwood-Smith Teacher Loan Assistance Program. 2210</td>
</tr>
<tr>
<td>217.</td>
<td>(*HB2702)</td>
<td>Redefining Service Personnel Class Titles of Early Childhood Classroom Assistant Teacher. 2213</td>
</tr>
<tr>
<td>218.</td>
<td>(*HB2139)</td>
<td>Relating to Employment of Retired Teachers as Substitutes in Areas of Critical Need and Shortage for Substitutes. 2253</td>
</tr>
<tr>
<td>220.</td>
<td>(SB559)</td>
<td>Relating to Social Work Provisional Licensing. 2264</td>
</tr>
<tr>
<td><strong>TABLE OF CONTENTS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>STATE ATHLETIC COMMISSION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>221. (*SB436) Relating to State Athletic Commission........... 2267</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>STATE POLICE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>222. (HB2523) Creating a Special Revenue Account to Offset Costs for the West Virginia State Police 100th Anniversary in 2019.......... 2280</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>STATE SAFETY OVERSIGHT PROGRAM</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>223. (*SB407) Implementing State Safety Oversight Program..... 2283</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SUBSTANCE ABUSE TREATMENT</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>224. (HB2880) Creating an Addiction Treatment Pilot Program. ........................................ 2286</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SUICIDE PREVENTION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>225. (HB2535) Relating Generally to Suicide Prevention Training, “Jamie’s Law”......................... 2292</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SURFACE MINING</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>226. (SB502) Relating to Eligibility for Certain Reclamation or Remediation Tax Credit........... 2295</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TAXATION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>227. (*HB2968) Exempting from Property Tax Certain Properties in this State Owned by Nonprofit Youth Organizations. ............... 2203</td>
<td></td>
<td></td>
</tr>
<tr>
<td>228. (HB2877) Relating to Electronic Filing of Tax Returns and Electronic Funds Transfers In Payment of Taxes. ......................... 2315</td>
<td></td>
<td></td>
</tr>
<tr>
<td>229. (*HB3006) Relating to the Determination of the Adjusted Rate Established by the Tax Commissioner for the Administration of Tax Deficiencies................................. 2321</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

[XXX]
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>230.</td>
<td>(SB332)</td>
<td>Relating to Administrative Fees for Tax Division, Department of Revenue.</td>
</tr>
<tr>
<td>231.</td>
<td>(SB310)</td>
<td>Exempting Nonprofit Public Utility Companies from B&amp;O Tax.</td>
</tr>
<tr>
<td>232.</td>
<td>(*HB2462)</td>
<td>Relating to Certain Deposits of Tax Proceeds.</td>
</tr>
<tr>
<td>233.</td>
<td>(HB2114)</td>
<td>Updating the Meaning of Federal Adjusted Gross Income and Certain Other Terms Used in the West Virginia Personal Income Tax Act.</td>
</tr>
<tr>
<td>234.</td>
<td>(HB2115)</td>
<td>Updating the Meaning of the Term “Federal Taxable Income” and Certain Other Terms Used in the West Virginia Corporation Net Income Tax Act.</td>
</tr>
<tr>
<td>235.</td>
<td>(SB583)</td>
<td>Increasing Tax Rate on Providers of Certain Nursing Facility Services.</td>
</tr>
<tr>
<td>236.</td>
<td>(SB398)</td>
<td>Extending Expiration Date for Health Care Provider Tax on Eligible Acute Care Hospitals.</td>
</tr>
<tr>
<td>237.</td>
<td>(*HB2005)</td>
<td>Relating to Alternative Programs for the Education of Teachers.</td>
</tr>
<tr>
<td>238.</td>
<td>(*SB248)</td>
<td>Requiring Certain Insurance and Owner Information Be Provided Following Car Accident.</td>
</tr>
<tr>
<td>239.</td>
<td>(SB510)</td>
<td>Amending Uniform Interstate Family Support Act.</td>
</tr>
</tbody>
</table>

[XXXI]
# Table of Contents

## Veteran-Owned Businesses

240. (*SB316) Exempting New Veteran-owned Business from Certain Fees Paid to Secretary of State. .......................... 2424

## Vital Statistics

241. (*SB277) Requiring Issuance of Certificate of Birth Resulting in Stillbirth. ......................... 2444

## Wildlife Resources

242. (*HB2515) Relating to Elk Restoration. ......................... 2446

## Workers’ Compensation

243. (*HB2011) Relating to Disbursements from the Workers’ Compensation Fund Where an Injury Is Self Inflicted or Intentionally Caused by the Employer. ......................... 2465

244. (SB578) Relating to Occupational Disease Claims. ........ 2476

[XXXII]
MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2015

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

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

[XXXIII]
<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Occupation or Profession</th>
<th>Legislative Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eighteenth</td>
<td>Kelli Sobonya (R)</td>
<td>Barboursville</td>
<td>Realtor</td>
<td>76th - 82nd</td>
</tr>
<tr>
<td>Nineteenth</td>
<td>Kenneth Paul Hicks (D)</td>
<td>Kenova</td>
<td>Attorney</td>
<td>82nd</td>
</tr>
<tr>
<td></td>
<td>Don C. Perdue (D)</td>
<td>Prichard</td>
<td>Pharmacist</td>
<td>74th - 82nd</td>
</tr>
<tr>
<td>Twentieth</td>
<td>Justin J. Marcum (D)</td>
<td>Williamson</td>
<td>Attorney</td>
<td>Appt. 1/18/12, 80th - 82nd</td>
</tr>
<tr>
<td>Twenty-first</td>
<td>Harry Keith White (D)</td>
<td>Gilbert</td>
<td>Businessman</td>
<td>Appt. 9/11/1992, 70th - 82nd</td>
</tr>
</tbody>
</table>

| Twenty-second | Jeff Eldridge (D)         | Alum Creek         | Self Employed                  | 77th - 79th - 82nd |
|               | Michel Moffatt (R)         | Hurricane          | Former Manufacturing Manager   | 82nd                |
| Twenty-third  | Joshua Nelson (R)          | Danville           | Coal Miner                     | 81st - 82nd        |
| Twenty-fourth | Rupert Phillips, Jr. (D)   | Lorado             | Sales Manager                  | 80th - 82nd        |
|               | Ralph Rodighiero (D)       | Logan              | UPS Delivery Driver            | 78th - 80th, 82nd  |
| Twenty-fifth  | Linda Goode Phillips (D)   | Pineville          | Retired Elementary             | 79th - 82nd        |
| Twenty-sixth  | Clif Moore (D)             | Thorpe             | Administrator                  | 77th - 82nd        |
| Twenty-seventh | Joe Ellington (R)         | Princeton          | Physician                      | 80th - 82nd        |
|               | Marty Gearheart (R)        | Bluefield          | Businessman                    | 80th - 82nd        |
|               | John H. Shott (R)          | Bluefield          | Attorney                       | 79th, Resigned 5/2010; 82nd |
| Twenty-eighth | Roy G. Cooper (R)        | Wayside            | Retired U. S. Navy             | 81st - 82nd        |
|               | John D. O’Neal, IV (R)    | Beckley            | Businessman                    | 80th - 82nd        |
| Twenty-ninth  | Ricky Moe (D)              | Crab Orchard       | Businessman/School             | 82nd                |
|               |                            |                    | Bus Operator                   | 78th - 82nd        |
| Thirtieth    | Mick Bates (D)             | Beckley            | Physical Therapist             | 82nd                |
| Thirty-first  | Karen “Lynne” Arvon (R)   | Beckley            | Businesswoman                  | 81st - 82nd        |
| Thirty-second | Tom Fast (R)               | Fayetteville       | Attorney                       | 82nd                |
|               | Kayla Kessinger (R)        | Mount Hope         | Director of Human Resources    | 82nd                |
|               | David G. Perry (D)         | Oak Hill           | Educator                       | 75th - 82nd        |
| Thirty-third  | Roger Hanshaw (R)          | Wallback           | Attorney                       | 82nd                |
| Thirty-fourth | Brent Boggs (D)           | Gassaway           | Railroad Engineer              | 73rd - 82nd        |
| Thirty-fifth  | Andrew D. Byrd (D)         | South Charleston   | Attorney                       | 82nd                |
|               | John B. McCuskey (R)      | Charleston         | Attorney                       | 81st - 82nd        |
|               | Eric Nelson (R)            | Charleston         | Businessman                    | 80th - 82nd        |
|               | Chris Stansbury (R)        | Charleston         | Doctor of Optometry            | 82nd                |
| Thirty-sixth  | Nancy Peoples Guthrie (D)  | Charleston         | Former Small                  | 82nd                |
|               | Larry L. Rowe (D)          | Charleston         | Attorney                       | 73rd - 75th, 82nd  |
|               | Brad White (R)             | Charleston         | Insurance Agent                | 82nd                |
| Thirty-seventh | Mike Pushkin (D)          | Charleston         | Taxi Driver / Musician         | 82nd                |
| Thirty-eighth | Patrick Lane (R)          | Cross Lanes        | Attorney/Entrepreneur          | 77th - 82nd        |
| Thirty-ninth  | Ron Walters (R)            | Charleston         | Insurance Executive/President  | 71st - 73rd, 75th - 82nd |

[XXXIV]
<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Occupation or Profession</th>
<th>Legislative Service</th>
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<tbody>
<tr>
<td>Fortieth</td>
<td>Tim Armstead (R)</td>
<td>Elkview</td>
<td>Attorney</td>
<td>Appt. 9/5/98,</td>
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<td></td>
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<td>73rd - 74th - 82nd</td>
</tr>
<tr>
<td>Forty-first</td>
<td>Jordan Hill (R)</td>
<td>Mt. Nebo</td>
<td>Human Resources</td>
<td>82nd</td>
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<tr>
<td>Forty-second</td>
<td>George “Boogie” Ambler (R)</td>
<td>Fort Springs</td>
<td>Businessman/Farmer</td>
<td>81st - 82nd</td>
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<tr>
<td></td>
<td>Ray Canterbury (R)</td>
<td>Roncouver</td>
<td>Internet Entrepreneur</td>
<td>75th - 82nd</td>
</tr>
<tr>
<td>Forty-third</td>
<td>Denise L. Campbell (D)</td>
<td>Elkins</td>
<td>Licensed Nursing</td>
<td>Home Administrator</td>
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<tr>
<td></td>
<td>William G. Hartman (D)</td>
<td>Elkins</td>
<td>Retired Independent</td>
<td>Insurance Agent</td>
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<td>76th - 82nd</td>
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<tr>
<td>Forty-fourth</td>
<td>Dana L. Lynch (D)</td>
<td>Webster Springs</td>
<td>Retired</td>
<td>81st - 82nd</td>
</tr>
<tr>
<td>Forty-fifth</td>
<td>Bill Hamilton (R)</td>
<td>Buckhannon</td>
<td>Independent Insurance</td>
<td>Agency Owner</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>76th - 82nd</td>
</tr>
<tr>
<td>Forty-sixth</td>
<td>Peggy Donaldson Smith (D)</td>
<td>Weston</td>
<td>Attorney</td>
<td>79th - 82nd</td>
</tr>
<tr>
<td>Forty-seventh</td>
<td>Danny Wagner (R)</td>
<td>Philippi</td>
<td>Retired Educator</td>
<td>82nd</td>
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<tr>
<td>Forty-eighth</td>
<td>Danny Hamrick (R)</td>
<td>Clarksburg</td>
<td>Consulting / Media Production</td>
<td>81st - 82nd</td>
</tr>
<tr>
<td></td>
<td>Tim Miley (D)</td>
<td>Clarksburg</td>
<td>Attorney</td>
<td>Frontier</td>
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<td></td>
<td>Patsy Samuel Trecost II (D)</td>
<td>Clarksburg</td>
<td>Communications</td>
<td>82nd</td>
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<td></td>
<td>Theresa Waxman (R)</td>
<td>Bridgeport</td>
<td>Homemaker</td>
<td>82nd</td>
</tr>
<tr>
<td>Forty-ninth</td>
<td>Amy Summers (R)</td>
<td>Flemington</td>
<td>Registered Nurse</td>
<td>82nd</td>
</tr>
<tr>
<td>Fiftieth</td>
<td>Mike Caputo (D)</td>
<td>Fairmont</td>
<td>UMWA, District 31</td>
<td>Vice-President</td>
</tr>
<tr>
<td></td>
<td>Linda Longstreth (D)</td>
<td>Fairmont</td>
<td>Administrator/Educator</td>
<td>73rd - 82nd</td>
</tr>
<tr>
<td></td>
<td>Tim Manchin (D)</td>
<td>Fairmont</td>
<td>Attorney</td>
<td>76th - 82nd</td>
</tr>
<tr>
<td>Fifty-first</td>
<td>Barbara Evans Fleischauer (D)</td>
<td>Morgantown</td>
<td>Attorney/Small Business Owner</td>
<td>72nd - 75th; 78th - 82nd</td>
</tr>
<tr>
<td></td>
<td>Cindy Frich (R)</td>
<td>Morgantown</td>
<td>Sales/Writer/Consultant</td>
<td>76th - 77th; 81st - 82nd</td>
</tr>
<tr>
<td></td>
<td>Brian Kurcaba (R)</td>
<td>Morgantown</td>
<td>Financial Advisor</td>
<td>82nd</td>
</tr>
<tr>
<td></td>
<td>Amanda Pasdon (R)</td>
<td>Morgantown</td>
<td>Business Development</td>
<td>Director</td>
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<tr>
<td></td>
<td>Joe Statler (R)</td>
<td>Core</td>
<td>Retired</td>
<td>82nd</td>
</tr>
<tr>
<td>Fifty-second</td>
<td>Larry A. Williams (D)</td>
<td>Tunnelton</td>
<td>Businessman/Farmer</td>
<td>Appt. 10/8/1993, 71st; 72nd - 82nd</td>
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<tr>
<td>Fifty-third</td>
<td>Randy E. Smith (R)</td>
<td>Terra Alta</td>
<td>Coal Miner</td>
<td>81st - 82nd</td>
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<tr>
<td>Fifty-fourth</td>
<td>Allen V. Evans (R)</td>
<td>Petersburg</td>
<td>Poultry Producer/Farmer</td>
<td>70th - 82nd</td>
</tr>
<tr>
<td>Fifty-fifth</td>
<td>Isaac Sponaugle (D)</td>
<td>Franklin</td>
<td>Attorney</td>
<td>81st - 82nd</td>
</tr>
<tr>
<td>Fifty-sixth</td>
<td>Gary G. Howell (R)</td>
<td>Keyser</td>
<td>Small Business Owner</td>
<td>80th - 82nd</td>
</tr>
<tr>
<td>Fifty-seventh</td>
<td>Ruth Rowan (R)</td>
<td>Points</td>
<td>Retired Educator</td>
<td>77th - 82nd</td>
</tr>
<tr>
<td>Fifty-eighth</td>
<td>Daryl E. Cowles (R)</td>
<td>Berkeley Springs</td>
<td>Businessman</td>
<td>78th - 82nd</td>
</tr>
<tr>
<td>Fifty-ninth</td>
<td>Saira Blair (R)</td>
<td>Martinsburg</td>
<td>Student</td>
<td>82nd</td>
</tr>
<tr>
<td>Sixtieth</td>
<td>Larry W. Faircloth (R)</td>
<td>Inwood</td>
<td>Small Business Consulting</td>
<td>81st - 82nd</td>
</tr>
<tr>
<td>District</td>
<td>Name</td>
<td>Address</td>
<td>Occupation or Profession</td>
<td>Legislative Service</td>
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<tr>
<td>Sixty-first.</td>
<td>Walter E. Duke (R)</td>
<td>Martinsburg</td>
<td>Retired Educator</td>
<td>76th - 80th; 82nd</td>
</tr>
<tr>
<td>Sixty-second.</td>
<td>John Overington (R)</td>
<td>Martinsburg</td>
<td>Public Relations/Former Educator</td>
<td>67th - 82nd</td>
</tr>
<tr>
<td>Sixty-third.</td>
<td>Michael “Mike” Folk (R)</td>
<td>Martinsburg</td>
<td>Airline Pilot; Farmer</td>
<td>81st - 82nd</td>
</tr>
<tr>
<td>Sixy-fourth.</td>
<td>Eric L. Householder (R)</td>
<td>Martinsburg</td>
<td>Small Business Owner</td>
<td>80th - 82nd</td>
</tr>
<tr>
<td>Sixy-fifth.</td>
<td>Jill Upson (R)</td>
<td>Charles Town</td>
<td>Former Retail Manager / Student</td>
<td>82nd</td>
</tr>
<tr>
<td>Sixy-sixth.</td>
<td>Paul Espinosa (R)</td>
<td>Charles Town</td>
<td>General Manager, Frontier Communications</td>
<td>81st - 82nd</td>
</tr>
<tr>
<td>Sixy-seventh.</td>
<td>Stephen Skinner (D)</td>
<td>Shepherdstown</td>
<td>Attorney</td>
<td>81st - 82nd</td>
</tr>
</tbody>
</table>
## Members of the Senate

### Regular Session, 2015

### Officers

**President** – William P. Cole, III, Bluefield  
**Clerk** – Clark S. Barnes, French Creek  
**Sergeant-at-Arms** – Howard L. Wellman, Bluefield  
**Doorkeeper** – Anthony Gallo, Charleston

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Occupation or Profession</th>
<th>Legislative Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>First.</td>
<td>Ryan Ferns (R).</td>
<td>Wheeling</td>
<td>Physical Therapist</td>
<td>82nd</td>
</tr>
<tr>
<td></td>
<td>Jack Yost (D).</td>
<td>Wellsburg</td>
<td>Retired</td>
<td>(House 76th - 78th); 79th - 82nd</td>
</tr>
<tr>
<td>Second.</td>
<td>Jeffrey V. Kessler (D).</td>
<td>Glen Dale</td>
<td>Attorney</td>
<td>Appt. 11/1997, 73rd; 74th - 82nd</td>
</tr>
<tr>
<td></td>
<td>Kent Leonhardt (R).</td>
<td>Fairview</td>
<td>Retired USMC/ farmer</td>
<td>82nd</td>
</tr>
<tr>
<td>Third.</td>
<td>Donna J. Boley (R).</td>
<td>St. Marys</td>
<td>Retired</td>
<td>Appt. 5/14/1985, 67th; 68th - 82nd</td>
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<tr>
<td>Fourth.</td>
<td>Mitch B. Carmichael (R).</td>
<td>Ripley</td>
<td>Director of Commercial Sales</td>
<td>80th - 82nd</td>
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<tr>
<td></td>
<td>Mike Hall (R).</td>
<td>Winfield</td>
<td>Businessman</td>
<td>(House 72nd - 74th); 78th - 82nd</td>
</tr>
<tr>
<td>Fifth.</td>
<td>Robert H. Plymale (D).</td>
<td>Huntington</td>
<td>Businessman</td>
<td>72nd - 82nd</td>
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<tr>
<td></td>
<td>Mike Woelfel (D).</td>
<td>Huntington</td>
<td>Lawyer</td>
<td>82nd</td>
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<tr>
<td>Sixth.</td>
<td>Bill Cole (R).</td>
<td>Bluefield</td>
<td>Automobile Dealer</td>
<td>(House Appt. 5/28/10, 79th); 82nd</td>
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<tr>
<td>Seventh.</td>
<td>Mark R. Maynard (R).</td>
<td>Genoa</td>
<td>Automobile Dealer</td>
<td>82nd</td>
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<td></td>
<td>Art Kirkendoll (D).</td>
<td>Chapmanville</td>
<td>Self Employed</td>
<td>Appt. 11/14/11, 80th; 82nd</td>
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<td>Eighth.</td>
<td>Ed Gaunch.</td>
<td>Charleston</td>
<td>Retired</td>
<td>82nd</td>
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<td>Chris Walters (R).</td>
<td>Nitro</td>
<td>Insurance</td>
<td>81st - 82nd</td>
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<tr>
<td>Ninth.</td>
<td>Daniel Hall (R).</td>
<td>Oceana</td>
<td>Account Executive</td>
<td>(House 79th - 80th); 81st - 82nd</td>
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<td></td>
<td>Jeff Mullins.</td>
<td>Shady Springs</td>
<td>Insurance</td>
<td>82nd</td>
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<tr>
<td>Tenth.</td>
<td>William Laird IV (D).</td>
<td>Oak Hill</td>
<td>Retired/Self-Employed</td>
<td>(House 73rd - 75th); 79th - 82nd</td>
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<td>Ronald F. Miller (D).</td>
<td>Lewisburg</td>
<td>Self-Employed</td>
<td>80th - 82nd</td>
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<td>Eleventh.</td>
<td>Greg Boso (R).</td>
<td>Summersville</td>
<td>Civil Engineer</td>
<td>82nd (appt. 1/16/2015)</td>
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[XXXVII]
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<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Occupation or Profession</th>
<th>Legislative Service</th>
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<tr>
<td>Twelfth</td>
<td>Robert L. Karnes (R)</td>
<td>Tallmansville</td>
<td>Information and Technology Field Services</td>
<td>82nd</td>
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<td></td>
<td>Mike Romano (D)</td>
<td>Clarksburg</td>
<td>Attorney/CPA</td>
<td>82nd</td>
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<td></td>
<td>Douglas Facemire (D)</td>
<td>Sutton</td>
<td>Grocery Chain Owner</td>
<td>79th - 82nd</td>
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<tr>
<td>Thirteenth</td>
<td>Robert D. Beach (D)</td>
<td>Morgantown</td>
<td>Executive Director of College Foundation</td>
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<td></td>
<td>Roman W. Prezioso, Jr. (D)</td>
<td>Fairmont</td>
<td>Administrator</td>
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<td>Dave Sypolt (R)</td>
<td>Kingwood</td>
<td>Professional Land Surveyor</td>
<td>78th - 82nd</td>
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<tr>
<td>Fourteenth</td>
<td>Bob Williams (D)</td>
<td>Grafton</td>
<td>Real Estate Appraiser</td>
<td>79th - 82nd</td>
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<tr>
<td>Fifteenth</td>
<td>Craig P. Blair (R)</td>
<td>Martinsburg</td>
<td>Businessman</td>
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<td></td>
<td>Charles S. Trump IV</td>
<td>Berkeley Springs</td>
<td>Lawyer</td>
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<tr>
<td>Sixteenth</td>
<td>Herb Snyder (D)</td>
<td>Shenandoah Junction</td>
<td>Director, Environmental Chemistry</td>
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<td>John R. Unger II (D)</td>
<td>Martinsburg</td>
<td>Businessman/Economic Development</td>
<td>74th - 82nd</td>
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<td>Seventeenth</td>
<td>Corey Palumbo (D)</td>
<td>Charleston</td>
<td>Attorney</td>
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<td></td>
<td>Tom Takubo (R)</td>
<td>Charleston</td>
<td>Physician</td>
<td>82nd</td>
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</table>
HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2015

STANDING

AGRICULTURE AND NATURAL RESOURCES

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

BANKING AND INSURANCE

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

EDUCATION

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

[XXXIX]
HOUSE OF DELEGATES COMMITTEES

ENERGY

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

ENROLLED BILLS

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

FINANCE

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

GOVERNMENT ORGANIZATION

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

HEALTH and HUMAN RESOURCES

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

[XL]
HOUSE OF DELEGATES COMMITTEES

INDUSTRY and LABOR

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

INTERSTATE COOPERATION

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

JUDICIARY

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

PENSIONS and RETIREMENT

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

POLITICAL SUBDIVISIONS

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

[XLI]
HOUSE OF DELEGATES COMMITTEES

ROADS AND TRANSPORTATION

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

RULE-MAKING REVIEW

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

RULES

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

SENIOR CITIZEN ISSUES

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

SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

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

[XLII]
VETERANS’ AFFAIRS and HOMELAND SECURITY

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

COMMITTEES OF THE SENATE
Regular Session, 2015

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

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

BANKING AND INSURANCE

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

CONFIRMATIONS

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

ECONOMIC DEVELOPMENT

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

EDUCATION

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

ENERGY, INDUSTRY AND MINING

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

[XLIV]
SENATE COMMITTEES

ENROLLED BILLS

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

FINANCE

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

GOVERNMENT ORGANIZATION

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

HEALTH AND HUMAN RESOURCES

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

INTERSTATE COOPERATION

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

JUDICIARY

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

LABOR

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

[XLV]
SENATE COMMITTEES

MILITARY

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

NATURAL RESOURCES

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

PENSIONS

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

RULES

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

TRANSPORTATION AND INFRASTRUCTURE

Senators Walters (Chair), Leonhardt (Vice Chair), Boley, Gaunch, Mullins, Beach, Kirkendoll, Plymale and Woelfel.
AN ACT to repeal §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated, §16-1-9f; to amend and reenact §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24 and §22-30-25 of said code; to amend said code by adding thereto a new section, designated §22-30-26; and to amend and reenact §22-31-2 of said code, all relating to protection of water resources and public health generally; amending the Aboveground Storage Tank Act; defining terms; requiring secretary to compile inventory of aboveground storage tanks in the state; requiring registration; authorizing certain fees; authorizing the Secretary of the Department of Environmental Protection to propose emergency and legislative rules; creating alternative regulatory program to allow permitted and otherwise regulated entities to compel permits and plans to accomplish tank and secondary containment standards under existing programs; requiring secretary to develop regulatory
program for tanks; creating a zone of peripheral concern for some; creating certain exemptions to regulation; providing factors to be considered in a program; requiring inspection and certification of tanks; requiring evidence of financial responsibility; requiring corrective action and plans; requiring spill prevention response plans; requiring notice of type and quantity of fluids stored in tanks to local water utilities and governments; requiring posting of signs at or near tanks; creating an administrative fund; creating Protect Our Water Fund; authorizing public access to certain information; authorizing inspections, monitoring and testing by secretary; authorizing secretary to issue administrative orders and seek injunctive relief; providing for civil and criminal penalties; allowing appeals to Environmental Quality Board; prohibiting duplicative enforcement; requiring interagency coordination; establishing duties of secretary upon imminent and substantial danger; providing additional duties and powers of secretary generally; providing for waiver of certain requirements; authorizing secretary to require individual NPDES permits; authorizing Secretary of Department of Health and Human Resources to inventory potential sources of significant contamination; membership of study commission; scope of study; and establishing reporting requirements.

Be it enacted by the Legislature of West Virginia:

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

§16-1-9f. Inventory of potential sources of significant contamination.

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

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

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-2. Legislative findings.

1. (a) The West Virginia Legislature finds the public policy of the State of West Virginia is to protect and conserve the water
resources for the state and its citizens. The state’s water resources are vital natural resources that are essential to maintain, preserve and promote human health, quality of life and economic vitality of the state.

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

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

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

§22-30-3. Definitions.

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

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

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

(C) Swimming pools;
(D) Process vessels;

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

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

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

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

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

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

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

(L) Electrical equipment such as transformers, circuit breakers and voltage regulator transformers.
(2) “Department” means the West Virginia Department of Environmental Protection.

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

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

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

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

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

(8) “Process vessel” means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of materials during the operation
94 of the process or in which a biological, chemical or physical change in the material occurs. This does not include tanks used for storage of materials prior to their introduction into the production process or for the storage of finished products or by-products of the production process.

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

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

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

117 (12) “Public water system” means:

118 (A) Any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include:
Any collection, treatment, storage and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

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

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

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

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

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

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

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

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

(B) An AST that contains substances defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as a “hazardous substance” (42 U. S. C. § 9601(14)); or is on EPA’s
“Consolidated List of Chemicals Subject to the Emergency Planning and Community Right to Know Act (EPCRA), CERCLA, and §112(r) of the Clean Air Act (CAA)” (known as “the List of Lists”) as provided by 40 C. F. R. §§ 355, 372, 302, and 68) in a concentration of one percent or greater, regardless of the AST’s location, except ASTs containing petroleum are not “level 1 regulated tanks” based solely upon containing constituents recorded on the CERCLA lists; or,

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

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

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

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

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

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

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

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

(21) “Zone of peripheral concern” for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants scrutiny due to its proximity to the surface water intake and the intake’s susceptibility to potential contaminants within that corridor. The zone of peripheral concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the
zone of peripheral concern is based on an additional five-hour
time-of-travel of water in the streams beyond the perimeter of
the zone of critical concern, which creates a protection zone of
ten hours above the water intake. The width of the zone of
peripheral concern is one thousand feet measured horizontally
from each bank of the principal stream and five hundred feet
measured horizontally from each bank of the tributaries draining
into the principal stream.

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

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

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

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

If the registered tank is regulated under any existing state or
federal regulatory program, the owner of the tank shall be
required to provide the identifying number of any license,
registration or permit issued for the tank.
(d) The secretary shall charge a registration fee of $40 per tank for all ASTs in service prior to July 1, 2015. The registration fee for ASTs placed into service on or after July 1, 2015, shall be $20 per tank. Registration fees for ASTs in service prior to July 1, 2015, shall be deposited such that half the amount is placed into the AST Administrative Fund and half the amount into the Protect Our Water Fund. Registration fees for ASTs placed into service on or after July 1, 2015, shall be deposited wholly into the AST Administrative Fund.

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

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

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

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

(a) The secretary shall develop a regulatory program for new and existing regulated aboveground storage tanks and secondary containment that takes into account the size, location and contents of the tanks and sets out tiered requirements for regulated tanks. Level 1 tanks shall be regulated to a higher standard of tank and secondary containment integrity based upon
their proximity to a public surface water supply source or public surface water influenced groundwater supply source.

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

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

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

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

(4) Requirements for recordkeeping;

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

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

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

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

(9) A procedure for the administrative resolution of violations including the assessment of administrative civil penalties.
Ch. 1] ABOVEGROUND STORAGE TANK ACT

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

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

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

66 (3) Individual permits issued pursuant to the National Pollution Discharge Elimination System, article eleven of this chapter;
(4) Permits issued pursuant to the Solid Waste Management Act, article fifteen of this chapter; and

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

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

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


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

(b) Every owner or operator shall submit a certification that each regulated tank and its associated secondary containment structure have been evaluated by a qualified person as set forth in subsection (a) of this section and meets the standards established in accordance with section five of this article.
(c) The certification form shall be submitted to the secretary within one hundred eighty days of the effective date of the rules establishing standards that are adopted in accordance with section five of this article. Subsequent certifications shall be due at regular intervals thereafter as established by the secretary by legislative rule, but not more frequently than once per calendar year.

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

§22-30-7. Financial responsibility.

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


(a) Prior to the effective date of the emergency and legislative rules promulgated pursuant to the authority granted under this article, the secretary is authorized to:
(1) Require the owner or operator of an aboveground storage tank to undertake prompt corrective action to protect human health, safety, water resources or the environment from contamination caused by a release; or

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

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

(c) Following the effective date of rules promulgated pursuant to this article, all actions or orders of the secretary shall be in conformity with those rules. Following the effective date of the rules, the secretary may utilize funds from the Protect Our Water Fund to undertake corrective action with respect to any release from an aboveground storage tank only if, in the judgment of the secretary, the action is necessary to protect human health, safety, water resources or the environment from contamination, and one or more of the following situations exists:
If no person can be found within thirty days, or a shorter period as may be necessary to protect human health, safety, water resources and the environment, who is an owner or operator of the aboveground storage tank at issue and who is capable of carrying out the corrective action properly;

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

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

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

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

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

(2) The owner or operator determined by the secretary to be responsible for the release has been informed in writing of the
secretary’s determination and has been requested by the secretary to take appropriate corrective action but is unable or unwilling to take proper action in a timely manner.

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

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


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

(1) Describe the activity that occurs at the site and provide an inventory of the types and amounts of fluids stored in
regulated aboveground storage tanks at the facility. The plan shall provide a reference to the location of the safety data sheets (SDS) required by the Occupational Safety and Health Administration for all fluids stored in regulated aboveground storage tanks at the facility;

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

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

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

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

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

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

(1) There is a substantial modification in design, construction, operation or maintenance of any regulated aboveground storage tank, secondary containment or leak
detection equipment or methods, or there are other circumstances
that increase the potential for fires, explosions or releases of
fluids;

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

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

(4) The plan fails in an emergency;

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

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

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

(d) In lieu of a plan developed in accordance with the
requirements of this section, the owner or operator of a regulated
aboveground storage tank may certify to the secretary that it is
subject to: (1) A groundwater protection plan approved by the
secretary; or (2) a spill prevention control and countermeasures
plan that complies the requirements of 40 C. F. R. Part 112. Such
plans shall be made available for review or submitted to the
secretary upon request.
(e) Nothing contained in this section relieves the owner or operator of an aboveground storage tank from his or her obligation to report any release in accordance with the provisions of this chapter and the rules promulgated thereunder.

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

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

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

§22-30-11. Required signage.

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

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

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


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

(b) Each owner or operator of an regulated aboveground storage tank subject to a fee assessment under subsection (a) of this section shall pay a fee based on the number, contents and
(c) At the end of each fiscal year, any unexpended balance, including accrued interest, on deposit in the Protect Our Water Fund shall not be transferred to the General Revenue fund, but shall remain in the Protect Our Water Fund for expenditure pursuant to this section.

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

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

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

(3) Reimbursing any nonresponsible parties for reasonable costs incurred with the authorization of the secretary responding to perceived, potential or threatened releases from aboveground storage tanks.
(e) The secretary, through a cooperative agreement with another state regulatory agency, in this or another state, may use the fund to compensate the cooperating agency for expenses the cooperating agency incurs in carrying out corrective actions pursuant to this article.

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

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

(b) A list of the potential sources of significant contamination contained within the zone of critical concern or zone of peripheral concern as provided by the Bureau for Public Health, working in conjunction with the department and the Division of Homeland Security and Emergency Management may only be disclosed to the extent consistent with the
protection of trade secrets, confidential business information and information designated by the Division of Homeland Security and Emergency Management as described above. The exact location of the contaminants within the zone of critical concern or zone of peripheral concern is not subject to public disclosure in response to a Freedom of Information Act request under article one, chapter twenty-nine-b of this code. However, the location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern or zone of peripheral concern shall be made known to one or more designees of the public water utility, and shall be maintained in a confidential manner by the public water utility. In the event of a release to waters of the state that could affect a public water supply, information about the release shall be promptly made available to any emergency responders responding to the site of a spill or release and the general public shall be promptly notified in the event of a chemical spill, release or related emergency by the Director of Homeland Security and Emergency Management.

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

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

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

(1) Furnish information relating to the aboveground storage tanks, their associated equipment and contents;
(2) Conduct reasonable monitoring or testing;

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

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

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

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

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

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

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

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

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

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

(a) When the secretary determines, on the basis of any information, that a person is in violation of any requirement of this article or the rules promulgated thereunder, the secretary
may issue an order stating with reasonable specificity the nature of the violation and requiring compliance within a reasonable specified time period, or the secretary may commence a civil action in the circuit court of the county in which the violation occurred or in the circuit court of Kanawha County for appropriate relief, including a temporary or permanent injunction. The secretary or the Environmental Quality Board may stay any order issued by the secretary until the order is reviewed by the Environmental Quality Board.

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

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

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

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

(c) Any owner or operator of an aboveground storage tank who fails to comply with any requirement of this article or any
standard promulgated by the secretary pursuant to this article is subject to a civil penalty not to exceed $10,000 for each day of violation.

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

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

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

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

(h) Civil penalties are payable to the secretary. All moneys collected under this section for civil fines collected under this article shall be deposited into either the AST Administrative
§22-30-17. Fund or the Protect Our Water Fund. All money deposited into these accounts shall be used by the secretary solely for the purposes described in sections twelve and thirteen of this article.

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

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


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

§22-30-20. Interagency cooperation.

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

(b) The Division of Homeland Security and Emergency Management shall also coordinate with state and local emergency response agencies to facilitate a coordinated
emergency response and incident command and communication between the owner or operator of the regulated aboveground storage tank, the state and local emergency response agencies, and the affected public water systems.

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

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

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


(a) In addition to the powers and duties prescribed in this chapter or otherwise provided by law, the secretary has the
exclusive authority to perform all acts necessary to implement this article.

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

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

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

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

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

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

The secretary may designate, by rules proposed for legislative approval in accordance with article three, chapter twenty-nine-a of this code, additional categories of aboveground storage tanks for which one or more of the requirements of this article may be waived upon a determination that such categories of aboveground storage tanks either do not represent a substantial threat of contamination or they are currently
regulated under standards that are consistent with the protective standards and requirements set forth in this article and rules promulgated thereunder.

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

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

ARTICLE 31. THE PUBLIC WATER SUPPLY PROTECTION ACT.


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

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

(2) A review and assessment of the effectiveness of legislation enacted during the 2014 Regular Session of the West Virginia Legislature, as it pertains to assisting public water systems in identifying and reacting or responding to identified
potential sources of significant contamination, and increasing
public awareness and public participation in the emergency
planning and response process;

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

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

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

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

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

(2) One representative designated by the Rural Water
Association;
(3) One representative designated by the Municipal League;

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

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

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

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

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

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

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

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

CHAPTER 2

(S. B. 489 - By Senator Carmichael)

[Passed March 10, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §55-2-6a of the Code of West Virginia, 1931, as amended, relating to extending certain existing limits on
the filing of civil actions to those actions arising from the actual surveying of real property.

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

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

**ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.**

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

1 No action, whether in contract or in tort, for indemnity or otherwise, nor any action for contribution or indemnity to recover damages for any deficiency in the planning, design, surveying, observation or supervision of any construction or the actual construction of any improvement to real property, or the actual surveying of real property, or, to recover damages for any injury to real or personal property, or, for an injury to a person or for bodily injury or wrongful death arising out of the defective or unsafe condition of any improvement to real property, or the survey of real property, may be brought more than ten years after the performance or furnishing of the services or construction.

However, the above period is tolled according to section twenty-one of this article. The period of limitation provided in this section does not commence until the improvement to the real property, or the survey of the real property in question has been occupied or accepted by the owner of the real property, whichever occurs first.
CHAPTER 3

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

[Passed January 29, 2015; in effect ninety days from passage.]
[Approved by the Governor on February 9, 2015.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

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

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

(b) A possessor of real property may use justifiable force to repel a criminal trespasser as provided by section twenty-two of this article.
(c) This section does not increase the liability of any possessor of real property and does not affect any immunities from or defenses to liability established by another section of this code or available at common law to which a possessor of real property may be entitled.

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

CHAPTER 4

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

[Passed February 18, 2015; in effect from passage.]
[Approved by the Governor on March 3, 2015.]

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

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

CHAPTER 5

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

[Passed March 10, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-29, relating
generally to treatment of punitive damages in civil actions; providing for limitations on punitive damages in civil actions; providing for when punitive damages may be awarded in civil actions; and providing for a bifurcated trial, upon request, for civil actions involving punitive damages.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

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

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

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

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

2. If the jury finds during the first stage of a bifurcated trial that a defendant is liable for compensatory damages, then the court shall determine whether sufficient evidence exists to proceed with a consideration of punitive damages.
(3) If the court finds that sufficient evidence exists to proceed with a consideration of punitive damages, the same jury shall determine if a defendant is liable for punitive damages in the second stage of a bifurcated trial and may award such damages.

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

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

CHAPTER 6

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

[Passed March 10, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2014.]

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

Be it enacted by the Legislature of West Virginia:

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

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

§55-7E-1. Definitions.

In this article:

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

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

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

(a) The Legislature finds that:

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

(2) The citizens and employers of this state are entitled to a legal system that provides adequate and reasonable compensation to those persons who have been subjected to
unlawful employment actions, a legal system that is fair, predictable in its outcomes, and a legal system that functions within the mainstream of American jurisprudence.

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

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

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

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

(a) In any employment law cause of action against a current or former employer, regardless of whether the cause of action arises from a statutory right created by the Legislature or a cause of action arising under the common law of West Virginia, the plaintiff has an affirmative duty to mitigate past and future lost wages, regardless of whether the plaintiff can prove the defendant employer acted with malice or malicious intent, or in willful disregard of the plaintiff’s rights. The malice exception to the duty to mitigate damages is abolished. Unmitigated or flat back pay and front pay awards are not an available remedy. Any award of back pay or front pay by a commission, court or jury
shall be reduced by the amount of interim earnings or the amount
earnable with reasonable diligence by the plaintiff. It is the
defendant’s burden to prove the lack of reasonable diligence.

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

CHAPTER 7

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

[Passed March 3, 2015; in effect July 1, 2015.]
[Approved by the Governor on April 2, 2015.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. ACTIONS ON CONTRACTS.


(a) It is public policy of this state that, in determining the
law applicable to a product liability claim brought by a
nonresident of this state against the manufacturer or distributor
of a prescription drug or other product, all liability claims at
issue shall be governed solely by the product liability law of the
place of injury ("lex loci delicti").

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

CHAPTER 8

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

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

AN ACT to amend and reenact §55-10-1, §55-10-2, §55-10-3,
§55-10-4, §55-10-5, §55-10-6, §55-10-7 and §55-10-8 of the Code
of West Virginia, 1931, as amended; and to amend said code by
adding thereto twenty-five new sections, designated §55-10-9,
§55-10-10, §55-10-11, §55-10-12, §55-10-13, §55-10-14,
§55-10-15, §55-10-16, §55-10-17, §55-10-18, §55-10-19,
§55-10-20, §55-10-21, §55-10-22, §55-10-23, §55-10-24,
§55-10-25, §55-10-26, §55-10-27, §55-10-28, §55-10-29,
§55-10-30, §55-10-31, §55-10-32 and §55-10-33, all relating
generally to arbitration; providing for a short title; making
legislative findings; defining terms; defining notice under article;
defining when article applies; prescribing effect of agreements to
arbitrate; identifying nonwaivable provisions of article; allowing
for application for judicial relief under article; providing required
method for notice of application for judicial relief; making
agreement to arbitrate valid unless legal or equitable reason for
revocation exists; delineating decisions to be made by judge and
arbitrator; providing for terms by which arbitration may continue if challenged; providing for process for motions to compel or stay arbitration; providing for provisional remedies to protect effectiveness of arbitration proceedings; providing process for initiation of arbitration; providing for consolidation of separate arbitration proceedings; providing for appointment of arbitrator and default process for appointing arbitrator if not agreed by the parties; requiring neutrality of arbitrators; requiring disclosure by arbitrators of matters likely to affect impartiality; requiring majority of arbitrators to agree to exercise powers; providing immunity for arbitrators; providing exceptions to arbitrator immunity; providing that arbitrator incompetence to testify to same extent as judges; providing exceptions to arbitrator incompetence to testify; providing for attorneys’ fees and costs for challenges from which arbitrators are immune from civil liability; providing general process for arbitration; providing for appointment of replacement arbitrator if necessary; allowing parties to be represented by a lawyer in arbitrations; outlining procedure for witnesses, issuance of subpoenas, depositions, discovery and protective orders in arbitrations; providing for judicial enforcement of discovery-related orders by arbitrator; providing for judicial enforcement of preaward ruling by arbitrator; providing for record of an award and requirements for making an award; providing an exemption from the award provisions in the case of arbitration conducted or administered by a self-regulatory organization as defined by the Securities Exchange Act of 1934, the Commodity Exchange Act or regulations adopted under those acts; allowing change of an award by arbitrator upon motion under certain conditions; providing that certain remedies and fees and costs of arbitration may be a part of arbitration award; allowing for confirmation by court of an award upon motion; providing process and grounds for vacating an award by a court; providing process and grounds for modification or correction of an award upon motion; providing that court shall enter a judgment upon confirmation of an award and may add certain reasonable
attorneys’ fees and costs; providing for jurisdiction over arbitration agreements by a court of this state; providing venue; providing that appeals may be taken from certain orders related to arbitration proceedings; requiring uniform application and construction of act; providing that this act shall conform with the Electronic Signatures in Global and National Commerce Act; and clarifying that the act does not affect an action or proceeding commenced or right accrued before the effective date of the article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. ARBITRATION.

§55-10-1. Short title.

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

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

The Legislature finds that:

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

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

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

§55-10-3. Definitions.

In this article:

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

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

“Court” means a circuit court in this state.

“Knowledge” means actual knowledge.

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

“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.
§55-10-4. Notice.

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

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

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

§55-10-5. When article applies.

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

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

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

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

(a) Except as otherwise provided in subsections (b) and (c) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive or the parties may vary the effect of the requirements of this article to the extent permitted by law.
6 (b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

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

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

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

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

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

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

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

6 (b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this
article must be served in the manner provided by law for the
service of a summons in a civil action. Otherwise, notice of the
motion must be given in the manner provided by the rules of
civil procedure for serving motions in pending cases.

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

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

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

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

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

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

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

(1) If the refusing party does not appear or does not oppose
the motion, the court shall order the parties to arbitrate; and
(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

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

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

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

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

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

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

§55-10-10. Provisional remedies.

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

§55-10-10. Provisional remedies during arbitration.

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

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

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

§55-10-11. Initiation of arbitration.

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

(b) Unless a person objects for lack or insufficiency of notice under section seventeen of this article not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.
§55-10-12. Consolidation of separate arbitration proceedings.

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

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

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

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

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

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

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

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

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be
followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

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


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

1. A financial or personal interest in the outcome of the arbitration proceeding; and

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

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

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to
the appointment or continued service of the arbitrator based upon
the fact disclosed, the objection may be a ground under section
twenty-five of this article for vacating an award made by the
arbitrator.

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

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

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


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

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

1 (a) An arbitrator or an arbitration organization acting in that
capacity is immune from civil liability to the same extent as a
judge of a court of this state acting in a judicial capacity.
(b) The immunity afforded by this section supplements any immunity under other law.

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

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

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

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

(e) If a person commences a civil action against an arbitrator, arbitration organization or representative of an arbitration organization arising from the services of the arbitrator, organization or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator, arbitration organization or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization or representative reasonable attorneys’ fees and other reasonable expenses of litigation.
§55-10-17. Arbitration process.

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

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

(1) If all interested parties agree; or

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

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party’s appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator’s own initiative, the arbitrator may adjourn the hearing, from time to time, as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.
(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy and to cross examine witnesses appearing at the hearing.

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

§55-10-18. Representation by lawyer.

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

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

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

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

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious and cost effective.
(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator’s discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

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

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

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

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

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator
to incorporate the ruling into an award under section twenty-one
of this article. A prevailing party may make a motion to the court
for an expedited order to confirm the award under section
twenty-four of this article, in which case the court shall
summarily decide the motion. The court shall issue an order to
confirm the award unless the court vacates, modifies or corrects
the award under section twenty-five or twenty-six of this article.

§55-10-21. Award.

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

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

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

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

(a) On motion to an arbitrator by a party to an arbitration
proceeding, the arbitrator may modify or correct an award:
(1) Upon a ground stated in section twenty-six of this article;

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

(3) To clarify the award.

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

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

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

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

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

(3) To clarify the award.

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

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

(a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil
action involving the same claim and the evidence produced at
the hearing justifies the award under the legal standards
otherwise applicable to the claim.

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

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

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

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


After a party to an arbitration proceeding receives notice of
an award, the party may make a motion to the court for an order
confirming the award at which time the court shall issue a
confirming order unless the award is modified or corrected
pursuant to section twenty-two or twenty-six of this article or is
vacated pursuant to section twenty-five of this article.
§55-10-25. Vacating award.

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

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

(2) There was:

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

(B) Corruption by an arbitrator; or

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

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

(4) An arbitrator exceeded the arbitrator’s powers;

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

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in section nine so as to prejudice substantially the rights of a party to the arbitration proceeding.
(b) A motion under this section must be filed within ninety days after the moving party receives notice of the award pursuant to section twenty-one of this article or within ninety days after the moving party receives notice of a modified or corrected award pursuant to section twenty-two of this article, unless the moving party alleges that the award was procured by corruption, fraud or other undue means, in which case the motion must be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the moving party.

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

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

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

(a) Upon motion made within ninety days after the moving party receives notice of the award pursuant to section nineteen of this article or within ninety days after the moving party receives notice of a modified or corrected award pursuant to section twenty-two of this article, the court shall modify or correct the award if:
(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

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

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

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

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

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

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

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

(c) On application of a prevailing party to a contested judicial proceeding under section twenty-four, twenty-five or twenty-six of this article, the court may add reasonable attorneys’ fees and other reasonable expenses of litigation
12 incurred in a judicial proceeding after the award is made to a
13 judgment confirming, vacating without directing a rehearing,
14 modifying or correcting an award.

1 (a) A court of this state having jurisdiction over the
2 controversy and the parties may enforce an agreement to
3 arbitrate.
4 (b) An agreement to arbitrate providing for arbitration in this
5 state confers exclusive jurisdiction on the court to enter
6 judgment on an award under this article.

§55-10-29. Venue.
1 A motion pursuant to section seven of this article must be
2 made in the circuit court of the county in which the agreement to
3 arbitrate specifies the arbitration hearing is to be held or, if the
4 hearing has been held, in the circuit court of the county in which
5 it was held. Otherwise, the motion may be made in the court of
6 any county in which an adverse party resides or has a place of
7 business or, if no adverse party has a residence or place of
8 business in this state, in the circuit court of Kanawha County,
9 West Virginia. All subsequent motions must be made in the
10 court hearing the initial motion unless the court otherwise
11 directs.

§55-10-30. Appeals.
1 (a) An appeal may be taken from:
2 (1) An order denying a motion to compel arbitration;
3 (2) An order granting or denying a motion to compel
4 arbitration issued in an action filed pursuant to the provisions of
5 chapter forty-six-a of this code;
(3) An order granting a motion to stay arbitration;

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

(5) An order modifying or correcting an award;

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

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

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

§55-10-31. 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.


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

§55-10-33. Savings clause.

This article does not affect an action or proceeding commenced or right accrued before this article takes effect.
AN ACT to repeal §29A-2-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §29A-1-2 of said code; to amend said code by adding thereto two new sections, designated §29A-1-3a and §29A-1-3b; and to amend and reenact §29A-3-1a, §29A-3-4, §29A-3-8, §29A-3-13 and §29A-3-15 of said code, all relating generally to the State Administrative Procedures Act; defining “legislative exempt rule”; providing certain technical amendments; providing for nullification and voiding of rules; setting forth requirements for amendments to existing rules, proposed new rules and repeal of existing rules; establishing filing and adoption requirements for legislative exempt rules; making legislative rules effective upon filing; requiring agency to provide list of interested parties with emergency rules; and changing number of copies required when filing an emergency rule.

Be it enacted by the Legislature of West Virginia:

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

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

1 For the purposes of this chapter:

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

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

4 (c) “Interpretive rule” means every rule, as defined in subdivision (j) of this section, adopted by an agency independently of any delegation of legislative power which is intended by the agency to provide information or guidance to the public regarding the agency’s interpretations, policy or opinions upon the law enforced or administered by it and which is not intended by the agency to be determinative of any issue affecting constitutional, statutory or common law rights, privileges or interests. An interpretive rule may not be relied upon to impose a civil or criminal sanction nor to regulate conduct or the exercise of constitutional, statutory or common law rights or privileges nor to confer any right or privilege provided by law and is not admissible in any administrative or judicial proceeding for that purpose, except where the interpretive rule
established the conditions for the exercise of discretionary power as provided in this subdivision. However, an interpretive rule is admissible for the purpose of showing that the prior conduct of a person was based on good faith reliance on the rule. The admission of the rule in no way affects any legislative or judicial determination regarding the prospective effect of the rule. Where any provision of this code lawfully commits any decision or determination of fact or judgment to the sole discretion of any agency or any executive officer or employee, the conditions for the exercise of that discretion, to the extent that the conditions are not prescribed by statute or by legislative rule, may be established by an interpretive rule and such rule is admissible in any administrative or judicial proceeding to prove the conditions.

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

(e) “Legislative rule” means every rule, as defined in subdivision (j) of this section, proposed or promulgated by an agency pursuant to this chapter. Legislative rule includes every rule which, when promulgated after or pursuant to authorization of the Legislature, has: (1) The force of law; or (2) supplies a basis for the imposition of civil or criminal liability; or (3) grants or denies a specific benefit. Every rule which, when effective, is determinative on any issue affecting constitutional, statutory or common law rights, privileges or interests is a legislative rule. Unless lawfully promulgated as an emergency rule, a legislative rule is only a proposal by the agency and has no legal force or effect until promulgated by specific authorization of the Legislature. Except where otherwise specifically provided in this code, legislative rule does not include: (A) Findings or determinations of fact made or reported by an agency, including any findings and determinations that are required to be made by
any agency as a condition precedent to proposal of a rule to the
Legislature; (B) declaratory rulings issued by an agency pursuant
to the provisions of section one, article four of this chapter; (C)
orders, as defined in subdivision (e) of this section; or (D)
executive orders or proclamations by the Governor issued solely
in the exercise of executive power, including executive orders
issued in the event of a public disaster or emergency.

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

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

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

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

(j) “Rule” includes every rule, standard or statement of
policy or interpretation of general application and future effect,
including the amendment or repeal of the rule, affecting
constitutional, statutory or common law rights, privileges or
interests, or the procedures available to the public, adopted by an
agency to implement, extend, apply, interpret or make specific
the law enforced or administered by it or to govern its
organization or procedure, but does not include rules relating
solely to the internal management of the agency, nor rules of
which notice is customarily given to the public by markers or
signs, nor mere instructions. Every rule shall be classified as
“legislative rule”, “interpretive rule” or “procedural rule”, all as defined in this section, and is effective only as provided in this chapter.

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

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

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


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.

ARTICLE 3. RULEMAKING.

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

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

(b) An agency proposing to repeal a rule, shall file the rule in its entirety with the provisions of the rule struck through. An agency may not repeal a rule by reference in another rule.
§29A-3-4. Filing of proposed legislative exempt rules, procedural rules and interpretive rules.

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

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

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

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.

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 thirty days after the filing, whichever
is later or as specified in this code.

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

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

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

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

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

(a) Any agency with authority to propose legislative rules
may, without hearing, find that an emergency exists requiring
that an emergency rule be promulgated and promulgate the
emergency rule in accordance with this section. The agency shall
file the emergency rule, together with a statement of the facts
and circumstances constituting the emergency and a listing of
state agencies, professions, businesses and other identifiable
interest groups affected by the proposed emergency rule, with
the Secretary of State, who shall publish a notice of the filing in
the State Register. However, an agency’s good faith failure to
list all known state agencies, professions, businesses and other
identifiable interest groups is not a basis for disapproval of the
emergency rule or does not subject the emergency rule to
judicial review. The emergency rule becomes effective upon the
approval of the Secretary of State in accordance with section
fifteen-a of this article or upon the approval of the Attorney
General in accordance with section fifteen-b of this article or
upon the forty-second day following the filing, whichever occurs
first. The emergency rule may adopt, amend or repeal any
legislative rule, but the agency shall state, with particularity, the
circumstances constituting the emergency requiring the adoption,
amendment or repeal, and the emergency rule is subject to de
novo review by any court having original jurisdiction of an
action challenging its validity. An agency shall immediately file
a copy of the emergency rule and the required statement with the
Secretary of State and one copy with the Legislative
Rule-Making Review Committee.

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

(1) The Secretary of State, acting under the authority
provided in section fifteen-a of this article, or the Attorney
General, acting under the authority provided in section fifteen-b
of this article, disapproves the emergency rule because: (A) The
emergency rule or an amendment to the emergency rule exceeds
the scope of the law authorizing or directing the promulgation of
the rule; (B) an emergency does not exist justifying the
promulgation of the emergency rule; or (C) the emergency rule
was not promulgated in compliance with the provisions of this
section. An emergency rule may not be disapproved pursuant to
the authority granted by clauses (A) or (B) of this subdivision on
the basis that the Secretary of State or the Attorney General
disagrees with the underlying public policy established by the
Legislature in enacting the authorizing legislation. An
emergency rule which would otherwise be approved as being
necessary to comply with a time limitation established by this
code or by a federal statute or regulation may not be disapproved
pursuant to the authority granted by paragraphs (A) or (B) of this
subdivision on the basis that the agency has failed to file the
emergency rule prior to the date fixed by the time limitation.
When the authorizing statute specifically directs an agency to
promulgate an emergency rule, or specifically finds that an
emergency exists and directs the promulgation of an emergency
rule, the emergency rule may not be disapproved pursuant to the
authority granted by paragraph (B) of this subdivision. An
emergency rule may not be disapproved on the basis that the
Legislature has not specifically directed an agency to promulgate
the emergency rule, or has not specifically found that an
emergency exists and directed the promulgation of an emergency
rule;

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

(3) The agency has not previously filed and fails to file the
proposed rule as approved by the agency following the close of
the public comment period with the Legislative Rule-Making
Review Committee within ninety days of the date the proposed
rule was filed as an emergency rule, in which case the
emergency rule expires on the ninety-first day;
(4) The Legislature has authorized or directed promulgation of an authorized legislative rule dealing with substantially the same subject matter since the emergency rule was first promulgated, in which case the emergency rule expires on the date the authorized rule is made effective; or

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

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

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

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

(e) The Legislative Rule-Making Review Committee may review any emergency rule to determine: (1) Whether the emergency rule or an amendment to the emergency rule exceeds
the scope of the law authorizing or directing its promulgation;  
(2) whether there exists an emergency justifying the  
promulgation of the emergency rule; and (3) whether the  
emergency rule was promulgated in compliance with the  
requirements and prohibitions contained in this section. The  
committee may recommend to the agency, the Legislature or the  
Secretary of State any action it determines appropriate.  

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

CHAPTER 10

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

[Passed March 9, 2015; in effect ninety days from passage.]  
[Approved by the Governor on March 25, 2015.]

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

Be it enacted by the Legislature of West Virginia:  

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

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

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

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

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

CHAPTER 11

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

[Passed March 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

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

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

ARTICLE  9. DISEASES AMONG DOMESTIC ANIMALS.

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

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

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

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

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

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

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

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

(C) So that the top of the carcass is not within two feet of the surface of the ground when the grave is filled and smoothed to the level of the surrounding surface;
(5) Rendering by a licensed facility;

(6) Composting; and

(7) Any other method the commissioner prescribes.

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

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

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

“Composter” is a roofed structure with an impervious floor, and with treatment areas made of wood, designed for composting organic materials; or a rotary drum composter designed, constructed and located to prevent the contamination of ground and surface water.
CHAPTER 12

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

[Passed March 12, 2015; in effect ninety days from passage.] [Approved by the Governor on March 25, 2015.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. PRODUCTION OF NONTRADITIONAL AGRICULTURE PRODUCTS.

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

1 The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, to include inspection of the meat from nontraditional agriculture intended for sale in commercial outlets. Except for rabbits and game birds, nontraditional agriculture shall be slaughtered in an inspected meat processing facility.
AN ACT to amend and reenact §11-16-3, §11-16-6, §11-16-9 and §11-16-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §11-16-6a and §11-16-6b, all relating to brewer, resident brewer, brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee and Class B retail licensee licensing and operations; clarifying, adding and revising definitions; providing legislative findings; authorizing licensed brewers and resident brewers to offer complimentary nonintoxicating beer and nonintoxicating craft beer samples; authorizing licensed brewers, resident brewers, brewpubs, Class A retail dealers, Class B retail dealers, private clubs, Class A retail licensees and Class B retail licensees to sell nonintoxicating beer and nonintoxicating craft beer in growlers subject to limitations; imposing operational, advertising, sanitation, sealing and labeling standards; authorizing and imposing penalties; authorizing promulgation of rules; clarifying and imposing license requirements and fees; removing authorization to propose rules; changing license fee schedule for certain brewers and resident brewers; decreasing license fee for brewpubs; requiring annual production report; providing for fee correction; authorizing penalty for failure to submit production report; removing brewpub bonding requirement; and providing clarifying and technical amendments.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

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

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

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

3 (3) “Brewpub” means a place of manufacture of nonintoxicating beer or nonintoxicating craft beer owned by a resident brewer, subject to federal and state regulations and guidelines, a portion of which premises are designated for retail sales of nonintoxicating beer or nonintoxicating craft beer by the resident brewer owning the brewpub.
(4) “Class A retail license” means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet licensed pursuant to chapter sixty of this code.

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

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

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

(8) “Franchise agreement” means the written agreement between a brewer and a distributor that is identical as to terms and conditions between the brewer and all its distributors, which agreement has been approved by the commissioner. The franchise agreement binds the parties so that a distributor, appointed by a brewer, may distribute all of the brewer’s nonintoxicating beer products, brands or family of brands imported and offered for sale in West Virginia, including, but not limited to, existing brands, line extensions and new brands all in the brewer’s assigned territory for the distributor. All brands and line extensions being imported or offered for sale in
West Virginia must be listed by the brewer in the franchise agreement or a written amendment to the franchise agreement. A franchise agreement may be amended by mutual written agreement of the parties as approved by the commissioner with identical terms and conditions for a brewer and all of its distributors. Any approved amendment to the franchise agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer may appoint a successor distributor who accedes to all the rights of the cancelled or terminated distributor.

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

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

(11) “Growler” means a container or jug that is made of glass, ceramic, metal or other material approved by the commissioner, that may be only thirty-two or sixty-four fluid
89 ounces in size and must be capable of being securely sealed. The
growler is utilized by an authorized licensee for purposes of off-
premise sales only of nonintoxicating beer or nonintoxicating
craft beer for personal consumption not on a licensed premise
and not for resale. Notwithstanding any other provision of this
code to the contrary, a securely sealed growler is not an open
container under federal, state and local law. A growler with a
broken seal is an open container under federal, state and local
law unless it is located in an area of the motor vehicle physically
separated from the passenger compartment. The secure sealing
of a growler requires the use of a tamper-resistant seal, security
tape or other material, as approved by the commissioner, placed
on or over the growler’s opening, which seal, security tape or
other material is clearly marked with the date of the secure
sealing by the authorized licensee who is selling the growler.

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

(13) “Nonintoxicating beer” means all natural cereal malt
beverages or products of the brewing industry commonly
referred to as beer, lager beer, ale and all other mixtures and
preparations produced by the brewing industry, including malt
coolers and nonintoxicating craft beers with no caffeine infusion
or any additives masking or altering the alcohol effect containing
at least one half of one percent alcohol by volume, but not more
than nine and six-tenths of alcohol by weight, or twelve percent
by volume, whichever is greater. The word “liquor” as used in
chapter sixty of this code does not include or embrace
nonintoxicating beer nor any of the beverages, products,
mixtures or preparations included within this definition.

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

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

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

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

(18) “Person” means and includes an individual, firm,
partnership, limited partnership, limited liability company,
association or corporation.
(19) “Private club” means a license issued pursuant to article seven, chapter sixty of this code.

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

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

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

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

(a) No person shall be licensed in more than one capacity under the terms of this article, and there shall be no connection whatsoever between any retailer, distributor, resident brewer or brewer, and no person shall be interested, directly or indirectly, through the ownership of corporate stock, membership in a partnership, or in any other way in the business of a retailer, if such person is at the same time interested in the business of a brewer, resident brewer or distributor. A resident brewer may act as distributor in a limited capacity for his or her own product from such resident brewery, place of manufacture or bottling, but a resident brewer is not permitted to act as a distributor as defined in section three of this article: Provided, That nothing in
this article may prevent a resident brewer from using the services of licensed distributors as specified in this article. A resident brewer or distributor may sell to a patron for personal use and not for resale quantities of draught beer in original containers that are no larger in size than one-half barrel for off-premises consumption. A resident brewer who also has a brewpub license may sell nonintoxicating beer or nonintoxicating craft beer produced by the resident brewer in cans, bottles or sealed growlers, pursuant to section six-b of this article, for personal consumption off of the brewpub’s licensed premises and not for resale.

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

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

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

(a) Legislative findings. — The Legislature hereby finds that it is in the public interest to regulate, control and support the brewing, manufacturing, distribution, sale, consumption, transportation and storage of nonintoxicating beer and nonintoxicating craft beer and its industry in this state in order to protect the public health, welfare and safety of the citizens of
this state, and promote hospitality and tourism. Therefore, this
section authorizes a licensed brewer or resident brewer with its
principal place of business and manufacture located in this state
to have certain abilities in order to promote the sale of
nonintoxicating beer and nonintoxicating craft beer
manufactured in this state for the benefit of the citizens of this
state, the state’s growing brewing industry and the state’s
hospitality and tourism industry, all of which are vital
components for the state’s economy.

(b) Sales of nonintoxicating beer. — A licensed brewer or
resident brewer with its principal place of business and
manufacture located in the state of West Virginia may offer only
nonintoxicating beer or nonintoxicating craft beer manufactured
by the licensed brewer or resident brewer for retail sale to
customers from the brewer’s or resident brewer’s licensed
premises for consumption off the licensed premises only in the
form of kegs, bottles, cans or growlers for personal consumption
and not for resale. A licensed brewer or resident brewer may not
sell, give or furnish nonintoxicating beer for consumption on the
premises of the principal place of business and manufacture
located in the state of West Virginia, except for the limited
purpose of complimentary samples as permitted in subsection (c)
of this section.

(c) Complimentary samples. — A licensed brewer or
resident brewer with its principal place of business and
manufacture located in the state of West Virginia may only offer
complimentary samples of nonintoxicating beer or
nonintoxicating craft beer brewed at the brewer’s or resident
brewer’s principal place of business and manufacture located in
the state of West Virginia. The complimentary samples may be
no greater than two ounces per sample per patron, and a
sampling shall not exceed ten complimentary two-ounce samples
per patron per day. A licensed brewer or resident brewer
providing complimentary samples shall provide complimentary
food items to the patron consuming the complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is twenty-one years of age or over and that the patron is not visibly intoxicated.

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

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

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

(g) Growler requirements. — A licensed brewer or resident brewer under this section must fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed brewer or resident brewer under this section must sanitize, fill, securely seal and label any growler prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail sale up to two 64-ounce, or four 32-ounce, growlers of nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer per customer per day
for personal consumption off of the licensed premises and not
for resale. A licensed brewer or resident brewer under this
section may refill a growler subject to the requirements of this
section. A licensed brewer or resident brewer shall visually
inspect any growler before filling or refilling it. A licensed
brewer or resident brewer may not fill or refill any growler that
appears to be cracked, broken, unsafe or otherwise unfit to serve
as a sealed beverage container.

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

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

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

(k) Limitations on licensees. — To be authorized under this
section, a licensed brewer or resident brewer may not produce
more than twenty-five thousand barrels per calendar year at the
brewer’s or resident brewer’s principal place of business and manufacture located in the state of West Virginia. No more than one brewer or resident brewer license may be issued to a single person or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer or resident brewer under this section may only conduct tours, give complimentary samples and sell growlers during the hours of operation set forth in subdivision (1), subsection (a), section eighteen of this article. A licensed brewer or resident brewer authorized under this section shall be subject to the applicable penalties under section twenty-three of this article for violations of this section. (1) Rules.—The commissioner, in consultation with the Bureau for Public Health concerning sanitation, is authorized to propose rules for legislative approval, pursuant to article three, chapter twenty-nine-a of this code, to implement this section.

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

(a) Legislative findings.—The Legislature hereby finds that it is in the public interest to regulate, control and support the brewing, manufacturing, distribution, sale, consumption, transportation and storage of nonintoxicating beer and nonintoxicating craft beer and its industry in this state in order to protect the public health, welfare and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee or Class B retail licensee to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer manufactured in this state for the benefit of the citizens of this state, the state’s growing brewing industry and the state’s hospitality and tourism industry, all of which are vital components for the state’s economy.
(b) *Sales of nonintoxicating beer.* — A licensed brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee or Class B retail licensee who pays the fee in subsection (i) of this section and meets the requirements of this section may offer nonintoxicating beer or nonintoxicating craft beer for retail sale to patrons from their licensed premises in a growler for personal consumption only off of the licensed premises and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing nonintoxicating beer or nonintoxicating craft beer is twenty-one years of age or over and that the patron is not visibly intoxicated. A licensee authorized under this section may not sell, give or furnish alcoholic liquors, including wine, for consumption off of its licensed premises, unless it is a private club licensed to sell sealed wine for consumption off of the licensed premises and meets the requirements set out in subdivisions (j) and (l), section three, article eight, chapter sixty of this code, for the sale of wine, not liquor.

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

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

(e) *Advertising.* — A licensee authorized under this section may advertise a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer and the price of the nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance.
(f) Growler requirements. — A licensee authorized under this section must fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensee authorized under this section must sanitize, fill, securely seal and label any growler prior to its sale. A licensee authorized under this section may only offer for retail sale up to two 64-ounce, or four 32-ounce, growlers of nonintoxicating beer or nonintoxicating craft beer per customer per day for personal consumption off of the licensed premises and not for resale. A licensee under this section may refill a growler subject to the requirements of this section. A licensee shall visually inspect any growler before filling or refilling it. A licensee may not fill or refill any growler that appears to be cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

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

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

(i) Fee. — Commencing July 1, 2015, and by every July 1 thereafter, there is an annual $100 nonrefundable fee for a
licensee, except for a licensed brewpub, to sell growlers as provided by this section. The licensee must be in good standing with the state at the time of paying the fee.

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

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

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

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

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

(b) The annual license fees are as follows:

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

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

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

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

A Class B license may be issued only to the proprietor or owner of a grocery store. For the purpose of this article, the term "grocery store" means any retail establishment commonly
known as a grocery store or delicatessen, and caterer or party supply store, where food or food products are sold for consumption off the premises, and includes a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises. Caterers or party supply stores are required to purchase the appropriate licenses from the Alcohol Beverage Control Administration.

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

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

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

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

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

(4) For a brewer whose principal place of business or manufacture is not located in this state, the license fee is $1,500. The brewer is exempt from the requirements set out in subsections (c), (d) and (e) of this section: Provided, That a brewer whose principal place of business or manufacture is not located in this state that produces less than twenty-five thousand barrels of nonintoxicating beer or nonintoxicating craft beer may choose to apply in writing to the commissioner to be subject to
the variable license fees of subdivision (3), subsection (b) of this section and the requirements set out in subsections (c), (d) and (e) of this section subject to investigation and approval by the commissioner as to brewer requirements.

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

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

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

(e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the brewer or resident brewer exceeded the brewer's or resident brewer’s estimate that was filed with the application or renewal for a brewer's or resident brewer’s license for that period, then the brewer or resident brewer shall include a remittance for the balance of the license fee pursuant to this section that would be required for the final, higher level of production.
(f) Any brewer or resident brewer failing to file the reports required in subsections (c) and (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion of the commissioner, be subject to the penalties set forth in section twenty-three of this article.

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

(a) In addition to furnishing the information required by this article, each brewer or distributor applying for a license under this article shall furnish, as prerequisite to a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the state of West Virginia, conditioned for the payment of any and all additional taxes accruing during the period of such license, and conditioned further for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the state of West Virginia generally relating to the sale, transportation, storage and distribution of nonintoxicating beer, which said bonds shall be forfeited to the state upon the revocation of the license of any such brewer or distributor. The amount of such bond in the case of a resident brewer or brewpub shall be not less than $5,000 nor more than $10,000 and in the case of a distributor, not less than $2,000 nor more than $5,000 for each place of business licensed and conducted within the state, the amount of such bond, between the minimum and maximum amounts, to be determined in the discretion of the commissioner. There shall be no bond for a brewpub license, as the license privilege itself secures the payment of taxes and is subject to suspension and revocation for failure to pay said taxes. In the case of brewers shipping nonintoxicating beer into the state, any brewer must also furnish a bond in a penalty of not less than $5,000 nor more than $25,000 conditioned as hereinabove in this subsection provided and any bond furnished
pursuant hereto shall be forfeited to the state in the full amount
of said bond upon revocation of license of any such brewer or
distributor. Such money received by the state shall be credited to
the State Fund, General Revenue.

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

(c) Upon the revocation of the license of any Class A retail
dealer by the commissioner or by any court of competent
jurisdiction, the commissioner or the clerk of said court shall
notify the prosecuting attorney of the county wherein such retail
dealer’s place of business is located, or the prosecuting attorney
of the county wherein the licensee resides, of such revocation,
and, upon receipt of said notice, it shall be the duty of such
prosecuting attorney forthwith to institute appropriate
proceedings for the collection of the full amount of said bond.
Upon request of such prosecuting attorney, the commissioner
shall deliver the bond to him. Willful refusal without just cause
therefor by the prosecuting attorney to perform said duty hereby
imposed shall subject him to removal from office by the circuit
court of the county for which said prosecuting attorney was
elected upon proper proceedings and proof in the manner
provided by law.
CHAPTER 14

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

[Passed March 14, 2015; in effect ninety day from passage.]
[Approved by the Governor on March 31, 2015.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

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

1 (a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to retail licensees. The commissioner
shall sell liquor, other than wine, to retail licensees according to
a uniform pricing schedule. The commissioner shall obtain, if
possible, upon request, any liquor requested by a retail licensee
and those permitted to manufacture and sell liquor pursuant to
section three, article four of this chapter.

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

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

(d) The sale of liquor by the commissioner to retail licensees
shall be paid by electronic funds transfer which shall be initiated
by the commissioner on the business day following the retail
licensees order or by money order, certified check or cashier’s
check which shall be received by the commissioner at least twenty-four hours prior to the shipping of the alcoholic liquors: Provided, That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with surety acceptable to the commissioner from a financial institution acceptable to the commissioner guaranteeing payment of checks, then the commissioner may accept the retail licensee’s checks in an amount up to the amount of the letter of credit.

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

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

ARTICLE 4. LICENSES.

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

A person who is licensed to manufacture alcoholic liquors in this state may sell liquors in this state only to the West Virginia Alcohol Beverage Control Commissioner and to wholesalers and retailers licensed as provided in this chapter: Provided, That a holder of a winery or a farm winery license may sell wines and a holder of a distillery or a mini-distillery license may sell alcoholic liquors manufactured by it in this state in accordance with the provisions of section three-a of this article and section two, article six of this chapter. Hours of retail sale by a winery or a farm winery or distillery or a mini-distillery are subject to regulation by the commissioner. A winery, distillery, farm winery or mini-distillery may sell and ship alcoholic liquors outside of the state subject to provisions of this chapter.
§60-4-3a. Distillery and mini-distillery license to manufacture and sell.

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

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

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

(d) Payments to market zone retailers. — Each distillery or mini-distillery shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for the value of all sales at the distillery or the mini-distillery each month. This
collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery or mini-distillery’s market zone, proportionate to each market zone retailer’s annual gross prior years pretax value sales. The maximum amount of market zone payments that a distillery or mini-distillery shall be required to submit to the commissioner is $15,000 per annum.

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

CHAPTER 15

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

[Passed March 18, 2015; in effect from passage.]
[Approved by the Governor with deletions and reductions on March 23, 2015.]

AN ACT making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution.
Be it enacted by the Legislature of West Virginia:

Title
I. General Provisions.
II. Appropriations.
III. Administration.

TITLE I — GENERAL PROVISIONS.

§1. General policy.
§2. Definitions.
§3. Classification of appropriations.
§5. Maximum expenditures.

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 2016.

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 2016” shall mean the period from July 1, 2015, through June 30, 2016.

“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: 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 by subsequent enactment consolidates agencies,
boards or functions, the secretary or other appropriate agency
head may transfer the funds formerly appropriated to such
agency, board or function in order to implement such
consolidation. 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.

ADMINISTRATION, DEPARTMENT OF

Administration, Department of – Office of the Secretary – Fund No. 0186. .................................................. 150
Children’s Health Insurance Agency – Fund No. 0588. ......................... 157
Committee for the Purchase of Commodities and Services from the Handicapped – Fund No. 0233. .................................................. 156
Consolidated Public Retirement Board – Fund No. 0195. .............................. 151
Ethics Commission – Fund No. 0223. .................................................. 155
Finance, Division of – Fund No. 0203. .................................................. 151
General Services, Division of – Fund No. 0230. ...................................... 152
Prosecuting Attorneys’ Institute, West Virginia – Fund No. 0557. .................. 157
Public Defender Services – Fund No. 0226. ............................................ 155
Public Employees Grievance Board – Fund No. 0220. .............................. 154
Public Employees Insurance Agency – Fund No. 0200. 156
Purchasing, Division of – Fund No. 0210. 153
Real Estate Division – Fund No. 0610. 157
Travel Management – Fund No. 0615. 154
Uniform State Laws, Commission on – Fund No. 0214. 154

COMMERCE, DEPARTMENT OF
Coal Mine Health and Safety, Board of –
Fund No. 0280. 164
Commerce, Department of – Office of the Secretary –
Fund No. 0606. 165
Commerce, Department of – Office of the Secretary –
Office of Economic Opportunity – Fund No. 0617. 165
Development Office, West Virginia – Fund No. 0256. 159
Energy, Division of – Fund No. 0612. 165
Forestry, Division of – Fund No. 0250. 158
Geological and Economic Survey – Fund No. 0253. 159
Labor, Division of – Fund No. 0260. 162
Labor, Division of – Occupational Safety and Health Fund – Fund No. 0616. 162
Miners’ Health, Safety and Training, Division of – Fund No. 0277. 164
Natural Resources, Division of – Fund No. 0265. 163
WorkForce WV – Fund No. 0572. 164

EDUCATION, DEPARTMENT OF
State Board of Education – Division of Educational Performance Audits – Fund No. 0573. 173
State Board of Education – Vocational Division – Fund No. 0390. 172
State Department of Education – Aid for Exceptional Children – Fund No. 0314. 170
State Department of Education – Fund No. 0313. 167
State Department of Education – School Lunch Program – Fund No. 0303. 166
State Department of Education – State Aid to Schools – Fund No. 0317. 171
State FFA-FHA Camp and Conference Center – Fund No. 0306. 166
West Virginia Schools for the Deaf and
the Blind – Fund No. 0320. .......................................................... 173

EDUCATION AND THE ARTS, DEPARTMENT OF
Culture and History, Division of – Fund
No. 0293. ................................................................. 175
Educational Broadcasting Authority – Fund
No. 0300. ................................................................. 177
Education and the Arts, Department of – Office
of the Secretary – Fund No. 0294. ................................................. 174
Library Commission – Fund No. 0296. ............................................. 176
State Board of Rehabilitation – Division of
Rehabilitation Services – Fund No. 0310. .......................................... 177

ENVIRONMENTAL PROTECTION, DEPARTMENT OF
Air Quality Board – Fund No. 0550. ................................................. 180
Environmental Protection, Division of – Fund
No. 0273. ................................................................. 179
Environmental Quality Board – Fund No. 0270. ................................. 178

EXECUTIVE
Agriculture, Department of – Fund No. 0131. ................................. 144
Agriculture, Department of – Agricultural
Awards--Fund No. 0136. ......................................................... 147
Agriculture, Department of – Meat Inspection--
Fund No. 0135. ................................................................. 147
Agriculture, Department of – West Virginia
Agricultural Land Protection Authority--
Fund No. 0607. ................................................................. 148
Attorney General – Fund No. 0150. ................................................ 148
Auditor’s Office – General Administration--
Fund No. 0116. ................................................................. 143
Governor’s Office – Fund No. 0101. ................................................ 141
Governor’s Office – Civil Contingent Fund--
Fund No. 0105. ................................................................. 142
Governor’s Office – Custodial Fund--Fund
No. 0102. ................................................................. 142
Secretary of State – Fund No. 0155. ................................................ 149
State Election Commission – Fund No. 0160. ..................................... 150
Treasurer’s Office – Fund No. 0126. ................................................ 144
West Virginia Conservation Agency – Fund No. 0132. ............................ 146

HEALTH AND HUMAN RESOURCES, DEPARTMENT OF
Consolidated Medical Service Fund – Fund
No. 0525. ................................................................. 184
Health and Human Resources, Department of –
  Office of the Secretary – Fund No. 0400. .......................... 180
Health, Division of – Central Office--Fund
  No. 0407. ......................................................... 181
Health, Division of – West Virginia Drinking Water
  Treatment – Fund No. 0561. ........................................... 186
Human Services, Division of – Fund No. 0403. ...................... 186
Human Rights Commission – Fund No. 0416. ....................... 186

HIGHER EDUCATION POLICY COMMISSION
  Bluefield State College – Fund No. 0354. .......................... 220
  Concord University – Fund No. 0357. ............................. 220
  Fairmont State University – Fund No. 0360. ..................... 220
  Glenville State College – Fund No. 0363. .......................... 220
  Higher Education Policy Commission –
    Administration – Fund No. 0589. ................................. 212
  Higher Education Policy Commission –
    Administration – West Virginia Network for
    Educational Telecomputing (WVNET) – Fund No. 0551. ...... 213
  Marshall University – General Administration Fund – Fund No. 0348. 218
  Marshall University – School of Medicine – Fund No. 0347. .... 217
  Shepherd University – Fund No. 0366. ............................ 221
  West Liberty University – Fund No. 0370. .......................... 221
  West Virginia School of Osteopathic Medicine – Fund No. 0336. 219
  West Virginia State University – Fund No. 0373. ................. 221
  West Virginia University – General Administrative Fund –
    Fund No. 0344. .................................................. 216
  West Virginia University – School of Medicine –
    Medical School Fund – Fund No. 0343. ........................ 214

JUDICIAL
  Supreme Court – General Judicial – Fund
    No. 0180. ........................................................... 140

LEGISLATIVE
  House of Delegates – Fund No. 0170. .............................. 137
  Joint Expenses – Fund No. 0175. .................................. 139
  Senate – Fund No. 0165. ............................................. 135

MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF
  Adjutant General – Military Fund –
    Fund No. 0605. .................................................. 192
  Adjutant General – State Militia – Fund
    No. 0433. .......................................................... 191
<table>
<thead>
<tr>
<th>Agency</th>
<th>Fund No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corrections, Division of – Central Office –</td>
<td>0446</td>
<td>194</td>
</tr>
<tr>
<td>Corrections, Division of – Correctional Units –</td>
<td>0450</td>
<td>194</td>
</tr>
<tr>
<td>Fire Commission –</td>
<td>0436</td>
<td>198</td>
</tr>
<tr>
<td>Homeland Security and Emergency Management,</td>
<td>0443</td>
<td>193</td>
</tr>
<tr>
<td>Justice and Community Services, Division of –</td>
<td>0546</td>
<td>198</td>
</tr>
<tr>
<td>Juvenile Services, Division of –</td>
<td>0570</td>
<td>199</td>
</tr>
<tr>
<td>Military Affairs and Public Safety, Department of –</td>
<td>0430</td>
<td>190</td>
</tr>
<tr>
<td>Parole Board, West Virginia –</td>
<td>0440</td>
<td>192</td>
</tr>
<tr>
<td>Protective Services, Division of –</td>
<td>0585</td>
<td>200</td>
</tr>
<tr>
<td>State Police, West Virginia –</td>
<td>0453</td>
<td>197</td>
</tr>
<tr>
<td>Office of the Secretary – Fund No. 0465.</td>
<td></td>
<td>201</td>
</tr>
<tr>
<td>State Athletic Commission – Fund No. 0523.</td>
<td></td>
<td>203</td>
</tr>
<tr>
<td>State Budget Office – Fund No. 0595.</td>
<td></td>
<td>202</td>
</tr>
<tr>
<td>Tax Appeals, West Virginia Office of – Fund 0593.</td>
<td></td>
<td>203</td>
</tr>
<tr>
<td>Tax Division – Fund No. 0470.</td>
<td></td>
<td>201</td>
</tr>
<tr>
<td>Senior Services, Bureau of – Fund No. 0420.</td>
<td></td>
<td>207</td>
</tr>
<tr>
<td>Aeronautics Commission – Fund No. 0582.</td>
<td></td>
<td>205</td>
</tr>
<tr>
<td>Public Port Authority – Fund No. 0581.</td>
<td></td>
<td>204</td>
</tr>
<tr>
<td>Public Transit, Division of – Fund No. 0510.</td>
<td></td>
<td>204</td>
</tr>
<tr>
<td>State Rail Authority – Fund No. 0506.</td>
<td></td>
<td>203</td>
</tr>
<tr>
<td>Veterans Assistance, Division of – Fund No. 0456.</td>
<td></td>
<td>206</td>
</tr>
<tr>
<td>Veterans Assistance, Division of – Veterans Home –</td>
<td>0460</td>
<td>207</td>
</tr>
<tr>
<td>Blue Ridge Community and Technical College –</td>
<td>0601</td>
<td>210</td>
</tr>
<tr>
<td>BridgeValley Community and Technical College –</td>
<td>0618</td>
<td>211</td>
</tr>
</tbody>
</table>
§2. Appropriations from state road fund.

TRANSPORTATION, DEPARTMENT OF
  Administrative Hearings, Office of – Fund No. 9027. ..................... 224
  Highways, Division of – Fund No. 9017. ................................. 222
  Motor Vehicles, Division of – Fund No. 9007. ............................. 222

§3. Appropriations from other funds.

ADMINISTRATION, DEPARTMENT OF
  Administration, Department of – Office of the
    Secretary – Employee Pension and Health Care Benefit Fund – Fund No. 2044. ..................... 235
  Administration, Department of – Office of the
    Secretary – Tobacco Settlement Fund –
    Fund No. 2041 ................................................................. 234
  Information Services and Communications,
    Division of – Fund No. 2220 ............................................. 235
  Personnel, Division of – Fund No. 2440 .................................... 237
  Prosecuting Attorneys’ Institute, West Virginia – Fund
    No. 2521 ................................................................. 238
  Purchasing, Division of – Improvement Fund –
    Fund No. 2264 ............................................................. 236
  Purchasing, Division of – Vendor Fee
    Fund – Fund No. 2263 ...................................................... 236
Technology, Office of – Fund No. 2531. 238
Travel Management Aviation Fund – Fund No. 2302. 237
Travel Management Fleet Management
    Office Fund – Fund No. 2301. 237

COMMERCE, DEPARTMENT OF
  Development Office, West Virginia – Broadband
    Development Fund – Fund No. 3174. 240
  Development Office, West Virginia – Department
    of Commerce Marketing and Communications
    Operating Fund – Fund No. 3002. 240
  Energy, Division of – Energy Assistance –
    Fund No. 3010. 246
  Energy, Division of – Office of Coal Field Development –
    Community Development – Fund No. 3011. 246
  Forestry, Division of – Fund No. 3081. 239
  Forestry, Division of – Timbering Operations
    Enforcement Fund – Fund No. 3082. 239
  Geological and Economic Survey – Geological and Analytical
    Services Fund – Fund No. 3100. 240
  Labor, Division of – Amusement Rides/Amusement
    Attraction Safety Fund – Fund No. 3192. 242
  Labor, Division of – Contractor Licensing Board
    Fund – Fund No. 3187. 241
  Labor, Division of – Crane Operator Certification
    Fund – Fund No. 3191. 241
  Labor, Division of – Elevator Safety Act–
    Fund No. 3188. 241
  Labor, Division of – State Manufactured Housing
    Administration Fund – Fund No. 3195. 242
  Labor, Division of – Weights and Measures Fund –
    Fund No. 3196. 243
  Miners’ Health, Safety and Training Fund –
    Fund No. 3355. 245
  Natural Resources, Division of – License Fund –
    Wildlife Resources – Fund No. 3200. 243
  Natural Resources, Division of – Game, Fish
    and Aquatic Life Fund – Fund No. 3202. 244
  Natural Resources, Division of – Nongame Fund –
    Fund No. 3203. 244
  Natural Resources, Division of – Planning and
    Development Division–Fund No. 3205. 244
Natural Resources, Division of--Whitewater
   Advertising and Promotion Fund--Fund
   No. 3256 .................................................. 245
Natural Resources, Division of--Whitewater
   Study and Improvement Fund--Fund No. 3253 ............. 245

EDUCATION, DEPARTMENT OF
   State Board of Education--School Construction
      Fund -- Fund No. 3951 ................................. 247
   State Board of Education--Strategic Staff
      Development--Fund No. 3937 ............................ 246
   State Department of Education--FFA-FHA
      Conference Center--Fund No. 3960 ..................... 247
   State Department of Education--School Building
      Authority--Fund No. 3959 .............................. 247

EDUCATION AND THE ARTS, DEPARTMENT OF
   Culture and History, Division of--Public
      Records and Preservation Revenue Account --
      Fund No. 3542 ............................................ 248
   Office of the Secretary--Lottery Education Fund
      Interest Earnings Control Account--Fund No. 3508.. 248
   State Board of Rehabilitation--Division of
      Rehabilitation Services--West Virginia
      Rehabilitation Center--Special Account--
      Fund No. 8664 ............................................ 249

ENVIRONMENTAL PROTECTION, DEPARTMENT OF
   Environmental Protection, Division of--
      Air Pollution Control Fund -- Fund No. 3336. .......... 254
   Environmental Protection, Division of--
      Air Pollution Education and Environment
      Fund--Fund No. 3024 ..................................... 250
   Environmental Protection, Division of--
      Environmental Laboratory Certification
      Fund--Fund No. 3340 ..................................... 254
   Environmental Protection, Division of--
      Hazardous Waste Emergency and
      Response Fund -- Fund No. 3331 .................... 253
   Environmental Protection, Division of--
      Hazardous Waste Management Fund--Fund
      No. 3023 .................................................. 250
   Environmental Protection, Division of --
      Litter Control Fund -- Fund No. 3486 ................ 255
Environmental Protection, Division of--Mining and Reclamation Operations Fund--Fund No. 3324. 252
Environmental Protection, Division of--Mountaintop Removal Fund--Fund No. 3490. 256
Environmental Protection, Division of--Oil and Gas Operating Permit and Processing Fund--Fund No. 3323. 251
Environmental Protection, Division of--Oil and Gas Reclamation Fund--Fund No. 3322. 251
Environmental Protection, Division of – Protect our Water Fund – Fund No. 3017. 250
Environmental Protection, Division of--Recycling Assistance Fund-- Fund No. 3487. 255
Environmental Protection, Division of--Solid Waste Enforcement Fund--Fund No. 3333. 253
Environmental Protection, Division of--Solid Waste Reclamation and Environmental Response Fund--Fund No. 3332. 253
Environmental Protection, Division of--Special Reclamation Fund--Fund No. 3321. 251
Environmental Protection, Division of--Stream Restoration Fund--Fund No. 3349. 255
Environmental Protection, Division of--Underground Storage Tanks Administrative Fund--Fund No. 3325. 252
Oil and Gas Conservation Commission--Fund No. 3371. 256
Solid Waste Management Board--Fund No. 3288. 249

EXECUTIVE
Agriculture, Department of--Agricultural Fees Fund--Fund No. 1401. 230
Agriculture, Department of--Donated Food Fund--Fund No. 1446. 231
Agriculture, Department of--Farm Operating Fund--Fund No. 1412. 231
Agriculture, Department of--Integrated Predation Management Fund -- Fund No. 1465. 232
Agriculture, Department of--General John McCausland Memorial Farm--Fund No. 1409. 230
Agriculture, Department of – Spay Neuter Assistance Fund – Fund No. 1481. 232
Agriculture, Department of--Veterans' and
Warriors to Agriculture Fund – Fund No. 1483. 232
Agriculture, Department of--West Virginia Rural
Rehabilitation Program--Fund No. 1408. 230
Attorney General--Anti-Trust Enforcement--
Fund No. 1507. 232
Attorney General--Preneed Funeral Guarantee Fund--
Fund No. 1514. 233
Attorney General--Preneed Burial Contractl Regulation Fund--
Fund No. 1513. 233
Auditor’s Office--Land Operating Fund--
Fund No. 1206. 225
Auditor’s Office--Local Government Purchasing
Card Expenditure Fund--Fund No. 1224. 226
Auditor’s Office--Office of the Chief Inspector--
Fund No. 1235. 228
Auditor’s Office--Purchasing Card Administration
Fund--Fund No. 1234. 228
Auditor’s Office--Securities Regulation Fund--
Fund No. 1225. 227
Auditor’s Office--Technology Support and Acquisition--
Fund No. 1233. 227
Auditor’s Office – Volunteer Fire Department Workers’
Compensation Premium Subsidy Fund – Fund No. 1239. 229
Governor’s Office – Office of Minority Affairs Fund –
Fund No. 1058. 225
Secretary of State--General Administrative Fees
Account – Fund No. 1617. 234
Secretary of State – Service Fees and Collection
Account – Fund No. 1612. 233
Treasurer’s Office – College Prepaid Tuition
and Savings Program – Administrative Account –
Fund No. 1301. 229
Treasurer’s Office – Technology Support and
Acquisition – Fund No. 1329. 229

HEALTH AND HUMAN RESOURCES, DEPARTMENT OF
Health Care Authority, West Virginia – Health Care Cost
Review Fund – Fund No. 5375. 260
Health Care Authority, West Virginia – Health
Information Network Account – Fund No. 5380. 261
Health Care Authority, West Virginia – Revolving
Loan Fund – Fund No. 5382. 261
Health, Division of – Health Facility
   Licensing – Fund No. 5172. .................................................. 259

Health, Division of – Hepatitis B Vaccine –
   Fund No. 5183. ................................................................. 259

Health, Division of – Hospital Services Revenue
   Account(Special Fund) (Capital Improvement,
   Renovation and Operations)--Fund No. 5156. .......................... 257

Health, Division of–Laboratory Services--
   Fund No. 5163. ................................................................. 258

Health, Division of--Lead Abatement Fund--
   Fund No. 5204. ................................................................. 259

Health, Division of--Tobacco Control Special
   Fund – Fund No. 5218. ...................................................... 260

Health, Division of – Tobacco Settlement Expenditure
   Fund – Fund No. 5124. ...................................................... 256

Health, Division of – Vital Statistics – Fund
   No. 5144. ........................................................................... 257

Health, Division of – West Virginia
   Birth to Three Fund – Fund 5214................................. 260

Human Services, Division of – Child Support
   Enforcement – Fund No. 5094. .............................................. 262

Human Services, Division of – Domestic
   Violence Legal Services Fund – Fund No. 5455. .................... 264

Human Services, Division of – Health Care
   Provider Tax – Fund No. 5090. ............................................. 262

Human Services, Division of – James “Tiger” Morton
   Catastrophic Illness Fund – Fund No. 5454. ........................ 263

Human Services, Division of – Marriage Education
   Fund – Fund No. 5490. .......................................................... 264

Human Services, Division of – Medical Services
   Trust Fund – Fund No. 5185. ................................................. 263

Human Service, Division of – WV Works Separate
   State College Program Fund – Fund No. 5467...................... 264

Human Service, Division of – WV Works Separate
   State Two – Parent Program Fund – Fund No. 5468. ............... 264

HIGHER EDUCATION POLICY COMMISSION

Community and Technical College –
   Capital Improvement Fund – Fund No. 4908.......................... 284

Higher Education Policy Commission – Registration Fee –
   Capitol Improvement and Bond Retirement
   Fund – Fund No. 4902. ....................................................... 283
Higher Education Policy Commission – Tuition Fee –
Capitol Improvement and Bond Retirement
Fund – Fund No. 4903. ............................................ 283
Higher Education Policy Commission–Tuition Fee–
Revenue Bond Construction Fund–Fund No. 4906. .......... 284
Higher Education Policy Commission--West Virginia
University Health Sciences Center--Fund No. 4179. .......... 285

JUDICIAL
Supreme Court - Family Court Fund--Fund No. 1763. .......... 225

LEGISLATIVE
Crime Victims Compensation Fund--Fund
No. 1731.................................................................. 224

MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF
Corrections, West Virginia Division of--Parolee
Supervision Fees--Fund No. 6362. ............................... 266
Fire Commission--Fire Marshal Fees--Fund
No. 6152. ............................................................... 270
Homeland Security and Emergency Management --
Interoperable Radio Project--Fund No. 6295. .................. 266
Justice and Community Service, Division of – Community
Corrections Fund – Fund No. 6386. ............................... 270
Justice and Community Services, Division of – Court Security
Fund--Fund No. 6804. .................................................. 270
Military Affairs and Public Safety, Department of –
Law Enforcement, Safety and Emergency Worker
Funeral Expense Payment Fund--Fund No. 6003............. 265
Regional Jail and Correctional Facility Authority – Fund No. 6675. .... 269
State Armory Board--General Armory Fund –
Fund No. 6057. .......................................................... 265
State Police, West Virginia – Bail Bond
Enforcer Fund – Fund No. 6532. ................................. 269
State Police, West Virginia – Central Abuse Registry
Fund – Fund No. 6527. ................................................. 268
State Police, West Virginia – Drunk Driving Prevention
Fund – Fund No. 6513. ................................................. 267
State Police, West Virginia – Motor Vehicle Inspection
Fund – Fund No. 6501. ................................................. 266
State Police, West Virginia – State Police Academy Post
Exchange – Fund No. 6544. ......................................... 269
State Police, West Virginia – Surplus Real Property
Proceeds Fund – Fund No. 6516. .............................. 268
State Police, West Virginia – Surplus Transfer
Account – Fund No. 6519. .............................. 268

MISCELLANEOUS BOARDS AND COMMISSIONS
Barbers and Cosmetologists, Board of--
Fund No. 5425. .................................................. 285
Enterprise Resource Planning Board – Fund No. 9080. .............. 281
Examiners for Speech--Language Pathology and
Audiology, West Virginia Board of--Fund
No. 8646. .................................................. 289
Hospital Finance Authority--Fund No. 5475. .................. 285
Licensed Dietitians, West Virginia Board of--
Fund No. 8680. .................................................. 290
Licensed Practical Nurses, West Virginia State Board
of Examiners for--Fund No. 8517. .................. 286
Massage Therapy Licensure--Fund No. 8671. .................. 290
Medicine, Board of--Fund No. 9070. .................. 291
Public Service Commission--Fund No. 8623. .................. 287
Public Service Commission--Consumer Advocate--
Fund No. 8627. .................................................. 288
Public Service Commission--Gas Pipeline
Division--Fund No. 8624. .................................................. 287
Public Service Commission--Motor Carrier
Division--Fund No. 8625. .................................................. 288
Real Estate Commission--Fund No. 8635. .................. 289
Registered Professional Nurses, West Virginia Board of
Examiners for--Fund No. 8520. .................................................. 286
Respiratory Care, West Virginia Board of--
Fund No. 8676. .................................................. 290
Treasury Investments, Board of--Fund No. 9152.................................................. 291

REVENUE, DEPARTMENT OF
Alcohol Beverage Control Administration--
Fund No. 7352. .................................................. 279
Alcohol Beverage Control Administration--
Wine License Special Fund--Fund No. 7351. .................................................. 279
Financial Institutions, Division of--Fund No. 3041. .............. 271
Insurance Commissioner--Fund No. 7152. .................. 275
Insurance Commissioner--Consumer Advocate--
Fund No. 7151. .................................................. 275
Insurance Commissioner--Examination Revolving
Fund--Fund No. 7150.................................................. 274
Insurance Commissioner--Self-Insured Employer
Guaranty Risk Pool--Fund No. 7164............................. 276
Insurance Commissioner--Self-Insured Employer
Security Risk Pool--Fund No. 7165............................... 276
Insurance Commissioner--Workers’ Compensation
Old Fund -- Fund No. 7162.......................................... 275
Insurance Commissioner--Workers’ Compensation
Uninsured Employers’ Fund--Fund No. 7163................ 276
Lottery Commission--Revenue Center Construction
Fund -- Fund No. 7209................................................ 276
Municipal Bond Commission--Fund No. 7253................ 277
Office of the Secretary–Revenue Shortfall Reserve
Fund – Fund No. 7005.................................................. 271
Office of the Secretary--State Debt Reduction
Fund--Fund No. 7007................................................... 272
Racing Commission--Administration and
Promotion--Fund No. 7304......................................... 277
Racing Commission--Administration, Promotion
and Education Fund--Fund No. 7307.............................. 278
Racing Commission--General Administration--
Fund No. 7305.......................................................... 278
Racing Commission--Relief Fund--Fund No. 7300.............. 277
State Budget Office--Public Employees Insurance
Reserve Fund--Fund No. 7400........................................ 274
Tax Division--Cemetery Company Account--
Fund No. 7071.......................................................... 272
Tax Division – Reduced Cigarette Ignition Propensity
Standard and Fire Protection Act Fund – Fund No. 7092.... 273
Tax Division--Special Audit and Investigative
Unit--Fund No. 7073................................................... 272
Tax Division–Local Sales Tax and Excise Tax
Administration Fund--Fund No. 7099............................ 273
Tax Division--Wine Tax Administration Fund--
Fund No. 7087........................................................... 273

SENIOR SERVICES, BUREAU OF
Senior Services, Bureau of--Community Based Service
Fund--Fund No. 5409.................................................. 282
TRANSPORTATION, DEPARTMENT OF
Highways, Division of –
   A. James Manchin Fund – Fund No. 8319. . . . . . . . . . . . . . . . . . . . . 281
Motor Vehicles, Division of –
   Dealer Recovery Fund – Fund No. 8220. . . . . . . . . . . . . . . . . . . . . 280
Motor Vehicles, Division of –
   Motor Vehicle Fees Fund – Fund No. 8223. . . . . . . . . . . . . . . . . . . . 280
Public Port Authority – Special Railroad and
   Intermodal Enhancement Fund – Fund No. 8254. . . . . . . . . . . . . . . . . 281

VETERANS’ ASSISTANCE, DEPARTMENT OF
   Veterans’ Assistance, Department of – Veterans’ Facilities
      Support Fund – Fund No. 6703. . . . . . . . . . . . . . . . . . . . . . . . . . . . . 281
   Veterans’ Affairs, Department of – Veterans
      Home – Fund No. 6754. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 282

§4. Appropriations from lottery net profits.

APPROPRIATIONS
   Community and Technical College Capital Improvement
      Fund--Fund No. 4908. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 310
   Culture and History, Division of--Lottery Education
      Fund--Fund No. 3534. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 296
   Development Office, West Virginia--Division of
      Tourism--Fund No. 3067. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 293
   Education and the Arts, Department of--Office of the
      Secretary--Control Account--Lottery Education
      Fund-Fund No. 3508. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 295
   Education, Arts, Sciences and Tourism Debt Service
      Fund--Fund No. 2252. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 293
   Education, State Department of--Fund No. 3951. . . . . . . . . . . . . . . . . . . . 294
   Education, State Department of--School
      Building Authority--Debt Service Fund--Fund
      No. 3963. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 295
   Higher Education Policy Commission--Lottery
      Education--Higher Education Policy Commission--
      Fund No. 4925. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 309
   Higher Education Policy Commission--Lottery
      Education – Marshall University – Fund No. 4267. . . . . . . . . . . . . . . . . 311
   Higher Education Policy Commission--Lottery
      Education – Marshall University –
      School of Medicine – Fund No. 4896. . . . . . . . . . . . . . . . . . . . . . . . . . . 312
§5. Appropriations from state excess lottery revenue fund.

APPROPRIATIONS

Corrections, Division of--Correctional Units--
Fund No. 6283. ........................................ 319
Development Office--Fund No. 3170. ........................................ 317
Economic Development Authority--Economic
Development Project Fund--Fund No. 9065. .............................. 314
Governor’s Office--Fund No. 1046. ........................................ 317
Health, Division of--Central Office--Fund No. 5219. ......................... 318
Higher Education Improvement Fund--Fund No. 4297. ....................... 315
Higher Education Policy Commission--
Administration – Control Account – Fund No. 4932. ....................... 318
Higher Education Policy Commission--
Education Improvement Fund – Fund No. 4295. .......................... 314
Human Services, Division of – Fund No. 5365. ............................ 318
Infrastructure Council, West Virginia – Fund No. 3390. .................... 314
Lottery Commission – Distributions to Statutory
Funds and Purposes – Fund No. 7213. ....................................... 316
Lottery Commission – Excess Lottery Revenue
Fund Surplus – Fund No. 7208. ........................................ 317
Lottery Commission – General Purpose Account –
Fund No. 7206. ........................................ 313
Lottery Commission – Refundable Credit – Fund No. 7207 ......... 313
Natural Resources, Division of – State Park
Improvement Fund – Fund No. 3277. ...................................... 315
School Building Authority – Fund No. 3514. ................................ 314
Racing Commission – Fund No. 7308. ..................................... 316
West Virginia Infrastructure Council – Fund No. 3390. .................... 314

§6. Appropriations of federal funds.

ADMINISTRATION, DEPARTMENT OF
Children’s Health Insurance Agency – Fund No. 8838. .................... 322
### COMMERCE, DEPARTMENT OF

<table>
<thead>
<tr>
<th>Agency</th>
<th>Fund No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Office, West Virginia – Fund</td>
<td>8705</td>
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<td>Economic Opportunity, Office of – Fund No. 8780</td>
<td>8706</td>
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<td>Energy, Division of – Fund No. 8892</td>
<td>8707</td>
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<td>Forestry, Division of – Fund No. 8703</td>
<td>8708</td>
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<td>Geological and Economic Survey – Fund No. 8704</td>
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<td>Labor, Division of – Fund No. 8706</td>
<td>8710</td>
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<td>Miners’ Health, Safety and Training, Division of – Fund No. 8707</td>
<td>8711</td>
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<td>Natural Resources, Division of – Fund No. 8708</td>
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<td>Workforce WV – Fund No. 8835</td>
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### EDUCATION, DEPARTMENT OF

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<th>Agency</th>
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<tr>
<td>State Board of Education – Vocational Division – Fund No. 8714</td>
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<td>State Department of Education – Fund No. 8712</td>
<td>8715</td>
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<td>State Department of Education – Aid for Exceptional Children – Fund No. 8715</td>
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<td>State Department of Education – School Lunch Program – Fund No. 8713</td>
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### EDUCATION AND THE ARTS, DEPARTMENT OF

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<td>Culture and History, Division of – Fund No. 8717</td>
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<td>Educational Broadcasting Authority – Fund No. 8720</td>
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<td>Education and the Arts, Department of – Office of the Secretary – Fund No. 8841</td>
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<td>Library Commission – Fund No. 8721</td>
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<td>Rehabilitation, State Board of – Division of Rehabilitation Services – Fund No. 8734</td>
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<tr>
<td>Rehabilitation, State Board of – Division of Rehabilitation Services – Disability Determination Services – Fund No. 8890</td>
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### ENVIRONMENTAL PROTECTION, DEPARTMENT OF

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<td>Environmental Protection, Division of – Fund No. 8735</td>
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### EXECUTIVE

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<th>Agency</th>
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<td>Agriculture, Department of – Fund No. 8736</td>
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<tr>
<td>Agriculture, Department of – Land Protection Authority – Fund No. 8896</td>
<td>8896</td>
</tr>
</tbody>
</table>
Agriculture, Department of – Meat Inspection – Fund No. 8737. 321
Agriculture, Department of – State Conservation Committee – Fund No. 8783. 321
Governor’s Office – Fund No. 8742. 320
Secretary of State--State Election Fund -- Fund No. 8854. 322

HEALTH AND HUMAN RESOURCES, DEPARTMENT OF
Consolidated Medical Service Fund--Fund No. 8723. 331
Health, Division of--Central Office--Fund No. 8802. 331
Health, Division of--West Virginia Safe Drinking Water Treatment--Fund No. 8824. 331
Human Services, Division of--Fund No. 8722. 332
Human Rights Commission--Fund No. 8725. 332
West Virginia Health Care Authority-- Fund No. 8851. 332

LEGISLATIVE
Crime Victims Compensation Fund--Fund No. 8738. 319

JUDICIAL
Supreme Court--Consolidated Federal Funds-- Fund No. 8867. 320

MILITARY AFFAIRS AND PUBLIC SAFETY, DEPARTMENT OF
Adjutant General--State Militia--Fund No. 8726. 333
Adjutant General–West Virginia National Guard Counterdrug Forfeiture Fund – Fund No. 8785. 334
Corrections, Division of--Fund No. 8836.. 334
Homeland Security and Emergency Management, Division of--Fund No. 8727. 334
Fire Commission--Fund No. 8819. 335
Justice and Community Services, Division of-- Fund No. 8803. 335
Office of the Secretary--Fund No. 8876. 333
State Police, West Virginia--Fund No. 8741. 335

MISCELLANEOUS BOARDS AND COMMISSIONS
Coal Heritage Highway Authority--Fund No. 8861. 339
Ch. 15]  APPROPRIATIONS  133

National Coal Heritage Area Authority--
    Fund No. 8869. ................................. 339
Public Service Commission--Gas Pipeline
    Division--Fund No. 8744. ........................ 339
Public Service Commission--Motor Carrier
    Division--Fund No. 8743. ........................ 338

REVENUE, DEPARTMENT OF
    Insurance Commission--Fund No. 8883. ........ 336
    Tax Division--Consolidated Federal Fund--
        Fund No. 8899. ................................. 336

SENIOR SERVICES, BUREAU OF
    Senior Services, Bureau of--Fund No. 8724. .... 338

TRANSPORTATION, DEPARTMENT OF
    Motor Vehicles, Division of--Fund No. 8787. .... 336
    Public Transit, Division of--Fund No. 8745. .... 337

VETERANS’ ASSISTANCE, DEPARTMENT OF
    Veterans’ Assistance, Department of – Fund No. 8858. .... 337
    Veterans’ Assistance, Department of – Veterans
        Home – Fund No. 8728. ............................ 337

§7. Appropriations from federal block grants.

APPROPRIATIONS
    Commerce, Division of – Office of Economic Opportunity –
        Community Services – Fund No. 8781. ............ 341
    Development Office, West Virginia--Community
        Development--Fund No. 8746. ...................... 340
    Health, Division of--Community Mental Health
        Services--Fund No. 8794. ............................ 342
    Health, Division of--Maternal and Child
        Health--Fund No. 8750. .............................. 341
    Health, Division of--Preventive Health--
        Fund No. 8753. ........................................ 341
    Health, Division of--Substance Abuse Prevention
        and Treatment--Fund No. 8793. ..................... 341
    Human Services, Division of--Child Care and
        Development--Fund No. 8817. ....................... 343
    Human Services, Division of--Energy
        Assistance--Fund No. 8755. .......................... 342
§8. Awards for claims against the state.

§9. Appropriations from General Revenue Surplus Accrued.
   General Services, Division of – Fund No. 0230.. 344
   Education and the Arts, Department of – Office
   of the Secretary – Fund No. 0294.................. 345

§10. Appropriations from lottery net profits surplus accrued
   Senior Services, Bureau of--Fund No. 5405........ 345

§11. Appropriations from state excess lottery revenue surplus accrued
   Human Services, Division of – Fund No. 5365....... 346

§12. Special Revenue Appropriations.
§14. Specific funds and collection accounts.
§15. Appropriations for refunding erroneous payment.
§16. Sinking fund deficiencies.
§17. Appropriations for local governments.
§18. Total appropriations.
§19. General school fund.

TITLE III – ADMINISTRATION

§1. Appropriations conditional.
§2. Constitutionality.

1 Section 1. Appropriations from general revenue. — From
2 the State Fund, General Revenue, there are hereby appropriated
3 conditionally upon the fulfillment of the provisions set forth in
4 Article 2, Chapter 11B the following amounts, as itemized, for
5 expenditure during the fiscal year 2016.
The appropriations for the Senate for the fiscal year 2015 are to remain in full force and effect and are hereby reappropriated to June 30, 2016. Any balances so reappropriated may be transferred and credited to the fiscal year 2015 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,
the Senate, with the approval of the President, or the President
of the Senate shall have authority to employ
shall be needed in addition to staff personnel authorized by the
Senate resolution adopted during any such session. The Clerk of
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 2016 Org 2200

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

The appropriations for the House of Delegates for the fiscal year 2015 are to remain in full force and effect and are hereby reappropriated to June 30, 2016. Any balances so reappropriated may be transferred and credited to the fiscal year 2015 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 2016 Org 2300

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

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

The appropriation for the Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) (fund 0175, appropriation 64200) is intended for possible general state tax
reductions or the offsetting of any reductions in federal funding for state programs.

### JUDICIAL

#### 4 - Supreme Court –

*General Judicial*

**Fund 0180 FY 2016 Org 2400**

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<th>Item Description</th>
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<td>Personal Services and Employee Benefits (R)</td>
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<td>Children’s Protection Act (R)</td>
<td>09000</td>
<td>2,800,000</td>
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<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>29,465,276</td>
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<td>Repairs and Alterations (R)</td>
<td>06400</td>
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<td>Equipment (R)</td>
<td>07000</td>
<td>3,100,000</td>
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<td>Judges’ Retirement System (R)</td>
<td>11000</td>
<td>2,845,000</td>
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<td>Buildings (R)</td>
<td>25800</td>
<td>100,000</td>
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<td>Other Assets (R)</td>
<td>69000</td>
<td>1,200,000</td>
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<td>BRIM Premium (R)</td>
<td>91300</td>
<td>391,532</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$139,572,495</strong></td>
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The appropriations to the Supreme Court of Appeals for the fiscal years 2014 and 2015 are to remain in full force and effect and are hereby reappropriated to June 30, 2016. Any balances so reappropriated may be transferred and credited to the fiscal year 2015 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 therefrom 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 2016 Org 0100

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<td>Herbert Henderson Office of Minority Affairs..........</td>
<td>13400</td>
<td>156,726</td>
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<tr>
<td>Southern Governors’ Association</td>
<td>31400</td>
<td>40,000</td>
<td></td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>151,851</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$4,810,265</td>
<td></td>
</tr>
</tbody>
</table>

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

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

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 2016 Org 0100

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

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

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 2016 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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

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 2016 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 2016 Org 1200</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$ 3,160,621</td>
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<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>10,622</td>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>10,451</td>
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<tr>
<td>Total</td>
<td></td>
<td>$ 3,181,694</td>
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</tbody>
</table>

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

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

(WV Code Chapter 12)

**Fund 0126 FY 2016 Org 1300**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Appropriation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$2,534,350</td>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>32,355</td>
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<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>387,757</td>
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<tr>
<td>Abandoned Property Program</td>
<td>11800</td>
<td>157,337</td>
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<td>Other Assets</td>
<td>69000</td>
<td>10,000</td>
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<tr>
<td>Tuition Trust Fund (R)</td>
<td>69200</td>
<td>73,207</td>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>30,809</td>
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<tr>
<td>Total</td>
<td></td>
<td>$3,225,815</td>
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</tbody>
</table>

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

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

### 10 - Department of Agriculture

(WV Code Chapter 19)

**Fund 0131 FY 2016 Org 1400**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Appropriation</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services and</td>
<td>00100</td>
<td>$5,832,272</td>
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<tr>
<td>Animal Identification Program</td>
<td>03900</td>
<td>184,484</td>
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<tr>
<td>State Farm Museum</td>
<td>05500</td>
<td>104,500</td>
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<tr>
<td>Unclassified (R)</td>
<td>09900</td>
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<td>Item Description</td>
<td>Appropriation</td>
<td>Amount</td>
</tr>
<tr>
<td>------------------------------------------------------</td>
<td>---------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>264,826</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>30,000</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>23,402</td>
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<tr>
<td>Gypsy Moth Program (R)</td>
<td>11900</td>
<td>1,148,890</td>
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<tr>
<td>Huntington Farmers Market</td>
<td>12800</td>
<td>43,866</td>
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<tr>
<td>Black Fly Control (R)</td>
<td>13700</td>
<td>532,444</td>
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<tr>
<td>Donated Foods Program</td>
<td>36300</td>
<td>50,000</td>
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<tr>
<td>Predator Control (R)</td>
<td>47000</td>
<td>200,000</td>
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<tr>
<td>Logan Farmers Market</td>
<td>50100</td>
<td>46,799</td>
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<tr>
<td>Bee Research</td>
<td>69100</td>
<td>77,821</td>
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<tr>
<td>Charleston Farmers Market</td>
<td>74600</td>
<td>84,360</td>
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<tr>
<td>Microbiology Program (R)</td>
<td>78500</td>
<td>115,096</td>
</tr>
<tr>
<td>Moorefield Agriculture Center (R)</td>
<td>78600</td>
<td>1,077,467</td>
</tr>
<tr>
<td>Chesapeake Bay Watershed</td>
<td>83000</td>
<td>125,416</td>
</tr>
<tr>
<td>Livestock Care Standards Board</td>
<td>84300</td>
<td>15,000</td>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>120,202</td>
</tr>
<tr>
<td>Threat Preparedness</td>
<td>94200</td>
<td>82,110</td>
</tr>
<tr>
<td>WV Food Banks</td>
<td>96900</td>
<td>140,000</td>
</tr>
<tr>
<td>Seniors’ Farmers’ Market</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nutrition Coupon Program</td>
<td>97000</td>
<td>62,137</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>10,429,061</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified – Surplus (fund 0131, appropriation 09700), Unclassified (fund 0131, appropriation 09900), Gypsy Moth Program (fund 0131, appropriation 11900), Current Expenses (fund 0131, appropriation 13000), Predator Control (fund 0131, appropriation 47000), Capital Outlay, Repairs and Equipment – Surplus (fund 0131, appropriation 67700), Capital Outlay and Maintenance (fund 0131, appropriation 75500), Microbiology Program (fund 0131, appropriation 78500), Moorefield Agriculture Center (fund 0131, appropriation 78600), and Agricultural Disaster and Mitigation Needs – Surplus (fund 0131, appropriation 85000) at the close of the fiscal year 2015.
are hereby reappropriated for expenditure during the fiscal year 2016.

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 Unclassified or 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 2016 Org 1400

<table>
<thead>
<tr>
<th>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>722,344</td>
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<tr>
<td>Unclassified (R)</td>
<td>09900</td>
<td>83,564</td>
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<tr>
<td>Current Expenses (R)</td>
<td>13000</td>
<td>333,771</td>
</tr>
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<td>Repairs and Alterations</td>
<td>06400</td>
<td>10,000</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>10,000</td>
</tr>
<tr>
<td>Soil Conservation Projects (R)</td>
<td>12000</td>
<td>7,148,899</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>26,326</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>8,334,904</td>
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</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, appropriation 09900), Soil Conservation Projects (fund 0132, appropriation 12000), and Current Expenses (fund 0132, appropriation 13000) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

12 - Department of Agriculture – Meat Inspection Fund (WV Code Chapter 19)

Fund 0135 FY 2016 Org 1400

1 Personal Services and
2 Employee Benefits.............. 00100 $ 618,662
3 Unclassified.................. 09900 7,182
4 Current Expenses.............. 13000 96,344
5 Total.......................... $ 722,188

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 2016 Org 1400

1 Programs and Awards for 4-H
2 Clubs and FFA/FHA.......... 57700 $ 15,000
3 Commissioner’s Awards and Programs.................. 73700 $ 39,250
4 Total.......................... $ 54,250
### 14 - Department of Agriculture – West Virginia Agricultural Land Protection Authority

(WV Code Chapter 8A)

Fund 0607 FY 2016 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
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</tr>
<tr>
<td>2</td>
<td>Employee Benefits (R)</td>
<td>$ 98,029</td>
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<tr>
<td>3</td>
<td>Unclassified (R)</td>
<td>$ 950</td>
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<td>Total</td>
<td>$ 98,979</td>
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</table>

### 15 - Attorney General

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

Fund 0150 FY 2016 Org 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits (R)</td>
<td>$ 3,062,683</td>
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<tr>
<td>3</td>
<td>Unclassified (R)</td>
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<td>4</td>
<td>Current Expenses (R)</td>
<td>$ 590,706</td>
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<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>$ 7,500</td>
</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>$ 40,000</td>
</tr>
<tr>
<td>7</td>
<td>Criminal Convictions and</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Habeas Corpus Appeals (R)</td>
<td>$ 1,050,739</td>
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<tr>
<td>9</td>
<td>Better Government Bureau</td>
<td>$ 270,742</td>
</tr>
<tr>
<td>10</td>
<td>BRIM Premium</td>
<td>$ 90,000</td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td>$ 5,164,237</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the above appropriations for Personal Services and Employee Benefits (fund 0150, appropriation 00100), Employee Benefits (fund 0150, appropriation 01000), Unclassified (fund 0150, appropriation 09900), Current Expenses (fund 0150, appropriation 13000), Criminal Convictions and Habeas Corpus Appeals (fund 0150, appropriation 26000), Agency Client
Ch. 15] APPROPRIATIONS

19 Revolving Liquidity Pool (fund 0150, appropriation 36200),
20 Equipment – Surplus (fund 0150, appropriation 34100),
21 Technology Improvements – Surplus (fund 0150, appropriation
22 72500), and Operating Expenses – Surplus (fund 0150,
23 appropriation 77900) at the close of the fiscal year 2015 are
24 hereby reappropriated for expenditure during the fiscal year
25 2016.

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

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

16 - Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2016 Org 1600

1 Personal Services and
2     Employee Benefits............. 00100 $ 119,024
3 Unclassified (R)............... 09900 11,217
4 Current Expenses (R)......... 13000 977,395
5     BRIM Premium.............. 91300 20,000
6     Total......................... $ 1,127,636
Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, appropriation 09900), Current Expenses (fund 0155, appropriation 13000), and Technology Improvements – Surplus (fund 0155, appropriation 72500) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

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 2016 Org 1601

1 Personal Services and
2 Employee Benefits............ 00100 $ 2,477
3 Unclassified. ................... 09900 83
4 Current Expenses............... 13000 5,782
5 Total.......................... $ 8,342

DEPARTMENT OF ADMINISTRATION

18 - Department of Administration – Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2016 Org 0201

1 Personal Services and
2 Employee Benefits............ 00100 $ 584,142
3 Unclassified. ................... 09900 9,177
4 Current Expenses............... 13000 102,470
5 Repairs and Alterations........ 06400 100
6 Equipment. ...................... 07000 1,000
7 Financial Advisor (R)........... 30400 110,546
<table>
<thead>
<tr>
<th></th>
<th>Appropriation Description</th>
<th>Budgeted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Lease Rental Payments.</td>
<td>15,000,000</td>
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<tr>
<td>9</td>
<td>Design-Build Board.</td>
<td>4,000</td>
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<tr>
<td>10</td>
<td>Other Assets.</td>
<td>100</td>
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<tr>
<td>11</td>
<td>BRIM Premium</td>
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</tr>
<tr>
<td>12</td>
<td>Total</td>
<td>$15,815,535</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Financial Advisor (fund 0186, appropriation 30400) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

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 2016 Org 0205

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 2016 Org 0209

Personal Services and Employee Benefits. $91,073
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>2,400</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>84,462</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>1,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>1,000</td>
</tr>
<tr>
<td>GAAP Project (R)</td>
<td>12500</td>
<td>594,456</td>
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<tr>
<td>Other Assets</td>
<td>69000</td>
<td>2,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>4,526</td>
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<td><strong>Total</strong></td>
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<td><strong>$ 781,417</strong></td>
</tr>
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</table>

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, appropriation 12500) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

21 - Division of General Services

(WV Code Chapter 5A)

**Fund 0230 FY 2016 Org 0211**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
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<tr>
<td>Unclassified</td>
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<tr>
<td>Current Expenses</td>
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<td>Repairs and Alterations</td>
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<td>500</td>
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<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>
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<tr>
<td>Buildings (R)</td>
<td>25800</td>
<td>500</td>
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<tr>
<td>Preservation and Maintenance of Statues and Monuments on Capitol Grounds</td>
<td>37100</td>
<td>68,000</td>
</tr>
<tr>
<td>Capital Outlay, Repairs and Equipment (R)</td>
<td>58900</td>
<td>4,500,000</td>
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<tr>
<td>Other Assets</td>
<td>69000</td>
<td>500</td>
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<tr>
<td>Land (R)</td>
<td>73000</td>
<td>500</td>
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<td>BRIM Premium</td>
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<td>112,481</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 8,240,668</strong></td>
</tr>
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</table>
Any unexpended balances remaining in the above appropriations for Buildings (fund 0230, appropriation 25800), Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900), and Land (fund 0230, appropriation 73000) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

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 2016 Org 0213

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$1,005,608</td>
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<td>2</td>
<td>Unclassified</td>
<td>09900</td>
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<td>Current Expenses</td>
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<td>Repairs and Alterations</td>
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<td>700</td>
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<td>5</td>
<td>Equipment</td>
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<td>6</td>
<td>Other Assets</td>
<td>69000</td>
<td>1,000</td>
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<td>7</td>
<td>BRIM Premium</td>
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<td>Total</td>
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<td>$1,039,989</td>
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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 2016 Org 0215

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Fund Code</th>
<th>FY 2016 Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>00100</td>
<td>0215</td>
<td>$926,382</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>0215</td>
<td>14,414</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>0215</td>
<td>447,316</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>0215</td>
<td>0</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>0215</td>
<td>5,000</td>
</tr>
<tr>
<td>Buildings (R)</td>
<td>25800</td>
<td>0215</td>
<td>100</td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
<td>0215</td>
<td>100</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td>$1,393,312</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Buildings (fund 0615, appropriation 25800) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

### 24 - Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2016 Org 0217

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Fund Code</th>
<th>FY 2016 Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>0217</td>
<td>$465</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>0217</td>
<td>45,085</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
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<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 2016 Org 0219
1. Personal Services and Employee Benefits: $918,368
2. Unclassified: $1,000
3. Current Expenses: $165,806
4. Equipment: $50
5. BRIM Premium: $7,803
6. Total: $1,093,027

Any unexpended balances remaining in the appropriations for Buildings (fund 0220, appropriation 25800), and Land (fund 0220, appropriation 73000) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

26 - Ethics Commission
(WV Code Chapter 6B)

Fund 0223 FY 2016 Org 0220

1. Personal Services and Employee Benefits: $570,145
2. Unclassified: $4,500
4. Repairs and Alterations: $500
5. Other Assets: $100
6. BRIM Premium: $3,137
7. Total: $706,575

27 - Public Defender Services
(WV Code Chapter 29)

Fund 0226 FY 2016 Org 0221

1. Personal Services and Employee Benefits: $1,419,650
### APPROPRIATIONS [Ch. 15]

<table>
<thead>
<tr>
<th>Item</th>
<th>Number</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>317,429</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>45,840</td>
</tr>
<tr>
<td>Public Defender Corporations</td>
<td>35200</td>
<td>19,199,406</td>
</tr>
<tr>
<td>Appointed Counsel Fees (R)</td>
<td>78800</td>
<td>10,723,115</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>6,155</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>91300</strong></td>
<td><strong>$ 31,711,595</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Appointed Counsel Fees (fund 0226, appropriation 78800) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

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)

<table>
<thead>
<tr>
<th>Item</th>
<th>Number</th>
<th>Amount</th>
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</thead>
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<tr>
<td>Personal Services and Employee Benefits</td>
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<td><strong>Total</strong></td>
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<td><strong>$ 4,055</strong></td>
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</table>

#### 29 - Public Employees Insurance Agency (WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Item</th>
<th>Number</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
and/or federal funds shall pay their proportionate share of the
cr public employees health insurance cost for their respective
divisions.

30 - West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2016 Org 0228

1 Forensic Medical
2   Examinations (R).............. 68300  $   140,505
3   Federal Funds/Grant Match (R).... 74900  100,782
4   Total.................................. $  241,287

Any unexpended balances remaining in the appropriations
for Forensic Medical Examinations (fund 0557, appropriation
6 68300) and Federal Funds/Grant Match (fund 0557,
7 appropriation 74900) at the close of the fiscal year 2015 are
8 hereby reappropriated for expenditure during the fiscal year
9 2016.

31 - Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2016 Org 0230

1 Personal Services and
2   Employee Benefits............ 00100  $       0
3   Current Expenses............. 13000  0
4   Autism Spectrum Disorder
5   Coverage.................... 85600  0
6   Total.......................... $       0

32 - Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2016 Org 0233
<table>
<thead>
<tr>
<th></th>
<th>Appropriation Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td>00100</td>
<td>$725,360</td>
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<td>2</td>
<td>Employee Benefits</td>
<td>09900</td>
<td>2,000</td>
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<td>3</td>
<td>Unclassified</td>
<td>13000</td>
<td>167,046</td>
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<td>4</td>
<td>Current Expenses</td>
<td>06400</td>
<td>100</td>
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<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>07000</td>
<td>2,500</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>91300</td>
<td>4,200</td>
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<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$901,206</td>
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</tbody>
</table>

9 Any unexpended balances remaining in the appropriations for Buildings (fund 0610, appropriation 25800) and Land (fund 0610, appropriation 73000) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

DEPARTMENT OF COMMERCE

33 - Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2016 Org 0305

<table>
<thead>
<tr>
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<th>Appropriation Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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<td>$3,908,154</td>
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<td>Employee Benefits</td>
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<td>21,435</td>
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<td>3</td>
<td>Unclassified</td>
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<td>1,213,953</td>
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<td>4</td>
<td>Current Expenses</td>
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<td>135,000</td>
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<td>5</td>
<td>Repairs and Alterations</td>
<td>07000</td>
<td>100,000</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>91300</td>
<td>85,000</td>
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<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$5,463,542</td>
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</table>

9 Any unexpended balance remaining in the appropriation for Equipment (fund 0250, appropriation 07000) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.
Out of the above appropriations a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

34 - Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2016 Org 0306

1 Personal Services and Employee Benefits.......... 00100 $ 1,632,541
2 Unclassified. .................. 09900 30,096
3 Current Expenses................. 13000 91,852
4 Repairs and Alterations.......... 06400 10,000
5 Equipment. ..................... 07000 100
6 Mineral Mapping System (R). .. 20700 1,214,328
7 Other Assets..................... 69000 100
8 BRIM Premium.................... 91300 20,950
9 Total................................ $ 2,999,967

Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, appropriation 20700) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

The above Unclassified and Current Expenses 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.

35 - West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2016 Org 0307

1 Personal Services and Employee Benefits.......... 00100 $ 3,954,304
<table>
<thead>
<tr>
<th>Item</th>
<th>Program Description</th>
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<th>amount</th>
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<tr>
<td>3</td>
<td>ARC-WV Home of Your</td>
<td>04800</td>
<td>33,744</td>
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<tr>
<td>4</td>
<td>Own Alliance</td>
<td>09900</td>
<td>128,379</td>
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<tr>
<td>5</td>
<td>Unclassified</td>
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<td>1,750,854</td>
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<tr>
<td>6</td>
<td>Current Expenses</td>
<td>07100</td>
<td>414,840</td>
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<tr>
<td>7</td>
<td>Southern WV Career Center</td>
<td>13300</td>
<td>1,650,000</td>
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<tr>
<td>8</td>
<td>Local Economic Development</td>
<td>13600</td>
<td>152,585</td>
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<tr>
<td>9</td>
<td>Partnerships (R)</td>
<td>23100</td>
<td>149,134</td>
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<tr>
<td>10</td>
<td>ARC Assessment</td>
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<td>11</td>
<td>Mid-Atlantic Aerospace Complex</td>
<td>36700</td>
<td>438,504</td>
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<tr>
<td>12</td>
<td>Guaranteed Work Force</td>
<td>38900</td>
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<tr>
<td>13</td>
<td>Grant (R)</td>
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<td>40,099</td>
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<tr>
<td>14</td>
<td>Robert C. Byrd Institute for Advanced/Flexible Manufacturing - Technology Outreach and Programs for Environmental and Advanced Technologies</td>
<td>39100</td>
<td>*198,906</td>
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<tr>
<td>15</td>
<td>Advantage Valley</td>
<td>39200</td>
<td>438,504</td>
</tr>
<tr>
<td>21</td>
<td>Chemical Alliance Zone</td>
<td>39400</td>
<td>40,099</td>
</tr>
<tr>
<td>22</td>
<td>WV High Tech Consortium</td>
<td>39500</td>
<td>529,867</td>
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<tr>
<td>23</td>
<td>Regional Contracting</td>
<td>39600</td>
<td>0</td>
</tr>
<tr>
<td>24</td>
<td>Assistance Center</td>
<td>41800</td>
<td>208,215</td>
</tr>
<tr>
<td>25</td>
<td>Highway Authorities</td>
<td>43100</td>
<td>732,078</td>
</tr>
<tr>
<td>26</td>
<td>International Offices (R)</td>
<td>59300</td>
<td>732,078</td>
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<td>27</td>
<td>WV Manufacturing</td>
<td>59400</td>
<td>529,867</td>
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<td>28</td>
<td>Extension Partnership</td>
<td>63100</td>
<td>121,478</td>
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<tr>
<td>29</td>
<td>Polymer Alliance</td>
<td>65400</td>
<td>97,014</td>
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<tr>
<td>30</td>
<td>Regional Councils</td>
<td>78400</td>
<td>371,184</td>
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<tr>
<td>31</td>
<td>Mainstreet Program</td>
<td>79400</td>
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<tr>
<td>32</td>
<td>National Institute of Chemical Studies</td>
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<tr>
<td>34</td>
<td>I-79 Development Council</td>
<td>82400</td>
<td>46,296</td>
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</tbody>
</table>

*NOTE: The Governor reduced Item 35, line 22, by $101,094, from $300,000 to $198,906. And lines 23 and 24, by $16,785, from $225,000 to $208,215. The total does NOT reflect the reductions made by the Governor.*
35 Mingo County Post Mine Land
36 Use Projects .................. 84100 250,000
37 BRIM Premium. ................. 91300 26,096
38 Hatfield McCoy
39 Recreational Trail. ............. 96000 210,900
40 Hardwood Alliance Zone........ 99200 35,937
41 Total............................. $ 12,878,445

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), Small Business Development (fund 0256, appropriation
70300), Local Economic Development Assistance (fund 0256,
appropriation 81900), and 4-H Camp Improvements (fund 0256,
appropriation 94100) at the close of the fiscal year 2015 are
hereby reappropriated for expenditure during the fiscal year
2016.

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
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.

From the above appropriation for Highway Authorities (fund
0256, appropriation 43100), $106,548 is for King Coal Highway
Authority: $106,548 is for Coal Field Expressway Authority; $170,478 is for Coal Heritage Area Authority; $42,620 is for Little Kanawha River Parkway; $76,715 is for Midland Trail Scenic Highway Association; $48,585 is for Shawnee Parkway Authority; $85,239 is for Corridor G Regional Development Authority; $52,725 is for Corridor H Authority; and $42,620 is for Route 2 I68 Highway Authority.

36 - Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2016 Org 0308

1 Personal Services and
2 Employee Benefits................. 00100 $ 2,201,632
3 Unclassified. ....................... 09900  28,658
4 Current Expenses................. 13000  564,773
5 Repairs and Alterations.......... 06400  30,000
6 Equipment. ......................... 07000  10,000
7 BRIM Premium...................... 91300  22,752
8 Total................................ $ 2,857,815

37 - Division of Labor – Occupational Safety and Health Fund

(WV Code Chapter 21)

Fund 0616 FY 2016 Org 0308

1 Personal Services and
2 Employee Benefits................. 00100 $ 74,144
3 Current Expenses................. 13000  79,963
4 Repairs and Alterations.......... 06400  500
5 Equipment. ......................... 07000  500
6 BRIM Premium...................... 91300  985
7 Total................................ $ 156,092
### 38 - Division of Natural Resources

(WV Code Chapter 20)

**Fund 0265 FY 2016 Org 0310**

<table>
<thead>
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<tbody>
<tr>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>11,220</td>
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<td>Current Expenses</td>
<td>13000</td>
<td>57,416</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>400</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>500</td>
</tr>
<tr>
<td>Buildings (R)</td>
<td>25800</td>
<td>400</td>
</tr>
<tr>
<td>Litter Control Conservation</td>
<td>56400</td>
<td>149,103</td>
</tr>
<tr>
<td>Upper Mud River Flood Control</td>
<td>65400</td>
<td>168,622</td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
<td>200</td>
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<tr>
<td>Land (R)</td>
<td>73000</td>
<td>400</td>
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<tr>
<td>Law Enforcement</td>
<td>80600</td>
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<tr>
<td>BRIM Premium</td>
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<td>293,374</td>
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<td>Total</td>
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</tbody>
</table>

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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

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.
### 39 - Division of Miners’ Health, Safety and Training

(WV Code Chapter 22)

**Fund 0277 FY 2016 Org 0314**

<table>
<thead>
<tr>
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<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<td>$10,503,524</td>
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<td>Unclassified</td>
<td>09900</td>
<td>120,000</td>
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<td>Current Expenses</td>
<td>13000</td>
<td>1,870,667</td>
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<tr>
<td>Coal Dust and Rock</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dust Sampling</td>
<td>27000</td>
<td>572,583</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>68,134</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$13,134,908</strong></td>
</tr>
</tbody>
</table>

Included in the above appropriation for Current Expenses (fund 0277, appropriation 13000) is $500,000 for the Southern West Virginia Community and Technical College Mine Rescue and Rapid Response Team.

### 40 - Board of Coal Mine Health and Safety

(WV Code Chapter 22)

**Fund 0280 FY 2016 Org 0319**

<table>
<thead>
<tr>
<th>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>$286,435</td>
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<td>Unclassified</td>
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<td>4,230</td>
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<td>131,634</td>
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<td><strong>Total</strong></td>
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</table>

### 41 - WorkForce West Virginia

(WV Code Chapter 23)

**Fund 0572 FY 2016 Org 0323**
## Ch. 15] APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
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<td>Personal Services and Employee Benefits</td>
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### 42 - Department of Commerce – Office of the Secretary

(WV Code Chapter 19)

**Fund 0606 FY 2016 Org 0327**

<table>
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<th>Description</th>
<th>Code</th>
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<tr>
<td>1</td>
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<td>Unclassified</td>
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<td>3</td>
<td>Current Expenses</td>
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<td>4</td>
<td>Total</td>
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</tr>
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</table>

### 43 - Department of Commerce – Office of the Secretary – Office of Economic Opportunity

**Fund 0617 FY 2016 Org 0327**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Office of Economic Opportunity</td>
<td>03400</td>
<td>$102,417</td>
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### 44 - Division of Energy

(WV Code Chapter 5H)

**Fund 0612 FY 2016 Org 0328**

<table>
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<th>Description</th>
<th>Code</th>
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<td>Total</td>
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<td>$1,682,676</td>
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</tbody>
</table>
From the above appropriation for Current Expenses (fund 0612, appropriation 13000) $593,375 is for West Virginia University and $593,375 is for Southern West Virginia Community and Technical College for the Mine Training and Energy Technologies Academy.

DEPARTMENT OF EDUCATION

45 - State Board of Education – School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2016 Org 0402

1 Personal Services and
2 Employee Benefits............. 00100 $ 361,665
3 Unclassified. ................. 09900 0
4 Current Expenses............. 13000 2,118,490
5 Total........................... $ 2,480,155

46 - State Board of Education – State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2016 Org 0402

1 Personal Services and
2 Employee Benefits............. 00100 $ 600,273
3 Unclassified. ................. 09900 *0
4 Current Expenses............. 13000 128,033

* NOTE: The Governor reduced Item 46, line 3, by $500,000, from $500,000 to $0. The total does NOT reflect the reductions made by the Governor.
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47 - State Board of Education –
State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2016 Org 0402

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<td>Unclassified (R).</td>
<td>09900</td>
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<td>Current Expenses (R).</td>
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<td>9</td>
<td>Equipment.</td>
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<td>Safe Schools.</td>
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<td>Teacher Mentor (R).</td>
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<td>13</td>
<td>National Teacher Certification (R).</td>
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<td>Buildings (R).</td>
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<td>16</td>
<td>Allowance for County Transfers.</td>
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<td>469,993</td>
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<td>17</td>
<td>Technology Repair and Modernization.</td>
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<td>951,003</td>
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<td>19</td>
<td>HVAC Technicians.</td>
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<td>Early Retirement Notification Incentive.</td>
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<td>22</td>
<td>MATH Program.</td>
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<td>23</td>
<td>Assessment Programs.</td>
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<td>2,339,588</td>
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<td>24</td>
<td>21st Century Fellows.</td>
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<td>25</td>
<td>English as a Second Language.</td>
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<td>26</td>
<td>Teacher Reimbursement.</td>
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<td>Item</td>
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<tr>
<td>17</td>
<td>Hospitality Training</td>
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<td>21</td>
<td>Hi-Y Youth in Government</td>
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<td>22</td>
<td>High Acuity Special Needs (R)</td>
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<td>24</td>
<td>Foreign Student Education</td>
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<td>25</td>
<td>Principals Mentorship</td>
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<td>26</td>
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<td>27</td>
<td>Administrative Costs</td>
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<td>28</td>
<td>IT Academy</td>
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<td>29</td>
<td>Land (R)</td>
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<td>30</td>
<td>Early Literacy Program</td>
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<td>32</td>
<td>School Based Truancy Prevention</td>
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<td>33</td>
<td>Alternative Schools</td>
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<td>34</td>
<td>21st Century Innovation Zones</td>
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<td>35</td>
<td>21st Century Learners (R)</td>
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<td>36</td>
<td>Technology Initiatives</td>
<td>$90,100</td>
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<td>37</td>
<td>BRIM Premium</td>
<td>$91,300</td>
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<td>38</td>
<td>High Acuity Health Care</td>
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<td>39</td>
<td>Needs Program</td>
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<tr>
<td>40</td>
<td>21st Century Assessment and Professional Development</td>
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<td>41</td>
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<td>42</td>
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<td>43</td>
<td>Tools and Support (R)</td>
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<td>44</td>
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<td>45</td>
<td>Holocaust Education</td>
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<td>46</td>
<td>Regional Education</td>
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<td>47</td>
<td>Service Agencies</td>
<td>$97,200</td>
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<td>48</td>
<td>Educational Program Allowance</td>
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<td>49</td>
<td>Total</td>
<td>$94,057,696</td>
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*Note: The Governor reduced Item 47, line 27, by $54,032, from $319,005 to $264,973. And line 58, by $18,750, from $535,000 to $516,250.*
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), Teacher Mentor (fund 0313, appropriation 15800), National Teacher Certification (fund 0313, appropriation 16100), Buildings (fund 0313, appropriation 25800), High Acuity Special Needs (fund 0313, appropriation 63400), Land (fund 0313, appropriation 73000), and 21st Century Learners (fund 0313, appropriation 88600) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

The above appropriation for Technology System Specialists (fund 0313, appropriation 06200), shall first be used for the continuance of current pilot projects. The remaining balance, if any, may be used to expand the pilot project for additional counties.

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).

Included in the above appropriation for Current Expenses (fund 0313, appropriation 13000) is $50,000 for the fifth year of a five year special community development school pilot program per W.Va. Code §18-3-12.

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.
The above appropriation for Local Solutions Dropout Prevention and Recovery (fund 0313, appropriation 78000) shall be transferred to the Local Solutions Dropout Prevention and Recovery Fund (fund 3949).

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; and $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.

48 - State Board of Education – Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2016 Org 0402

<table>
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<th>Item</th>
<th>Description</th>
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<tr>
<td>1</td>
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<td>2</td>
<td>Special Education – Institutions</td>
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<td>3</td>
<td>Education of Juveniles</td>
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<tr>
<td>4</td>
<td>Held in Predispositional Juvenile Detention Centers</td>
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<td>5</td>
<td>Education of Institutionalized Juveniles and Adults (R)</td>
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<td>Total</td>
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</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 2015 is

*Note: The Governor reduced Item 47, line 102, from $85,000 to $66,250. The total does NOT reflect the reductions made by the Governor.
hereby reappropriated for expenditure during the fiscal year 2016.

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.

*49 - State Board of Education – State Aid to Schools* (WV Code Chapters 18 and 18A)

<table>
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<th>Fund</th>
<th>FY 2016 Org</th>
<th>Description</th>
<th>Amount</th>
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</thead>
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<td>Other Current Expenses</td>
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<tr>
<td>15100</td>
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<td>Professional Educators</td>
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<td>15200</td>
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<td>Service Personnel</td>
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<td>15300</td>
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<td>15400</td>
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<td>Transportation</td>
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<td>65500</td>
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<td>Professional Student Support Services</td>
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<td>15600</td>
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<td>Improved Instruction Programs</td>
<td>47,840,943</td>
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<td>93600</td>
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<td>21st Century Strategic Technology</td>
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<td>Adjustments</td>
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<td>Total Basic State Aid</td>
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<td>20</td>
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<td>School Building Authority</td>
<td>23,423,270</td>
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*Note: The Governor reduced Item 49, line 15, by $718,168, from $718,168 to $0. The total does NOT reflect the reductions made by the Governor.*
21 Retirement Systems –
22 Unfunded Liability. ............ 77500 298,584,000
23 Total............................... $1,752,930,283

50 - State Board of Education –
Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2016 Org 0402

<table>
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<tr>
<td>2</td>
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<td>5</td>
<td>Wood Products – Forestry</td>
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<td>6</td>
<td>Vocational Program.</td>
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<td>Albert Yanni Vocational</td>
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<tr>
<td>8</td>
<td>Program.</td>
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<tr>
<td>9</td>
<td>Vocational Aid.</td>
<td>22,193,335</td>
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<td>10</td>
<td>Adult Basic Education.</td>
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<td>11</td>
<td>Program Modernization.</td>
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<td>12</td>
<td>High School Equivalency</td>
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<tr>
<td>13</td>
<td>Diploma Testing (R).</td>
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<td>14</td>
<td>FFA Grant Awards.</td>
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<td>Pre-Engineering</td>
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<td>16</td>
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<td>Total.</td>
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Any unexpended balances remaining in the appropriations for GED Testing (fund 0390, appropriation 33900) and High School Equivalency Diploma Testing (fund 0390, appropriation 72600) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.
## 51 - State Board of Education –
### Division of Education Performance Audits

(WV Code Chapters 18 and 18A)

**Fund 0573 FY 2016 Org 0402**

<table>
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<td>942,099</td>
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<td>Repairs and Alterations</td>
<td>06400</td>
<td>1,000</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>1,000</td>
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<td><strong>Total</strong></td>
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<td><strong>$1,855,590</strong></td>
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## 52 - State Board of Education –
### West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

**Fund 0320 FY 2016 Org 0403**

<table>
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<td>Repairs and Alterations</td>
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<td>Buildings (R)</td>
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<td>Other Assets</td>
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<td>25,000</td>
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<td>Capital Outlay and Maintenance (R)</td>
<td>75500</td>
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<td>BRIM Premium</td>
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<td><strong>Total</strong></td>
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<td><strong>$13,639,961</strong></td>
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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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

DEPARTMENT OF EDUCATION AND THE ARTS

53 - Department of Education and the Arts – Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2016 Org 0431

1 Personal Services and
2 Employee Benefits.......... 00100 $ 851,891
3 Unclassified. ................. 09900 35,000
4 Current Expenses. ............ 13000 27,818
5 Center for Professional
6 Development (R). .......... 11500 2,298,371
7 National Youth Science
8 Camp ......................... 13200 246,500
9 WV Humanities Council. .... 16800 450,000
10 Benedum Professional
11 Development
12 Collaborative (R). .......... 42700 805,895
13 Governor’s Honors
14 Academy (R). ............... 47800 597,714
15 Educational Enhancements. ... 69500 *200,000
16 S.T.E.M. Education and
17 Grant Program............... 71900 500,000
18 Energy Express. ............ 86100 470,000
19 BRIM Premium. ............. 91300 4,509

* NOTE: The Governor reduced Item 53, line 15, by $375,000, from $575,000 to $200,000. The total does NOT reflect the reductions made by the Governor.
Any unexpended balances remaining in the appropriations for Center for Professional Development (fund 0294, appropriation 11500), Benedum Professional Development Collaborative (fund 0294, appropriation 42700), and Governor’s Honors Academy (fund 0294, appropriation 47800) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

Included in the above appropriation for Educational Enhancements (fund 0294, appropriation 69500) is $125,000 for Reconnecting McDowell - Save the Children,* and $75,000 for the Clay Center.

54 - Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2016 Org 0432

<table>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
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<td>1</td>
<td>Personal Services and Employee Benefits</td>
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<tr>
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<td>Unclassified (R)</td>
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<tr>
<td>3</td>
<td>Current Expenses</td>
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<td>810,103</td>
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<td>Land (R)</td>
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*NOTE: The Governor deleted language in Item 53, lines 31 through 33, which read “$375,000 for Save the Children programs in Cabell, Roane, Calhoun and Mason counties, and lines 34 through 36, which redirects funds from the S.T.E.M. Education and Grant Program. The total does NOT reflect the reductions made by the Governor.
176  APPROPRIATIONS  [Ch. 15

10  Culture and History
11    Programming. . . . . . . . . . 73200  236,298
12  Capital Outlay and
13    Maintenance (R). . . . . . . . 75500  20,000
14  Historical Highway
15    Marker Program. . . . . . . . 84400  58,722
16  BRIM Premium. . . . . . . . . 91300  33,677
17    Total. . . . . . . . . . . . . . . $ 5,006,297

18  Any unexpended balances remaining in the appropriations
19  for Unclassified (fund 0293, appropriation 09900), Buildings
20  (fund 0293, appropriation 25800), Capital Outlay, Repairs and
21  Equipment (fund 0293, appropriation 58900), Capital
22  Improvements – Surplus (fund 0293, appropriation 66100),
23  Capital Outlay, Repairs and Equipment – Surplus (fund 0293,
24  appropriation 67700), Land (fund 0293, appropriation 73000),
25  and Capital Outlay and Maintenance (fund 0293, appropriation
26  75500) at the close of the fiscal year 2015 are hereby
27  reappropriated for expenditure during the fiscal year 2016.

28  The Current Expense appropriation includes funding for the
29  arts funds, department programming funds, grants, fairs and
30  festivals and Camp Washington Carver and shall be expended
31  only upon authorization of the division of culture and history and
32  in accordance with the provisions of Chapter 5A, Article 3, and
33  Chapter 12 of the Code.

55 - Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2016 Org 0433

1  Personal Services and
2    Employee Benefits. . . . . . . . 00100  $ 1,309,788
3  Current Expenses. . . . . . . . . . . . . . . 13000  171,140
4  Repairs and Alterations. . . . . . 06400  6,500
5 Services to Blind &
Handicapped. ............... 18100 161,559
7 BRIM Premium. ............... 91300 15,177
8 Total........................... $ 1,664,164

56 - Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2016 Org 0439

1 Personal Services and
2 Employee Benefits........... 00100 $ 4,261,859
3 Current Expenses............. 13000 170,545
4 Mountain Stage.............. 24900 300,000
5 Capital Outlay and
6 Maintenance (R)............. 75500 50,000
7 BRIM Premium............... 91300 41,929
8 Total........................... $ 4,824,333

Any unexpended balance remaining in the appropriation for
Capital Outlay and Maintenance (fund 0300, appropriation
75500) at the close of the fiscal year 2015 is hereby
reappropriated for expenditure during the fiscal year 2016.

From the above appropriation for Current Expenses (fund
0300, appropriation 13000) $100,000 is for Healthy Choices
Children Television Program in conjunction with WVSOM and
up to $45,000 is for the WV Music Hall of Fame.

57 - State Board of Rehabilitation –
Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2016 Org 0932

1 Personal Services and
2 Employee Benefits........... 00100 $ 10,597,682
Independent Living Services. . . . . 00900  500,000
Current Expenses. . . . . . . . . . . 13000  545,202
Workshop Development. . . . . . . 16300  2,116,149
Supported Employment
  Extended Services. . . . . . . . 20600  100,000
Ron Yost Personal Assistance Fund (R). . . . . 40700  388,698
Employment Attendant
  Care Program . . . . . . . . . 59800  156,065
  BRIM Premium. . . . . . . . . 91300  67,033
Total. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $ 14,470,829

Any unexpended balance remaining in the appropriation for Ron Yost Personal Assistance Fund (fund 0310, appropriation 40700) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

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

58 - Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2016 Org 0311

Personal Services and
  Employee Benefits......... 00100 $ 72,050
Current Expenses......... 13000 30,691
Repairs and Alterations. . . . . 06400 100
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59 - Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2016 Org 0313

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A portion of the appropriations for Current Expenses (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.
60 - Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2016 Org 0325

1 Personal Services and Employee Benefits. 00100 $ 64,143
2 Current Expenses. 13000 10,746
3 Repairs and Alterations. 06400 50
4 Equipment. 07000 579
5 Other Assets. 69000 200
6 BRIM Premium. 91300 2,013
7 Total. 91300 $ 77,731

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

61 - Department of Health and Human Resources – Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2016 Org 0501

1 Personal Services and Employee Benefits. 00100 $ 478,683
2 Unclassified. 09900 8,386
3 Current Expenses. 13000 48,461
4 Women’s Commission (R). 19100 155,557
5 Commission for the Deaf
6 and Hard of Hearing. 70400 216,405
7 Total. 91300 $ 907,492

Any unexpended balance remaining in the appropriation for the Women’s Commission (fund 0400, appropriation 19100) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.
## 62 - Division of Health – Central Office

(WV Code Chapter 16)

Fund 0407 FY 2016 Org 0506

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<td>$ 73,515,490</td>
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Any unexpended balances remaining in the appropriations for Unclassified – Surplus (fund 0407, appropriation 09700), 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), Assistance to Primary Health Care Centers Community Health Foundation (fund 0407, appropriation 84500), and Tobacco Education Program (fund 0407, appropriation 90600) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

*Note: The Governor reduced Item 62, line 29, by $729,572, from $6,000,000 to $5,270,428. And line 32, by $250,000, from $3,000,000 to $2,750,000. The total does NOT reflect the reductions made by the Governor.*
60 From the above appropriation for Current Expenses (fund 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.

68 From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500) $400,000 shall 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.

74 Included in the above appropriation for Primary Care Centers - Mortgage Finance (fund 0407, appropriation 41300) is $8,375 for the mortgage payment for the Lincoln Primary Care Center, Inc.; $7,130 for the mortgage payment for Roane County Family Health Care, Inc.; $8,040 for the mortgage payment for Community Care (formerly Primary Care Systems); $3,350 for the mortgage payment for the Belington Community Medical Services; $5,025 for the mortgage payment for Community Care (formerly Tri-County Health Clinic); $2,513 for the mortgage payment for Valley Health Care (Randolph); $4,449 for the mortgage payment for WomenCare (Family Care Health Center - Madison); $1,340 for the mortgage payment for Northern Greenbrier Health Clinic; $3,350 for the mortgage payment for the North Fork Clinic (Pendleton); $6,700 for the mortgage payment for the Pendleton Community Care; $6,433 for the mortgage payment for Clay-Battelle Community Health Center; $8,288 for the mortgage payment for Monongahela Valley Association of Health Centers, Inc. (Marion); $5,628 for the mortgage payment for Mountaineer Community Health Center;
93 $2,178 for the mortgage payment for the St. George Medical
94 Clinic; $4,691 for the mortgage payment for the Bluestone
95 Health Center; $7,538 for the mortgage payment for Wheeling
96 Health Right; $8,040 for the mortgage payment for the Minnie
97 Hamilton Health Care Center, Inc.; $9,045 for the mortgage
98 payment for the Shenandoah Valley Medical Systems, Inc.;
99 $7,538 for the mortgage payment for the Change, Inc.; and
100 $4,850 for the mortgage payment for the Wirt County Health
101 Services Association.

63 - Consolidated Medical Services Fund

(WV Code Chapter 16)

<table>
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<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
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<tr>
<td>0525</td>
<td>2016</td>
<td>0506</td>
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1 | Personal Services and |
2 | Employee Benefits........... 00100 | $ 1,567,388 |
3 | Current Expenses.............. 13000 | 12,463 |
4 | Behavioral Health |
5 | Program (R).................. 21900 | 69,725,365 |
6 | Family Support Act........... 22100 | 251,226 |
7 | Institutional Facilities |
8 | Operations (R)............... 33500 | 110,414,656 |
9 | Substance Abuse |
10 | Continuum of Care (R)....... 35400 | 5,000,000 |
11 | Capital Outlay and |
12 | Maintenance (R).............. 75500 | 950,000 |
13 | Renaissance Program.......... 80400 | 165,996 |
14 | BRIM Premium................ 91300 | 1,088,070 |
15 | Total......................... | $ 189,175,164 |

16 Any unexpended balances remaining in the appropriations
17 for Behavioral Health Program (fund 0525, appropriation
18 21900), Institutional Facilities Operations (fund 0525,
19 appropriation 33500), Substance Abuse Continuum of Care
(fund 0525, appropriation 35400), Capital Outlay (fund 0525, appropriation 51100), Behavioral Health Program – Surplus (fund 0525, appropriation 63100), Institutional Facilities Operations – Surplus (fund 0525, appropriation 63200), Substance Abuse Continuum of Care – Surplus (fund 0525, appropriation 72200), and Capital Outlay and Maintenance (fund 0525, appropriation 75500) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

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, together with available funds from the division of health – hospital services revenue account (fund 5156, appropriation 33500), on July 1, 2015, the sum of $160,000 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 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 2016, organization 0506, and fund 5124, fiscal year 2016, 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.
64 - Division of Health –
West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2016 Org 0506

1 West Virginia Drinking Water Treatment
2 Revolving Fund – Transfer. . . 68900 $ 647,500
4 The above appropriation for Drinking Water Treatment
5 Revolving Fund – Transfer shall be transferred to the West
6 Virginia Drinking Water Treatment Revolving Fund or
7 appropriate bank depository and the Drinking Water Treatment
8 Revolving – Administrative Expense Fund as provided by
9 Chapter 16 of the Code.

65 - Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2016 Org 0510

1 Personal Services and
2 Employee Benefits.............. 00100 $ 910,221
3 Unclassified. ................. 09900 $ 4,024
4 Current Expenses.............. 13000 $ 191,766
5 BRIM Premium. ............... 91300 $ 9,311
6 Total.......................... $ 1,115,322

66 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2016 Org 0511

1 Personal Services and
2 Employee Benefits.............. 00100 $ 40,965,805
3 Unclassified. ................. 09900 $ 5,688,944
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<td>Case Workers</td>
<td>46800</td>
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<td>19</td>
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<td>Title XIX Waiver for Seniors</td>
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<td>21</td>
<td>WV Teaching Hospitals</td>
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<td>Tertiary/Safety Net</td>
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<td>23</td>
<td>Specialized Foster Care</td>
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<td>24</td>
<td>Child Welfare System</td>
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<td>25</td>
<td>In-Home Family Education</td>
<td>68800</td>
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<td>26</td>
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<td>27</td>
<td>State Program</td>
<td>69800</td>
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<td>70500</td>
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<td>Medicaid Auditing</td>
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<td>30</td>
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<tr>
<td>31</td>
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<td>32</td>
<td>Maintenance of Effort</td>
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<tr>
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<td>34</td>
<td>of Effort Match</td>
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<td>35</td>
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<td>36</td>
<td>Grants for Licensed</td>
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<tr>
<td>37</td>
<td>Domestic Violence</td>
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</tr>
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<td>38</td>
<td>Programs and Statewide</td>
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<td>39</td>
<td>Prevention</td>
<td>75000</td>
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<tr>
<td>40</td>
<td>Capital Outlay and Maintenance (R)</td>
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<td>41</td>
<td>Community Based Services and Pilot Programs for Youth</td>
<td>75900</td>
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<td>42</td>
<td>Medical Services Administrative Costs</td>
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<td>43</td>
<td>Traumatic Brain Injury Waiver</td>
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<td>44</td>
<td>Indigent Burials (R)</td>
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<td>Autism Spectrum Disorder Coverage</td>
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<td>CHIP Administrative Costs</td>
<td>85601</td>
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<td>47</td>
<td>CHIP Services</td>
<td>85602</td>
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<td>48</td>
<td>BRIM Premium</td>
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<tr>
<td>49</td>
<td>Rural Hospitals Under 150 Beds</td>
<td>94000</td>
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<tr>
<td>50</td>
<td>Children’s Trust Fund – Transfer</td>
<td>95100</td>
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<td>51</td>
<td>Total</td>
<td>$ 917,010,422</td>
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</table>

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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

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.

*NOTE: The Governor reduced Item 66, lines 56 and 57, by $80,000, from $300,000 to $220,000. The total does NOT reflect the reductions made by the Governor.*
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.

* NOTE: The Governor deleted language in Item 66, lines 75 through 80, which related to enhancement of reimbursement rates for nursing homes.
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 Fund (fund 5469, org 0511).

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

*67 - Department of Military Affairs and Public Safety – Office of the Secretary*

(WV Code Chapter 5F)

**Fund 0430 FY 2016 Org 0601**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
</tr>
<tr>
<td>2</td>
<td>Unclassified (R)</td>
<td>09900</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>06400</td>
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<tr>
<td>5</td>
<td>Equipment</td>
<td>07000</td>
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</tbody>
</table>
Fusion Center (R)................. 46900          534,544
Other Assets....................... 69000          4,015
Directed Transfer............... 70000          32,000
BRIM Premium..................... 91300           9,404
WV Fire and EMS Survivor Benefit (R).... 93900       400,000
Homeland State Security Administrative Agency (R).... 95300    533,036
Total................................ $ 2,364,275

Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, appropriation 09900), Fusion Center (fund 0430, appropriation 46900), Substance Abuse Program – Surplus (fund 0430, appropriation 69600), 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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

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).

68 - Adjutant General – State Militia
(WV Code Chapter 15)

Fund 0433 FY 2016 Org 0603

Unclassified (R)................... 09900       $ 14,993,758
College Education Fund........... 23200          0
Mountaineer Challenge
Academy.......................... 70900          0
Any unexpended balance remaining in the appropriation for Unclassified (fund 0433, appropriation 09900) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

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.

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.

---

69 - Adjutant General –
Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2016 Org 0603

1 Personal Services and
2 Employee Benefits.............. 00100 $ 100,000
3 Current Expenses.............. 13000 $ 71,125
4 Total................................. $ 171,125

70 - West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2016 Org 0605

1 Personal Services and
2 Employee Benefits.............. 00100 $ 378,085
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
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<td>168,694</td>
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<tr>
<td>Salaries of Members of West Virginia Parole Board</td>
<td>22700</td>
<td>600,744</td>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>4,712</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>1,152,235</strong></td>
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</table>

9 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.

71 - Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2016 Org 0606

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$547,934</td>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>28,157</td>
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<td>Current Expenses</td>
<td>13000</td>
<td>144,611</td>
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<td>Repairs and Alterations</td>
<td>06400</td>
<td>1,000</td>
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<td>Radiological Emergency Preparedness</td>
<td>55400</td>
<td>27,752</td>
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<tr>
<td>Federal Funds/Grant</td>
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<tr>
<td>Match (R)</td>
<td>74900</td>
<td>658,407</td>
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<tr>
<td>Mine and Industrial Accident Rapid Response Call Center</td>
<td>78100</td>
<td>481,412</td>
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<tr>
<td>Early Warning Flood</td>
<td></td>
<td></td>
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<tr>
<td>System (R)</td>
<td>87700</td>
<td>506,089</td>
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<td>BRIM Premium</td>
<td>91300</td>
<td>18,811</td>
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<tr>
<td>WVU Charleston Poison Control Hotline</td>
<td>94400</td>
<td>757,804</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>3,171,977</strong></td>
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</table>


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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

72 - Division of Corrections – Central Office

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

Fund 0446 FY 2016 Org 0608

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
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<td>Current Expenses</td>
<td>$1,800</td>
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<td>Total</td>
<td>$611,990</td>
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73 - Division of Corrections – Correctional Units

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

Fund 0450 FY 2016 Org 0608

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>1</td>
<td>Employee Benefits</td>
<td>$1,258,136</td>
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<tr>
<td>2</td>
<td>Children’s Protection Act (R)</td>
<td>$938,437</td>
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<td>3</td>
<td>Unclassified (R)</td>
<td>$1,842,160</td>
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<td>4</td>
<td>Current Expenses (R)</td>
<td>$31,000,000</td>
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<td>5</td>
<td>Facilities Planning and Administration (R)</td>
<td>$1,116,627</td>
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<td>6</td>
<td>Charleston Correctional Center</td>
<td>$3,134,387</td>
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<td>7</td>
<td>Beckley Correctional Center</td>
<td>$1,814,873</td>
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<td>8</td>
<td>Huntington Work</td>
<td>$1,139,619</td>
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<td>9</td>
<td>Anthony Correctional Center</td>
<td>$5,001,443</td>
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<td>Item Description</td>
<td>Amount</td>
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<tr>
<td>----------------------------------------------------</td>
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<tr>
<td>Huttonsville Correctional Center</td>
<td>21,042,042</td>
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<tr>
<td>Northern Correctional Center</td>
<td>6,947,380</td>
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<td>Inmate Medical Expenses (R)</td>
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<td>Pruntytown Correctional Center</td>
<td>7,069,693</td>
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<td>Corrections Academy</td>
<td>1,447,934</td>
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<td>Martinsburg Correctional Center</td>
<td>3,437,882</td>
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<td>Parole Services</td>
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<td>Special Services</td>
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<td>Investigative Services</td>
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<td>Capital Outlay and Maintenance (R)</td>
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<td>Salem Correctional Center</td>
<td>9,977,414</td>
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<td>McDowell County Correctional Center</td>
<td>1,949,983</td>
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<td>Stevens Correctional Center</td>
<td>6,474,500</td>
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<tr>
<td>Parkersburg Correctional Center</td>
<td>2,431,887</td>
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<td>St. Mary’s Correctional Center</td>
<td>12,665,613</td>
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<tr>
<td>Denmar Correctional Center</td>
<td>4,384,334</td>
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<td>Ohio County Correctional Center</td>
<td>1,743,194</td>
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<tr>
<td>Mt. Olive Correctional Complex</td>
<td>19,783,496</td>
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<tr>
<td>Lakin Correctional Center</td>
<td>8,909,548</td>
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<tr>
<td>BRIM Premium</td>
<td>829,190</td>
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<td>Total</td>
<td>$196,080,184</td>
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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 Operating Expenses – Surplus (fund 0450, appropriation 77900) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016, with the exception of fund 0450, fiscal year 2015, appropriation 13000 ($8,000,000) and fund 0450, fiscal year 2015, appropriation 53500 ($3,000,000) which shall expire on June 30, 2015.

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, on July 1, 2015, the sum of $300,000 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 the Energy Savings Contract for Mt. Olive Correctional Complex, Huttonsville Correction Center, Pruntytown Correctional Center, or Denmar Correctional Center may be transferred from the listed individual correctional units to Facilities Planning and Administration (fund 0450, appropriation 38600).
### Fund 0453 FY 2016 Org 0612

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<th>Item</th>
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<td>1</td>
<td>Personal Services and Employee Benefits</td>
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<td>2</td>
<td>Children’s Protection Act</td>
<td>947,922</td>
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<td>3</td>
<td>Current Expenses</td>
<td>10,403,272</td>
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<td>4</td>
<td>Repairs and Alterations</td>
<td>450,523</td>
</tr>
<tr>
<td>5</td>
<td>Vehicle Purchase</td>
<td>*2,000,000</td>
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<td>6</td>
<td>Barracks Lease Payments</td>
<td>246,478</td>
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<tr>
<td>7</td>
<td>Communications and Other Equipment (R)</td>
<td>1,268,968</td>
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<tr>
<td>8</td>
<td>Trooper Retirement Fund</td>
<td>4,249,810</td>
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<td>9</td>
<td>Handgun Administration</td>
<td>81,442</td>
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<tr>
<td>10</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>*250,000</td>
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<tr>
<td>11</td>
<td>Unfunded Liability</td>
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<td>12</td>
<td>Automated Fingerprint Identification System</td>
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<tr>
<td>13</td>
<td>BRIM Premium</td>
<td>4,946,608</td>
</tr>
<tr>
<td>14</td>
<td>Total</td>
<td>$ 100,667,272</td>
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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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

* **Note:** The Governor reduced Item 74, lines 1 and 2, by $511,081, from $59,511,081 to $59,000,000, and line 6, by $377,614, from $2,377,614 to $2,000,000, and lines 13 and 14, by $2,000,000, from $2,250,000 to $250,000. The total does NOT reflect the reductions made by the Governor.
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.

**75 - Fire Commission**

(WV Code Chapter 29)

Fund 0436 FY 2016 Org 0619

1 Current Expenses................. 13000 $ 69,439

**76 - Division of Justice and Community Services**

(WV Code Chapter 15)

Fund 0546 FY 2016 Org 0620

1 Personal Services and Employee Benefits.............. 00100 $ 527,515
3 Current Expenses................. 13000 132,696
4 Repairs and Alterations............. 06400 1,804
5 Child Advocacy Centers (R). ...... 45800 1,702,108
6 Community Corrections (R). ...... 56100 7,419,704
7 Statistical Analysis Program. ..... 59700 46,499
8 Sexual Assault Forensic Examination Commission. .... 71400 76,592
10 Qualitative Analysis and Training for Youth Services. . 76200 500,000
12 Law Enforcement
13 Professional Standards............. 83800 156,577
14 BRIM Premium. .................... 91300 1,421
15 Total.............................. $ 10,564,916

Any unexpended balances remaining in the appropriations for Buildings (fund 0546, appropriation 25800), Child Advocacy
Ch. 15] APPROPRIATIONS 199

18 Centers (fund 0546, appropriation 45800), and Community
19 Corrections (fund 0546, appropriation 56100) at the close of the
20 fiscal year 2015 are hereby reappropriated for expenditure
21 during the fiscal year 2016.

22 From the above appropriation for Child Advocacy Centers
23 (fund 0546, appropriation 45800), the division may retain an
24 amount not to exceed four percent of the appropriation for
25 administrative purposes.

77 - Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2016 Org 0621

1 Statewide Reporting Centers. . . . . 26200 $ 5,428,893
2 Robert L. Shell Juvenile Center. . . 26700 1,954,598
3 Central Office . . . . . . . . . . . . . 70100 2,334,206
4 Capital Outlay and
5 Maintenance (R). . . . . . . . . . . 75500 250,000
6 Gene Spadaro Juvenile Center. . . 79300 2,132,797
7 BRIM Premium. . . . . . . . . . . . . 91300 96,187
8 Kenneth Honey Rubenstein
9 Juvenile Center (R) . . . . . . . . . 98000 4,920,220
10 Vicki Douglas Juvenile
11 Center. . . . . . . . . . . . . . . . . 98100 1,872,622
12 Northern Regional
13 Juvenile Center. . . . . . . . . . . . 98200 1,576,302
14 Lorrie Yeager Jr.
15 Juvenile Center. . . . . . . . . . . . 98300 1,920,239
16 Sam Perdue Juvenile
17 Center . . . . . . . . . . . . . . . . . 98400 2,007,781
18 Tiger Morton Center . . . . . . . . 98500 2,116,477
19 Donald R. Kuhn
20 Juvenile Center. . . . . . . . . . . . 98600 4,066,579
Any unexpended balances remaining in the appropriations for 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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

From the above appropriations, on July 1, 2015, the sum of $50,000 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.

78 - Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2016 Org 0622

1 Personal Services and
2 Employee Benefits.............. 00100 $ 2,027,387
3 Unclassified (R).................. 09900 21,991
4 Current Expenses.................. 13000 109,232
5 Repairs and Alterations......... 06400 8,500
6 Equipment (R)...................... 07000 75,000
7 Other Assets...................... 69000 72,825
8 BRIM Premium..................... 91300 9,969
9 Total................................. $ 2,324,904
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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

DEPARTMENT OF REVENUE

79 - Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2016 Org 0701

1 Personal Services and
2   Employee Benefits............. 00100  $ 529,025
3 Unclassified..................... 09900  6,397
4 Current Expenses................. 13000  92,454
5 Repairs and Alterations.......... 06400  1,262
6 Equipment......................... 07000  8,000
7 Other Assets....................... 69000  500
8 Total................................. $ 637,638

Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 0465, appropriation 09600) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

80 - Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2016 Org 0702

1 Personal Services and
2   Employee Benefits (R)........... 00100  $ 16,722,654
3 Unclassified (R).................... 09900  234,571
### APPROPRIATIONS

<table>
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<tr>
<th>Item</th>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$23,393,625</strong></td>
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</table>

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0470, appropriation 00100), Tax Technology Upgrade – Surplus (fund 0470, appropriation 45000), Unclassified (fund 0470, appropriation 09900), Current Expenses (fund 0470, appropriation 13000), and GIS Development Project (fund 0470, appropriation 56200) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016, with the exception of fund 0470, fiscal year 2015, appropriation 00100 ($1,000,000) which shall expire on June 30, 2015.

#### 81 - State Budget Office

(WV Code Chapter 11B)

**Fund 0595 FY 2016 Org 0703**

<table>
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<tr>
<td>Unclassified (R)</td>
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Any unexpended balance remaining in the appropriation for Unclassified (fund 0595, appropriation 09900) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.
82 - West Virginia Office of Tax Appeals  
(WV Code Chapter 11)  
Fund 0593 FY 2016 Org 0709

<table>
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<th>Item</th>
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<td>Unclassified</td>
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<td>5,397</td>
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<tr>
<td>4</td>
<td>Other Assets</td>
<td>69000</td>
<td>903</td>
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<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>91300</td>
<td>2,618</td>
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<tr>
<td>6</td>
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<td>$538,088</td>
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Any unexpended balance remaining in the appropriation for Current Expenses (fund 0593, appropriation 13000) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

83 - Division of Professional and Occupational Licenses – State Athletic Commission  
(WV Code Chapter 29)  
Fund 0523 FY 2016 Org 0933

<table>
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<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$10,721</td>
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</table>

DEPARTMENT OF TRANSPORTATION

84 - State Rail Authority  
(WV Code Chapter 29)  
Fund 0506 FY 2016 Org 0804
1 Personal Services and
2 Employee Benefits. 00100 $ 314,606
3 Current Expenses. 13000 $ 330,469
4 Other Assets (R). 69000 1,360,760
5 BRIM Premium. 91300 173,966
6 Total. $ 2,179,801

7 Any unexpended balances remaining in the appropriations
8 for Unclassified (fund 0506, appropriation 09900) and Other
9 Assets (fund 0506, appropriation 69000) at the close of the fiscal
10 year 2015 are hereby reappropriated for expenditure during the
11 fiscal year 2016.

85 - Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2016 Org 0805

1 Equipment (R). 07000 $ 661,049
2 Current Expenses (R). 13000 1,744,949
3 Buildings (R). 25800 20,281
4 Other Assets (R). 69000 50,000
5 Total. $ 2,476,279

6 Any unexpended balances remaining in the appropriations
7 for Equipment (fund 0510, appropriation 07000), Current
8 Expenses (fund 0510, appropriation 13000), Buildings (fund
9 0510, appropriation 25800) and Other Assets (fund 0510,
10 appropriation 69000) at the close of the fiscal year 2015 are
11 hereby reappropriated for expenditure during the fiscal year
12 2016.

86 - Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2016 Org 0806
1 Personal Services and
2 Employee Benefits............. 00100 $ 218,492
3 Current Expenses............. 13000 73,539
4 Repairs and Alterations........ 06400 500
5 BRIM Premium............. 91300 2,500
6 Total........................ $ 295,031

Any unexpended balance remaining in the appropriation for
Unclassified (fund 0581, appropriation 09900) at the close of the
fiscal year 2015 is hereby reappropriated for expenditure during
the fiscal year 2016.

87 - Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2016 Org 0807

1 Personal Services and
2 Employee Benefits............. 00100 $ 212,798
3 Current Expenses (R)............. 13000 807,704
4 Repairs and Alterations........ 06400 100
5 Civil Air Patrol............... 23400 155,095
6 BRIM Premium............... 91300 3,045
7 Total........................ $ 1,178,742

Any unexpended balance remaining in the appropriations for
Unclassified (fund 0582, appropriation 09900) and Current
Expenses (fund 0582, appropriation 13000) at the close of the
fiscal year 2015 are hereby reappropriated for expenditure
during the fiscal year 2016.

From the above appropriation for Current Expenses (fund
0582, appropriation 13000), the sum of $120,000 shall be
distributed equally to each of the twelve local Civil Air Patrol
Squadrons.
DEPARTMENT OF VETERANS’ ASSISTANCE

88 - Department of Veterans’ Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2016 Org 0613

<table>
<thead>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
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<td>$1,801,828</td>
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<td>2</td>
<td>Unclassified</td>
<td>09900</td>
<td>$20,000</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>
<td>5,000</td>
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<tr>
<td>5</td>
<td>Veterans’ Field Offices</td>
<td>22800</td>
<td>$268,345</td>
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<tr>
<td>6</td>
<td>Veterans’ Nursing Home (R)</td>
<td>28600</td>
<td>$5,941,038</td>
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<td>7</td>
<td>Veterans’ Toll Free Assistance Line</td>
<td>32800</td>
<td>2,015</td>
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<td>8</td>
<td>Veterans’ Reeducation Assistance (R)</td>
<td>32900</td>
<td>$29,502</td>
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<td>9</td>
<td>Veterans’ Grant Program (R)</td>
<td>34200</td>
<td>$100,000</td>
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<td>10</td>
<td>Veterans’ Grave Markers</td>
<td>47300</td>
<td>10,254</td>
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<td>11</td>
<td>Veterans’ Transportation</td>
<td>48500</td>
<td>625,000</td>
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<td>12</td>
<td>Veterans Outreach Programs</td>
<td>61700</td>
<td>188,277</td>
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<td>13</td>
<td>Memorial Day Patriotic Exercise</td>
<td>69700</td>
<td>20,000</td>
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<td>14</td>
<td>Veterans Cemetery</td>
<td>80800</td>
<td>$373,263</td>
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<td>15</td>
<td>BRIM Premium</td>
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<td>23,860</td>
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<td>$10,342,764</td>
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*NOTE: The Governor reduced Item 88, lines 1 and 2, by $75,000, from $1,876,828 to $1,801,828; line 3, by $180,000, from $200,000 to $20,000; line 6, by $20,000, from $288,345 to $268,345; line 7, by $63,875 from $6,004,913 to $5,941,038; line 10 and 11, by $10,000, from $39,502 to $29,502; line 12, by $50,000, from $150,000 to $100,000; and line 18, by $210,000, from $583,263 to $373,263. The total does NOT reflect the reductions made by the Governor.*
21 Any unexpended balances remaining in the appropriations
22 for Veterans’ Nursing Home (fund 0456, appropriation 28600),
23 Veterans’ Reeducation Assistance (fund 0456, appropriation
24 32900), Veterans’ Grant Program (fund 0456, appropriation
25 34200), Veterans’ Bonus – Surplus (fund 0456, appropriation
26 34400), Veterans’ Bonus (fund 0456, appropriation 48300), and
27 Educational Opportunities for Children of Deceased Veterans
28 (fund 0456, appropriation 85400) at the close of the fiscal year
29 2015 are hereby reappropriated for expenditure during the fiscal
30 year 2016.

89 - Department of Veterans’ Assistance –
Veterans’ Home

(WV Code Chapter 9A)

Fund 0460 FY 2016 Org 0618

1 Personal Services and
2 Employee Benefits.............. 00100 $ 1,088,530
3 Unclassified. ................. 09900 150,000
4 Current Expenses............. 13000 69,000
5 Total.................................. $ 1,307,530

BUREAU OF SENIOR SERVICES

90 - Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2016 Org 0508

1 Transfer to Division of Human
2 Services for Health Care
3 and Title XIX Waiver for
4 Senior Citizens............... 53900 $ 14,063,432
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

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

(WV Code Chapter 18B)

Fund 0596 FY 2016 Org 0420

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 2016 Amount</th>
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<tr>
<td>West Virginia Council for Community and Technical</td>
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<tr>
<td>Education (R)</td>
<td>$ 762,305</td>
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<tr>
<td>Transit Training Partnership</td>
<td>$ 70,217</td>
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<tr>
<td>Community College</td>
<td></td>
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<tr>
<td>Workforce Development (R)</td>
<td>$ 806,048</td>
</tr>
<tr>
<td>College Transition Program</td>
<td>$ 292,718</td>
</tr>
<tr>
<td>West Virginia Advance Workforce Development (R)</td>
<td>$ 3,433,842</td>
</tr>
<tr>
<td>Technical Program</td>
<td></td>
</tr>
<tr>
<td>Development (R)</td>
<td>$ 1,984,598</td>
</tr>
<tr>
<td>Total</td>
<td>$ 7,349,728</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified – Surplus (fund 0596, appropriation 09700), 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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

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.

92 - Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2016 Org 0444

1 Mountwest Community and Technical College. . . . . . . . . . . 48700 $ 5,687,484

93 - New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2016 Org 0445

1 New River Community and Technical College. . . . . . . . . . . 35800 $ *5,641,703

*NOTE: The Governor reduced Item 93, lines 1 and 2, by $34,797, from $5,676,500 to $5,641,703. The total does NOT reflect the reductions made by the Governor.
94 - *Pierpont Community and Technical College*

(WV Code Chapter 18B)

Fund 0597 FY 2016 Org 0446

1. Pierpont Community and  
2. Technical College. ............. 93000 $ *7,530,761

95 - *Blue Ridge Community and Technical College*

(WV Code Chapter 18B)

Fund 0601 FY 2016 Org 0447

1. Blue Ridge Community and  
2. Technical College. ............. 88500 $ *4,607,544

96 - *West Virginia University at Parkersburg*

(WV Code Chapter 18B)

Fund 0351 FY 2016 Org 0464

1. West Virginia University –  
2. Parkersburg. ................. 47100 $ *9,788,994

97 - *Southern West Virginia Community and Technical College*

(WV Code Chapter 18B)

Fund 0380 FY 2016 Org 0487

1. Southern West Virginia  
2. Community and  
3. Technical College. ............. 44600 $ 8,203,924

*NOTE: The Governor reduced Item 94, lines 1 and 2, by $133,835, from $7,664,596 to $7,530,761; Item 95, lines 1 and 2, by $342,166, from $4,949,710 to $4,607,544; and Item 96, lines 1 and 2, by $305,243, from $10,094,237 to $9,788,994. The total does NOT reflect the reductions made by the Governor.*
98 - West Virginia Northern Community and Technical College

(WV Code Chapter 18B)

Fund 0383 FY 2016 Org 0489

1 West Virginia Northern
2 Community and Technical
3 College.............................. 44700 $  *7,075,033

99 - Eastern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0587 FY 2016 Org 0492

1 Eastern West Virginia
2 Community and
3 Technical College. .............. 41200 $  *1,881,834

100 - BridgeValley Community and Technical College

(WV Code Chapter 18B)

Fund 0618 FY 2016 Org 0493

1 BridgeValley Community and
2 Technical College. .............. 71700 $  *7,719,911

*NOTE:* The Governor reduced Item 98, lines 1 through 3, by $24,583, from $7,099,616 to $7,075,033; Item 99, lines 1 through 3, by $5,340, from $1,887,174 to $1,881,834; and Item 100, lines 1 and 2, by $19,987, from $7,739,898 to $7,719,911.
### Higher Education Policy Commission

101 - Higher Education Policy Commission – Administration – Control Account

(WV Code Chapter 18B)

Fund **0589 FY 2016 Org 0441**

<table>
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<tr>
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<th>Fund Code</th>
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<th>Budget</th>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>172,806</td>
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<td>Higher Education Grant Program</td>
<td>16400</td>
<td>39,019,864</td>
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<tr>
<td>Tuition Contract Program (R)</td>
<td>16500</td>
<td>1,249,464</td>
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<tr>
<td>Underwood-Smith Scholarship Program-Student Awards</td>
<td>16700</td>
<td>192,500</td>
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<tr>
<td>Facilities Planning and Administration (R)</td>
<td>38600</td>
<td>1,897,759</td>
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<tr>
<td>PROMISE Scholarship – Transfer</td>
<td>80000</td>
<td>18,500,000</td>
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<tr>
<td>HEAPS Grant Program (R)</td>
<td>86700</td>
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<td></td>
<td><strong>68,572,438</strong></td>
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Any unexpended balances remaining in the appropriations for Unclassified – Surplus (fund 0589, appropriation 09700), Tuition Contract Program (fund 0589, appropriation 16500), Facilities Planning and Administration (fund 0589, appropriation 38600), Capital Improvements – Surplus (fund 0589, appropriation 66100), Capital Outlay and Maintenance (fund 0589, appropriation 75500), HEAPS Grant Program (fund 0589, appropriation 86700), and Higher Education – Special Projects – Surplus (fund 0589, appropriation 94600) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.
27 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.

28 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.

29 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.

30 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.

102 - Higher Education Policy Commission – Administration –
West Virginia Network for Educational Telecomputing (WVNET)

(WV Code Chapter 18B)

Fund 0551 FY 2016 Org 0495

<p>| | | | |</p>
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<tr>
<td>1</td>
<td>WVNET.</td>
<td>16900</td>
<td>$1,696,561</td>
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103 - West Virginia University –
School of Medicine
Medical School Fund

(WV Code Chapter 18B)
## Appropriations

**Fund 0343 FY 2016 Org 0463**

<table>
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<tr>
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<th>Description</th>
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<tr>
<td>1</td>
<td>WVU School of Health Science –</td>
<td>05600</td>
<td>$2,303,985</td>
</tr>
<tr>
<td>2</td>
<td>Eastern Division.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>WVU – School of Health Sciences</td>
<td>17400</td>
<td>*16,163,439</td>
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<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>WVU – School of Health Sciences –</td>
<td>17500</td>
<td>2,374,260</td>
</tr>
<tr>
<td>6</td>
<td>Charleston Division.</td>
<td>17500</td>
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<tr>
<td>7</td>
<td>Rural Health Outreach Programs (R).</td>
<td>37700</td>
<td>175,720</td>
</tr>
<tr>
<td>8</td>
<td>West Virginia University</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>School of Medicine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>BRIM Subsidy</td>
<td>46000</td>
<td>1,209,668</td>
</tr>
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<td>11</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Total</td>
<td></td>
<td>$22,775,047</td>
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Any unexpended balance remaining in the appropriations for Rural Health Outreach Programs (fund 0343, appropriation 37700), and Educational Enhancements – Surplus (fund 0343, appropriation 92700) at the close of the fiscal year 2015 are

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*Note: The Governor reduced Item 103, lines 3 and 4, by $547,975, from $16,711,414 to $16,163,439. And deleted language, lines 20 through 35 which read “Included in the appropriation for WVU - School of Health Sciences (fund 0343, appropriation 17400) is $2,000,000 for the School of Public Health; Graduate Medical Education; programming or research for multiple sclerosis, alzheimers, and neurosciences (including the Blanchette Rockefeller Project); and $82,000 for the West Virginia University National Center of Excellence in Women’s Health. Appropriations for WVU - School of Health Sciences (fund 0343, appropriation 17400) used for Graduate Medical Education may be transferred to the Department of Health and Human Resources Medical Service fund (fund 5084) for the purpose of matching federal or other funds used to support graduate medical education, subject to the approval of the vice-chancellor for health sciences and the Secretary of the Department of Health and Human Resources. If approval is denied, funds may be utilized by the respective institutions for expenditure on graduate medical education.” The total does NOT reflect the reductions made by the Governor.*
hereby reappropriated for expenditure during the fiscal year 2016.

* Included in the appropriation for WVU - School of Health Sciences (fund 0343, appropriation 17400) is $2,000,000 for the School of Public Health; Graduate Medical Education; programming or research for multiple sclerosis, alzheimers, and neurosciences (including the Blanchette Rockefeller Project); and $82,000 for the West Virginia University National Center of Excellence in Women’s Health. Appropriations for WVU - School of Health Sciences (fund 0343, appropriation 17400) used for Graduate Medical Education may be transferred to the Department of Health and Human Resources Medical Service fund (fund 5084) for the purpose of matching federal or other funds used to support graduate medical education, subject to the approval of the vice-chancellor for health sciences and the Secretary of the Department of Health and Human Resources. If approval is denied, funds may be utilized by the respective institutions for expenditure on graduate medical education.

* The 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 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.

104 - West Virginia University – General Administrative Fund

(WV Code Chapter 18B)
Fund 0344 FY 2016 Org 0463

1 West Virginia University .......... 45900 $ 100,354,338
2 Jackson’s Mill (R) ............... 46100 *247,549
3 West Virginia University
4 Institute for Technology .......... 47900 8,281,570
5 State Priorities –
6 Brownfield Professional
7 Development (R) ............... 53100 348,287
8 West Virginia University –
9 Potomac State ................... 99400 4,037,218
10 Total ............................. $ 113,329,126

Any unexpended balances remaining in the appropriations for Jackson’s Mill (fund 0344, appropriation 46100), and State Priorities – Brownfield Professional Development (fund 0344, appropriation 53100) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

* Note: The Governor reduced Item 104, line 2, by $60,164, from $307,713 to $247,549. And deleted language from lines 17 through 29, which read “Included in the appropriation for West Virginia University (fund 0344, appropriation 45900) is $360,000 for the WVU Law School - Skills Program; $836,400 for the College of Engineering and Mineral Resources for the WVU Coal and Energy Research Bureau, the Mining Engineering Program, and the Petroleum Engineering Program; $416,600 for farms in the Davis College of Forestry, Agriculture and Consumer Sciences; $100,000 for the WVU Soil Testing Program; and $25,000 for the West Virginia University Extension Service cyber-bullying prevention program. Included in the above appropriation for Jackson’s Mill (fund 0344, appropriation 46100) is $121,500 for the Jackson’s Mill Fire Academy.”
the Petroleum Engineering Program; $416,600 for farms in the Davis College of Forestry, Agriculture and Consumer Sciences; $100,000 for the WVU Soil Testing Program; and $25,000 for the West Virginia University Extension Service cyber-bullying prevention program.*

*Included in the above appropriation for Jackson’s Mill (fund 0344, appropriation 46100) is $121,500 for the Jackson’s Mill Fire Academy.

105 - Marshall University – School of Medicine
(WV Code Chapter 18B)

Fund 0347 FY 2016 Org 0471

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Appropriation</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marshall Medical School</td>
<td>17300</td>
<td>$12,541,389</td>
<td></td>
</tr>
<tr>
<td>Rural Health Outreach</td>
<td>37700</td>
<td>$174,600</td>
<td></td>
</tr>
<tr>
<td>Programs (R)</td>
<td>37701</td>
<td>*$250,411</td>
<td></td>
</tr>
<tr>
<td>Forensic Lab</td>
<td>37702</td>
<td>*$165,037</td>
<td></td>
</tr>
<tr>
<td>Center for Rural Health</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marshall University Medical</td>
<td>44900</td>
<td>$877,385</td>
<td></td>
</tr>
<tr>
<td>School BRIM Subsidy</td>
<td>44900</td>
<td>$877,385</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$14,283,374</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Rural Health Outreach Program (fund 0347, appropriation 37700) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

The above appropriation for Rural Health Outreach Programs (fund 0347, appropriation 37700) includes rural health

*NOTE: The Governor reduced Item 105, line 4, by $164,589, from $415,000 to $250,411; line 5 by $109,963, from $275,000 to $165,037. The total does NOT reflect the reductions made by the Governor.
activities and programs; rural residency development and education; and rural outreach activities.

The above appropriation for 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.

106 - Marshall University –
General Administration Fund

(WV Code Chapter 18B)

<table>
<thead>
<tr>
<th>Fund 0348 FY 2016 Org 0471</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Marshall University</td>
<td>$ 47,262,017</td>
</tr>
<tr>
<td>2  Vista E-Learning (R.)</td>
<td>259,207</td>
</tr>
<tr>
<td>3  State Priorities –</td>
<td></td>
</tr>
<tr>
<td>4  Brownfield Professional</td>
<td></td>
</tr>
<tr>
<td>5  Development (R.)</td>
<td>348,287</td>
</tr>
<tr>
<td>6  Marshall University Graduate</td>
<td></td>
</tr>
<tr>
<td>7  College Writing Project</td>
<td>21,601</td>
</tr>
<tr>
<td>8  Luke Lee Listening</td>
<td></td>
</tr>
<tr>
<td>9  Language and Learning</td>
<td></td>
</tr>
<tr>
<td>10 Lab.</td>
<td>$105,000</td>
</tr>
<tr>
<td>11 WV Autism Training</td>
<td></td>
</tr>
<tr>
<td>12 Center (R.)</td>
<td>1,846,830</td>
</tr>
<tr>
<td>13 Total</td>
<td>$49,912,942</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 53100) and WV Autism Training Center (fund

*NOTE: The Governor reduced Item 106, lines 8 through 10, by $70,000, from $175,000 to $105,000. The total does NOT reflect the reductions made by the Governor.
0348, appropriation 93200) at the close of fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

**107 - West Virginia School of Osteopathic Medicine**

(WV Code Chapter 18B)

**Fund 0336 FY 2016 Org 0476**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fiscal Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>West Virginia School of Osteopathic Medicine</td>
<td></td>
<td>$7,008,276</td>
</tr>
<tr>
<td>2</td>
<td>Rural Health Outreach Programs (R.)</td>
<td></td>
<td>175,367</td>
</tr>
<tr>
<td>3</td>
<td>West Virginia School of Osteopathic Medicine</td>
<td></td>
<td>150,751</td>
</tr>
<tr>
<td>4</td>
<td>Rural Health Initiative – Medical Schools Support</td>
<td></td>
<td>418,652</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$8,203,104</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) at the close of fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

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.

The above appropriation for BRIM subsidy (fund 0336, appropriation 40300) shall be paid to the Board of Risk and Insurance Management as a general revenue subsidy against the

*NOTE: The Governor reduced Item 107, lines 1 and 2, by $450,058, from $7,458,334 to $7,008,276. The total does NOT reflect the reductions made by the Governor.*
“Total Premium Billed” to the institution as part of the full cost of their malpractice insurance coverage.

108 - Bluefield State College
(WV Code Chapter 18B)
Fund 0354 FY 2016 Org 0482
1 Bluefield State College. .......... 40800 $ *5,815,119

109 - Concord University
(WV Code Chapter 18B)
Fund 0357 FY 2016 Org 0483
1 Concord University. ............. 41000 $ 8,933,744

110 - Fairmont State University
(WV Code Chapter 18B)
Fund 0360 FY 2016 Org 0484
1 Fairmont State University. ..... 41400 $ 15,668,202

111 - Glenville State College
(WV Code Chapter 18B)
Fund 0363 FY 2016 Org 0485
1 Glenville State College. .......... 42800 $ 6,034,427

* NOTE: The Governor reduced Item 108, line 1, by $8,561, from $5,823,680 to $5,815,119. The total does NOT reflect the reductions made by the Governor.
112 - Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2016 Org 0486

1 Shepherd University........... 43200 $ *9,831,330

113 - West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2016 Org 0488

1 West Liberty University........... 43900 $ *8,196,740

114 - West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2016 Org 0490

1 West Virginia State University. . . 44100 $ *10,307,141
2 West Virginia State University
3 Land Grant Match. ............ 95600 1,649,709
4 Total.......................... $ 12,383,400

5 Total TITLE II, Section 1 —
6 General Revenue
7 (Including claims against the state)... $ 4,305,776,000

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

*NOTE: The Governor reduced Item 112, line 1, by $90,226, from
$9,921,556 to $9,831,330; Item 113, line 1, by $1,589, from
$8,198,329 to $8,196,740; Item 114, line 1, by $426,550,
from $10,733,691 to $10,307,141. The total does NOT reflect
the reductions made by the Governor.
11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2016.

**DEPARTMENT OF TRANSPORTATION**

*115 - Division of Motor Vehicles*

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2016 Org 0802

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>State Road Fund</th>
</tr>
</thead>
<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>4 Repairs and Alterations</td>
<td>06400</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>07000</td>
</tr>
<tr>
<td>6 Buildings</td>
<td>25800</td>
</tr>
<tr>
<td>7 Other Assets</td>
<td>69000</td>
</tr>
<tr>
<td>8 BRIM Premium</td>
<td>91300</td>
</tr>
<tr>
<td>9 Total</td>
<td></td>
</tr>
</tbody>
</table>

*116 - Division of Highways*

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2016 Org 0803

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>04000</td>
</tr>
<tr>
<td>2 Maintenance</td>
<td>23700</td>
</tr>
<tr>
<td>3 Maintenance, Contract Paving and Secondary</td>
<td></td>
</tr>
<tr>
<td>4 Road Maintenance</td>
<td>27200</td>
</tr>
<tr>
<td>5 Bridge Repair and Replacement</td>
<td>27300</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>------------------------------------</td>
</tr>
<tr>
<td>8</td>
<td>Inventory Revolving</td>
</tr>
<tr>
<td>9</td>
<td>Equipment Revolving</td>
</tr>
<tr>
<td>10</td>
<td>General Operations</td>
</tr>
<tr>
<td>11</td>
<td>Interstate Construction</td>
</tr>
<tr>
<td>12</td>
<td>Other Federal Aid Programs</td>
</tr>
<tr>
<td>13</td>
<td>Appalachian Programs</td>
</tr>
<tr>
<td>14</td>
<td>Nonfederal Aid Construction</td>
</tr>
<tr>
<td>15</td>
<td>Highway Litter Control</td>
</tr>
<tr>
<td>16</td>
<td>Courtesy Patrol</td>
</tr>
<tr>
<td>17</td>
<td>Total</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.

117 - Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2016 Org 0808

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>$1,585,201</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$344,278</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$5,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$7,500</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>$10,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$1,951,979</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 2016.

LEGISLATIVE

118 - Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2016 Org 2300

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>$498,020</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 2016 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>133,903</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>1,000</td>
</tr>
<tr>
<td>5</td>
<td>Economic Loss Claim</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Payment Fund</td>
<td>3,460,125</td>
</tr>
<tr>
<td>7</td>
<td>Other Assets</td>
<td>3,700</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>4,096,748</td>
</tr>
</tbody>
</table>

#### JUDICIAL

**119 - Supreme Court – Family Court Fund**

(WV Code Chapter 51)

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 2016 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>1,200,000</td>
</tr>
</tbody>
</table>

#### EXECUTIVE

**120 - Governor’s Office Minority Affairs Fund**

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 2016 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>172,800</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>512,126</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>684,926</td>
</tr>
</tbody>
</table>

**121 - Auditor’s Office – Land Operating Fund**

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2016 Org 1200
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th>Ch. 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits.</td>
<td>$ 642,647</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified.</td>
<td>15,139</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses.</td>
<td>440,291</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations.</td>
<td>2,600</td>
</tr>
<tr>
<td>6</td>
<td>Equipment.</td>
<td>426,741</td>
</tr>
<tr>
<td>7</td>
<td>Cost of Delinquent Land Sales.</td>
<td>1,341,168</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$ 2,868,586</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.

**122 - Auditor’s Office – Local Government Purchasing Card Expenditure Fund**

(WV Code Chapter 6)

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits.</td>
<td>$ 308,087</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses.</td>
<td>62,030</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations.</td>
<td>6,000</td>
</tr>
<tr>
<td>5</td>
<td>Equipment.</td>
<td>10,805</td>
</tr>
<tr>
<td>6</td>
<td>Other Assets.</td>
<td>50,000</td>
</tr>
<tr>
<td>7</td>
<td>Statutory Revenue Distribution.</td>
<td>1,500,000</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$ 1,936,922</td>
</tr>
</tbody>
</table>
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

123 - Auditor’s Office –
Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2016 Org 1200

1 Personal Services and
2 Employee Benefits.............. 00100 $ 1,882,510
3 Unclassified. ................. 09900 31,866
4 Current Expenses............. 13000 838,830
5 Repairs and Alterations........ 06400 12,400
6 Equipment.................. 07000 19,700
7 Other Assets.................. 69000 673,326
8 Total.......................... $ 3,458,632

124 - Auditor’s Office –
Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1233 FY 2016 Org 1200

1 Current Expenses............. 13000 $ 300,000
2 Other Assets.................. 69000 100,000
3 Total......................... $ 400,000

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.
### Appropriations

**125 - Auditor’s Office – Purchasing Card Administration Fund**

(WV Code Chapter 12)

Fund 1234 FY 2016 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$2,499,307</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>1,578,622</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>5,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>650,000</td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
<td>308,886</td>
</tr>
<tr>
<td>Statutory Revenue</td>
<td>74100</td>
<td>4,000,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$9,042,315</td>
</tr>
</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 State Park Operating Fund (fund 3265) per W.Va. Code §12-3-10d.

### Appropriations

**126 - Auditor’s Office – Chief Inspector’s Fund**

(WV Code Chapter 6)

Fund 1235 FY 2016 Org 1200

<table>
<thead>
<tr>
<th>Description</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>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>765,915</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>50,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$4,221,427</td>
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</tbody>
</table>
### 127 - Auditor’s Office – Volunteer Fire Department Workers’ Compensation Premium Subsidy Fund

(WV Code Chapters 12 and 33)

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>FY 2016 Org 1200</th>
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<tbody>
<tr>
<td></td>
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</tr>
<tr>
<td></td>
<td>Volunteer Fire Department</td>
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</tr>
<tr>
<td>1</td>
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</tr>
<tr>
<td>2</td>
<td>Workers’ Compensation</td>
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<tr>
<td>3</td>
<td>Subsidy</td>
<td>$ 2,500,000</td>
</tr>
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</table>

### 128 - Treasurer’s Office – College Prepaid Tuition and Savings Program Administrative Account

(WV Code Chapter 18)

Fund 1301 FY 2016 Org 1300

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>FY 2016 Org 1300</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Personal Services and Employee</td>
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</tr>
<tr>
<td>1</td>
<td>Benefits</td>
<td>$ 769,227</td>
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<tr>
<td>2</td>
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<tr>
<td>3</td>
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<td>625,404</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$ 1,408,631</td>
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### 129 - Treasurer’s Office – Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1329 FY 2016 Org 1300

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Personal Services and Employee</td>
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<tr>
<td>1</td>
<td>Benefits</td>
<td>$ 183,074</td>
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<td>2</td>
<td>Unclassified</td>
<td>4,700</td>
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<td>228,875</td>
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<td>4</td>
<td>Other Assets</td>
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<td>$ 476,649</td>
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### 130 - Department of Agriculture – Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2016 Org 1400

<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>
<td>00100</td>
<td>$2,244,245</td>
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<td>Unclassified</td>
<td>09900</td>
<td>37,425</td>
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<td>13000</td>
<td>1,356,184</td>
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<td>58,500</td>
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<td>Equipment</td>
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<td>36,209</td>
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<td>Other Assets</td>
<td>69000</td>
<td>10,000</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,742,563</strong></td>
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</table>

### 131 - Department of Agriculture – West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2016 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</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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<td><strong>$1,047,687</strong></td>
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### 132 - Department of Agriculture – General John McCausland Memorial Farm Fund

(WV Code Chapter 19)

Fund 1409 FY 2016 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<tr>
<td>Unclassified</td>
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<td>$2,100</td>
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<td>129,500</td>
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<td>Item</td>
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<td>Code</td>
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</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>47,400</td>
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<td>31,000</td>
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<td>Total</td>
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<td>$ 210,000</td>
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The above appropriations shall be expended in accordance with Article 26, Chapter 19 of the Code.

133 - Department of Agriculture – Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2016 Org 1400

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<td>$ 309,248</td>
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<td>09900</td>
<td>15,173</td>
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<td>13000</td>
<td>1,167,464</td>
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<td>Repairs and Alterations</td>
<td>06400</td>
<td>238,722</td>
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</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>249,393</td>
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<td>Other Assets</td>
<td>69000</td>
<td>20,000</td>
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<tr>
<td>Total</td>
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<td>$ 2,000,000</td>
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</table>

134 - Department of Agriculture – Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2016 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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<td>45,807</td>
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<td>Repairs and Alterations</td>
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<td>Equipment</td>
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<tr>
<td>Other Assets</td>
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<td>27,000</td>
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<td>Total</td>
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<td>$ 4,580,713</td>
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<td>Fund</td>
<td>FY 2016 Org</td>
<td>Description</td>
<td>Code Chapter</td>
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<td>-----------------------------------------------------------------------------</td>
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<tr>
<td>1465</td>
<td>1400</td>
<td>Current Expenses. 13000 $ 100,000</td>
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<td>1481</td>
<td>1400</td>
<td>Current Expenses. 13000 $ 100</td>
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<td>1483</td>
<td>1400</td>
<td>Current Expenses. 13000 $ 7,500</td>
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<td>1507</td>
<td>1500</td>
<td>Personal Services and Employee Benefits. 00100 $ 356,900</td>
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<td></td>
<td>Current Expenses. 13000 $ 142,803</td>
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<td></td>
<td></td>
<td>Repairs and Alterations. 06400 $ 3,000</td>
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</tbody>
</table>
### 139 - Attorney General – Preneed Burial Contract Regulation Fund

(WV Code Chapter 47)

**Fund 1513 FY 2016 Org 1500**

<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></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
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<td>Current Expenses</td>
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<td>48,615</td>
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<td>Repairs and Alterations</td>
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<td>5</td>
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<td>5,000</td>
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<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$266,841</td>
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</table>

### 140 - Attorney General – Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

**Fund 1514 FY 2016 Org 1500**

<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>$901,135</td>
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</tbody>
</table>

### 141 - Secretary of State – Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

**Fund 1612 FY 2016 Org 1600**

<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></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$791,051</td>
</tr>
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<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>4,524</td>
</tr>
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<td>4</td>
<td>Current Expenses</td>
<td>13000</td>
<td>8,036</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$803,611</td>
</tr>
</tbody>
</table>
142 - Secretary of State –
General Administrative Fees Account

(WV Code Chapters 3, 5 and 59)

Fund 1617 FY 2016 Org 1600

1 Personal Services and
2 Employee Benefits.............. 00100 $ 2,769,898
3 Unclassified. .................. 09900 25,529
4 Current Expenses.............. 13000 796,716
5 Technology Improvements. .... 59900 750,000
6 Total................................ $ 4,342,143

DEPARTMENT OF ADMINISTRATION

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

(WV Code Chapter 4)

Fund 2041 FY 2016 Org 0201

1 Tobacco Settlement
2 Seuritization Trustee
3 Pass Thru. ...................... 65000 $ 80,000,000
4 Tobacco Settlement
5 Fund – Transfer. .............. 90200 6,000
6 Total................................ $ 80,006,000

7 The above appropriation for Tobacco Settlement Fund –
8 Transfer (appropriation 90200) shall be transferred to the
9 Division of Health (fund 5124, org 0506) for expenditure.

144 - Department of Administration –
Office of the Secretary
Employee Pension and Health Care Benefit Fund
Fund 2044 FY 2016 Org 0201

1 Current Expenses. ................. 13000 $ 34,472,000

2 The above appropriation for Current Expenses (fund 2044, appropriation 13000) shall be transferred to the Consolidated Public Retirement Board – West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601).

145 - Division of Information Services and Communications

Fund 2220 FY 2016 Org 0210

1 Personal Services and
2 Employee Benefits. .......... 00100 $ 23,378,322
3 Unclassified. ............... 09900 382,354
4 Current Expenses. ................. 13000 11,394,766
5 Repairs and Alterations. ......... 06400 1,000
6 Equipment. ................. 07000 2,034,000
7 Other Assets. ................. 69000 1,045,000
8 Total. ................................ $ 38,235,442

9 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.

10 Each spending unit operating from the general revenue fund, from special revenue funds or receiving reimbursement for postage from the federal government shall be charged monthly for all postage meter service and shall reimburse the revolving fund monthly for all such amounts.
### 146 - Division of Purchasing – 
### Vendor Fee Fund

(WV Code Chapter 5A)

**Fund 2263 FY 2016 Org 0213**

<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>
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<td>2,382</td>
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<td>Current Expenses</td>
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<td>238,115</td>
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<td>Repairs and Alterations</td>
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<td>5,000</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>2,500</td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
<td>2,500</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>810</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$906,515</strong></td>
</tr>
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</table>

### 147 - Division of Purchasing – 
### Purchasing Improvement Fund

(WV Code Chapter 5A)

**Fund 2264 FY 2016 Org 0213**

<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>
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<td>Unclassified</td>
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<td>5,562</td>
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<td>Current Expenses</td>
<td>13000</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>1,500,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>500</td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
<td>500,500</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>850</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,941,867</strong></td>
</tr>
</tbody>
</table>

### 148 - Travel Management 
### Fleet Management Office Fund

(WV Code Chapter 5A)
### Fund 2301 FY 2016 Org 0215

1. Personal Services and
   - Employee Benefits $722,586
2. Unclassified $4,000
3. Current Expenses $8,130,614
4. Repairs and Alterations $12,000
5. Equipment $800,000
6. Other Assets $2,000
7. Total $9,671,200

### Fund 2302 FY 2016 Org 0215

1. Unclassified $1,000
2. Current Expenses $149,700
3. Repairs and Alterations $400,237
4. Equipment $1,000
5. Buildings $100
6. Other Assets $100
7. Land $100
8. Total $552,237

### Fund 2440 FY 2016 Org 0222

1. Personal Services and
   - Employee Benefits $3,942,590
2. Unclassified $51,418
3. Current Expenses $1,062,813
The total amount of these appropriations shall be paid from a special revenue fund out of fees collected by the division of personnel.

151 - West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2016 Org 0228

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
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<td>Employee Benefits</td>
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<td>Repairs and Alterations</td>
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<td>600</td>
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<tr>
<td>Equipment</td>
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<tr>
<td>Other Assets</td>
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<td>1,000</td>
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<tr>
<td>Total</td>
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</table>

152 - Office of Technology – Chief Technology Officer Administration Fund

(WV Code Chapter 5A)

Fund 2531 FY 2016 Org 0231

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>Personal Services and</td>
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<tr>
<td>Employee Benefits</td>
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</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>50,000</td>
</tr>
</tbody>
</table>
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**

*153 - Division of Forestry*

(WV Code Chapter 19)

Fund 3081 FY 2016 Org 0305

1. Personal Services and
2. Employee Benefits.................. 00100 $ 1,264,328
3. Current Expenses.................... 13000 282,202
4. Repairs and Alterations............. 06400 53,000
5. Total.................................. $ 1,599,530

*154 - Division of Forestry – Timbering Operations Enforcement Fund*

(WV Code Chapter 19)

Fund 3082 FY 2016 Org 0305

1. Personal Services and
2. Employee Benefits.................. 00100 $ 224,433
3. Current Expenses.................... 13000 87,036
4. Repairs and Alterations............. 06400 11,250
5. Total.................................. $ 322,719

*155 - Geological and Economic Survey – Geological and Analytical Services Fund*

(WV Code Chapter 29)
### APPROPRIATIONS

**Fund 3100 FY 2016 Org 0306**

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
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<tbody>
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<td><strong>Total</strong></td>
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The above appropriations shall be used in accordance with W.Va. Code §29-2-4.

### 156 - West Virginia Development Office – Department of Commerce

**Marketing and Communications Operating Fund**

(WV Code Chapter 5B)

**Fund 3002 FY 2016 Org 0307**

<table>
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</thead>
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**Fund 3174 FY 2016 Org 0307**

<table>
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<tr>
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### 158 - Division of Labor – Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2016 Org 0308

| 1 | Personal Services and Employee Benefits | 00100 | $1,519,374 |
| 2 | Unclassified                            | 09900 | 21,589     |
| 3 | Current Expenses                        | 13000 | 597,995    |
| 4 | Repairs and Alterations                 | 06400 | 15,000     |
| 5 | Buildings                                | 25800 | 5,000      |
| 6 | Total                                   |       | $2,158,958 |

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

(WV Code Chapter 21)

Fund 3188 FY 2016 Org 0308

| 1 | Personal Services and Employee Benefits | 00100 | $176,772  |
| 2 | Unclassified                            | 09900 | 2,261     |
| 3 | Current Expenses                        | 13000 | 44,112    |
| 4 | Repairs and Alterations                 | 06400 | 2,000     |
| 5 | Buildings                                | 25800 | 1,000     |
| 6 | Total                                   |       | $226,145  |

### 160 - Division of Labor – Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2016 Org 0308

| 1 | Personal Services and Employee Benefits | 00100 | $84,380   |
### Unclassified

<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>$79,316</td>
</tr>
<tr>
<td>Unclassified</td>
<td>09900</td>
<td>1,281</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>44,520</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>2,000</td>
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<tr>
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<tr>
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<td>$128,117</td>
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</table>

### Division of Labor – Amusement Rides and Amusement Attraction Safety Fund

(WV Code Chapter 21)

**Fund 3192 FY 2016 Org 0308**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
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<tr>
<td>Unclassified</td>
<td>09900</td>
<td>1,281</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>44,520</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>2,000</td>
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<tr>
<td>Buildings</td>
<td>25800</td>
<td>1,000</td>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
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<td>Total</td>
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### Division of Labor – State Manufactured Housing Administration Fund

(WV Code Chapter 21)

**Fund 3195 FY 2016 Org 0308**

<table>
<thead>
<tr>
<th>Item</th>
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<tr>
<td>Personal Services and Employee Benefits</td>
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<td>09900</td>
<td>1,847</td>
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<td>13000</td>
<td>43,700</td>
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<td>1,000</td>
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<td>Buildings</td>
<td>25800</td>
<td>1,000</td>
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<tr>
<td>BRIM Premium</td>
<td>91300</td>
<td>3,404</td>
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### 163 - Division of Labor – Weights and Measures Fund

(WV Code Chapter 47)

Fund 3196 FY 2016 Org 0308

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Current Expenses</td>
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<td><strong>Total</strong></td>
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</table>

### 164 - Division of Natural Resources – License Fund – Wildlife Resources

(WV Code Chapter 20)

Fund 3200 FY 2016 Org 0310

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<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Wildlife Resources</td>
<td>02300</td>
<td>$5,551,895</td>
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<tr>
<td>Administration</td>
<td>15500</td>
<td>1,387,974</td>
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<tr>
<td>Capital Improvements and Land Purchase (R)</td>
<td>24800</td>
<td>1,387,973</td>
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<tr>
<td>Law Enforcement</td>
<td>80600</td>
<td>5,551,895</td>
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<td><strong>Total</strong></td>
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<td>$13,879,737</td>
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</table>

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 2015 is hereby reappropriated for expenditure during the fiscal year 2016.
165 - Division of Natural Resources – Natural Resources Game Fish and Aquatic Life Fund

(WV Code Chapter 22)

Fund 3202 FY 2016 Org 0310

1 Current Expenses. 13000 $ 125,000

166 - Division of Natural Resources – Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2016 Org 0310

1 Personal Services and Employee Benefits. 00100 $ 678,109
3 Current Expenses. 13000 201,930
4 Equipment. 07000 106,615
5 Total. $ 986,654

167 - Division of Natural Resources – Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2016 Org 0310

1 Personal Services and
2 Employee Benefits. 00100 $ 189,520
3 Current Expenses. 13000 157,864
4 Repairs and Alterations. 06400 15,016
5 Equipment. 07000 8,300
6 Buildings. 25800 8,300
7 Other Assets. 69000 1,000,000
8 Land. 73000 31,700
9 Total. $ 1,410,700
### 168 - Division of Natural Resources – Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2016 Org 0310

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<th>Item</th>
<th>Description</th>
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<tr>
<td>1</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$64,778</td>
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<td>3</td>
<td>Equipment</td>
<td>$1,297</td>
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<tr>
<td>4</td>
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<tr>
<td>5</td>
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<td>$135,748</td>
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</table>

### 169 - Division of Natural Resources – Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2016 Org 0310

<table>
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<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
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<td>$19,800</td>
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<td>3</td>
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### 170 - Division of Miners’ Health, Safety and Training – Special Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2016 Org 0314

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<th>Item</th>
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<td>4</td>
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<td>$1,954,557</td>
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<td>5</td>
<td>Buildings</td>
<td>$481,358</td>
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</table>
APPROPRIATIONS [Ch. 15

| 7  | Land.                        | 73000 | 1,000,000 |
| 8  | Total.                      |       | $ 4,098,506 |

171 - Division of Energy – Energy Assistance

(WV Code Chapter 5B)

Fund 3010 FY 2016 Org 0328

| 1  | Energy Assistance – Total.  | 64700 | $ 172,000 |

172 - Division of Energy – Office of Coal Field Community Development

(WV Code Chapter 5B)

Fund 3011 FY 2016 Org 0328

| 1  | Personal Services and       |       | $ 430,724 |
| 2  | Employee Benefits.          | 00100 | 8,300     |
| 3  | Unclassified.               | 09900 | 394,191   |
| 4  | Current Expenses.           | 13000 | 1,000     |
| 5  | Repairs and Alterations.    | 06400 | 4,000     |
| 6  | Equipment.                  | 07000 |           |
| 7  | Total.                      |       | $ 838,215 |

DEPARTMENT OF EDUCATION

173 - State Board of Education – Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2016 Org 0402

| 1  | Personal Services and       |       | $ 134,000 |
| 2  | Employee Benefits.          | 00100 |           |
### 174 - State Board of Education – School Construction Fund

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2016 Org 0402

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>SBA Construction Grants</td>
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### 175 - School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2016 Org 0402

<table>
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<tr>
<th>Item Description</th>
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<tbody>
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<td>Personal Services and Employee Benefits</td>
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<td>Current Expenses</td>
<td>$249,750</td>
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<tr>
<td>Repairs and Alterations</td>
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<tr>
<td>Equipment</td>
<td>$26,000</td>
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<tr>
<td>Total</td>
<td>$1,369,802</td>
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</table>

The above appropriations are for the administrative expenses of the school building authority and shall be paid from the interest earnings on debt service reserve accounts maintained on behalf of said authority.

### 176 - State Board of Education – State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 3960 FY 2016 Org 0402
248 APPROPRIATIONS

1 Personal Services and Employee Benefits........... 00100 $ 1,169,194
2 Unclassified. ................. 09900 17,000
3 Current Expenses............. 13000 707,223
4 Repairs and Alterations....... 06400 57,500
5 Equipment. .................. 07000 1,000
6 Buildings. ................... 25800 1,000
7 Other Assets................ 69000 10,000
8 Land. ........................ 73000 1,000
9 Total........................ $ 1,963,917

DEPARTMENT OF EDUCATION AND THE ARTS

177 - Office of the Secretary –
Lottery Education Fund Interest Earnings –
Control Account

(WV Code Chapter 29)

Fund 3508 FY 2016 Org 0431

1 Any unexpended balance remaining in the appropriation for
2 Educational Enhancements (fund 3508, appropriation 69500) at
3 the close of the fiscal year 2015 is hereby reappropriated for
4 expenditure during the fiscal year 2016.

178 - Division of Culture and History –
Public Records and Preservation Revenue Account

(WV Code Chapter 5A)

Fund 3542 FY 2016 Org 0432

1 Personal Services and
2 Employee Benefits........... 00100 $ 211,418
3 Current Expenses............. 13000 862,241
4 Equipment. .................. 07000 75,000
### 179 - State Board of Rehabilitation –
**Division of Rehabilitation Services –**
*West Virginia Rehabilitation Center Special Account*

(WV Code Chapter 18)

**Fund 8664 FY 2016 Org 0932**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services and</td>
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</tr>
<tr>
<td>2 Employee Benefits</td>
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<tr>
<td>3 Current Expenses</td>
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<tr>
<td>4 Equipment</td>
<td>00700</td>
<td>220,000</td>
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<tr>
<td>5 Repairs and Alterations</td>
<td>06400</td>
<td>85,500</td>
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<tr>
<td>6 Buildings</td>
<td>25800</td>
<td>150,000</td>
</tr>
<tr>
<td>7 Other Assets</td>
<td>69000</td>
<td>150,000</td>
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<tr>
<td><strong>Total</strong></td>
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### DEPARTMENT OF ENVIRONMENTAL PROTECTION

**180 - Solid Waste Management Board**

(WV Code Chapter 22C)

**Fund 3288 FY 2016 Org 0312**

<table>
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<tr>
<th>Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services and</td>
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<tr>
<td>2 Employee Benefits</td>
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<td>3 Current Expenses</td>
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<td>2,059,077</td>
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<tr>
<td>4 Repairs and Alterations</td>
<td>06400</td>
<td>1,000</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>07000</td>
<td>5,000</td>
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<tr>
<td>6 Other Assets</td>
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<tr>
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</table>
### 181 - Division of Environmental Protection – Protect Our Water Fund

(WV Code Chapter 22)

**Fund 3017 FY 2016 Org 0313**

<table>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
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<td>$200,000</td>
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### 182 - Division of Environmental Protection – Hazardous Waste Management Fund

(WV Code Chapter 22)

**Fund 3023 FY 2016 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tbody>
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<td>1</td>
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<td>3</td>
<td>Repairs and Alterations</td>
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<td>500</td>
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<td>4</td>
<td>Equipment</td>
<td>07000</td>
<td>4,000</td>
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<td>5</td>
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### 183 - Division of Environmental Protection – Air Pollution Education and Environment Fund

(WV Code Chapter 22)

**Fund 3024 FY 2016 Org 0313**

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<th>Description</th>
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<tbody>
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<td>1</td>
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<td>Repairs and Alterations</td>
<td>06400</td>
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<td>4</td>
<td>Equipment</td>
<td>07000</td>
<td>53,105</td>
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<td>5</td>
<td>Other Assets</td>
<td>69000</td>
<td>10,000</td>
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</table>
184 - Division of Environmental Protection –
Special Reclamation Fund

(WV Code Chapter 22)

Fund 3321 FY 2016 Org 0313

1 Personal Services and
2 Employee Benefits............ 00100 $ 1,350,829
3 Current Expenses............. 13000 16,402,506
4 Repairs and Alterations....... 06400 79,950
5 Equipment.................... 07000 130,192
6 Other Assets.................. 69000 32,000
7 Total............................ $ 17,995,477

185 - Division of Environmental Protection –
Oil and Gas Reclamation Fund

(WV Code Chapter 22)

Fund 3322 FY 2016 Org 0313

1 Personal Services and
2 Employee Benefits............ 00100 $ 163,594
3 Current Expenses............. 13000 512,329
4 Total............................ $ 675,923

186 - Division of Environmental Protection –
Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

Fund 3323 FY 2016 Org 0313

1 Personal Services and
2 Employee Benefits............ 00100 $ 2,899,788
3 Current Expenses............. 13000 1,414,609
4 Repairs and Alterations....... 06400 15,600
### Appropriations

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<tr>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>5</td>
<td>Equipment</td>
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<td>6</td>
<td>Other Assets</td>
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<td>15,000</td>
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187 - Division of Environmental Protection – Mining and Reclamation Operations Fund

(WV Code Chapter 22)

Fund 3324 FY 2016 Org 0313

<table>
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<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
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<td>2</td>
<td>Employee Benefits</td>
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188 - Division of Environmental Protection – Underground Storage Tank Administrative Fund

(WV Code Chapter 22)

Fund 3325 FY 2016 Org 0313

<table>
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<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
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</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
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<td>3,500</td>
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<tr>
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189 - Division of Environmental Protection – Hazardous Waste Emergency Response Fund

(WV Code Chapter 22)
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<th></th>
<th></th>
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<th>Total</th>
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<tr>
<td>1</td>
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<td>3</td>
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<td>4</td>
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</tr>
<tr>
<td>6</td>
<td><strong>Total</strong>..................................</td>
<td>$ 1,104,035</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

190 - Division of Environmental Protection – Solid Waste Reclamation and Environmental Response Fund

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th></th>
<th>Personal Services and</th>
<th></th>
<th></th>
<th></th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Employee Benefits</strong>.................. 00100</td>
<td>$ 779,261</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2</td>
<td><strong>Current Expenses</strong>................... 13000</td>
<td>3,657,693</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>3</td>
<td><strong>Repairs and Alterations</strong>............. 06400</td>
<td>10,150</td>
<td></td>
<td></td>
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<tr>
<td>4</td>
<td><strong>Equipment</strong>............................ 07000</td>
<td>31,500</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td><strong>Other Assets</strong>......................... 69000</td>
<td>1,000</td>
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<td>6</td>
<td><strong>Total</strong>..................................</td>
<td>$ 4,479,604</td>
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<td></td>
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</tbody>
</table>

191 - Division of Environmental Protection – Solid Waste Enforcement Fund

(WV Code Chapter 22)
5 Equipment. 07000 28,356
6 Other Assets. 69000 25,554
7 Total. $ 4,178,638

192 - Division of Environmental Protection – Air Pollution Control Fund

(WV Code Chapter 22)

Fund 3336 FY 2016 Org 0313

1 Personal Services and
2 Employee Benefits. 00100 $ 5,658,302
3 Current Expenses. 13000 1,560,534
4 Repairs and Alterations. 06400 74,045
5 Equipment. 07000 106,927
6 Other Assets. 69000 44,249
7 Total. $ 7,444,057

193 - Division of Environmental Protection – Environmental Laboratory Certification Fund

(WV Code Chapter 22)

Fund 3340 FY 2016 Org 0313

1 Personal Services and
2 Employee Benefits. 00100 $ 296,164
3 Current Expenses. 13000 94,688
4 Repairs and Alterations. 06400 1,000
5 Equipment. 07000 6,500
6 Other Assets. 69000 126,000
7 Total. $ 524,352

194 - Division of Environmental Protection – Stream Restoration Fund
<table>
<thead>
<tr>
<th>Fund 3349 FY 2016 Org 0313</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Current Expenses</td>
<td>$11,294,705</td>
<td></td>
</tr>
<tr>
<td>2 Repairs and Alterations</td>
<td>2,500</td>
<td></td>
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<tr>
<td>3 Equipment</td>
<td>500</td>
<td></td>
</tr>
<tr>
<td>4 Other Assets</td>
<td>500</td>
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<tr>
<td>5 Total</td>
<td>$11,298,205</td>
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</table>

195 - Division of Environmental Protection – Litter Control Fund

<table>
<thead>
<tr>
<th>Fund 3486 FY 2016 Org 0313</th>
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</thead>
<tbody>
<tr>
<td>1 Current Expenses</td>
<td>$60,000</td>
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</table>

196 - Division of Environmental Protection – Recycling Assistance Fund

<table>
<thead>
<tr>
<th>Fund 3487 FY 2016 Org 0313</th>
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<tbody>
<tr>
<td>1 Personal Services and</td>
<td>$544,553</td>
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<tr>
<td>2 Employee Benefits</td>
<td>2,237,354</td>
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<tr>
<td>3 Current Expenses</td>
<td>800</td>
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<tr>
<td>4 Repairs and Alterations</td>
<td>500</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>2,500</td>
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<tr>
<td>6 Other Assets</td>
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<tr>
<td>7 Total</td>
<td>$2,785,707</td>
</tr>
</tbody>
</table>

197 - Division of Environmental Protection – Mountaintop Removal Fund
### Fund 3490 FY 2016 Org 0313

1. **Personal Services and Employee Benefits**
   - 00100
   - $1,228,345

2. **Current Expenses**
   - 13000
   - 649,909

3. **Repairs and Alterations**
   - 06400
   - 20,112

4. **Equipment**
   - 07000
   - 23,725

5. **Other Assets**
   - 69000
   - 15,500

6. **Total**
   - $1,937,591

### 198 - Oil and Gas Conservation Commission – Special Oil and Gas Conservation Fund (WV Code Chapter 22C)

### Fund 3371 FY 2016 Org 0315

1. **Personal Services and Employee Benefits**
   - 00100
   - $157,224

2. **Current Expenses**
   - 13000
   - 161,225

3. **Repairs and Alterations**
   - 06400
   - 1,000

4. **Equipment**
   - 07000
   - 9,481

5. **Other Assets**
   - 69000
   - 1,500

6. **Total**
   - $330,430

### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

### 199 - Division of Health – Tobacco Settlement Expenditure Fund (WV Code Chapter 4)

### Fund 5124 FY 2016 Org 0506

1. **Institutional Facilities Operations**
   - 33500
   - $6,000

3. Additional funds have been appropriated in fund 0525, fiscal year 2016, organization 0506, and fund 5156, fiscal year 2016,
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.

200 - Division of Health –
The Vital Statistics Account

(WV Code Chapter 16)

Fund 5144 FY 2016 Org 0506

1 Personal Services and
2 Employee Benefits.............. 00100 $ 876,771
3 Unclassified.................. 09900 15,500
4 Current Expenses............. 13000 785,954
5 Equipment..................... 07000 30,000
6 Other Assets.................. 69000 441,834
7 Total................................. $ 2,150,059

201 - Division of Health –
Hospital Services Revenue Account
Special Fund
Capital Improvement, Renovation and Operations

(WV Code Chapter 16)

Fund 5156 FY 2016 Org 0506

1 Institutional Facilities
2 Operations.................. 33500 $ 56,708,911
3 Medical Services Trust Fund –
4 Transfer................. 51200 27,800,000
5 Total................................. $ 84,508,911
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 2016, organization 0506 and fund 5124, fiscal year 2016, 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, 2015, the sum of $160,000 shall be transferred to the department of agriculture – land division – farm operation 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.

202 - Division of Health – Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2016 Org 0506

1 Personal Services and
2 Employee Benefits............. 00100 $ 912,657
3 Unclassified. 09900  18,114
4 Current Expenses. 13000  850,133
5 Equipment. 07000  30,583
6 Total.  $ 1,811,487

203 - Division of Health –
The Health Facility Licensing Account

(WV Code Chapter 16)
Fund 5172 FY 2016 Org 0506

1 Personal Services and
2 Employee Benefits. 00100  $ 605,950
3 Unclassified. 09900  7,113
4 Current Expenses. 13000  98,247
5 Total.  $ 711,310

204 - Division of Health –
Hepatitis B Vaccine

(WV Code Chapter 16)
Fund 5183 FY 2016 Org 0506

1 Personal Services and
2 Employee Benefits. 00100  $ 88,582
3 Unclassified. 09900  18,477
4 Current Expenses. 13000  1,740,699
5 Total.  $ 1,847,758

205 - Division of Health –
Lead Abatement Account

(WV Code Chapter 16)
Fund 5204 FY 2016 Org 0506

1 Personal Services and
2 Employee Benefits. 00100  $ 19,100
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>373</td>
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<tr>
<td>4</td>
<td>Current Expenses</td>
<td>13000</td>
<td>17,875</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$37,348</td>
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</tbody>
</table>

*206 - Division of Health – West Virginia Birth-to-Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2016 Org 0506

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
<td></td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>707,545</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>223,999</td>
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<tr>
<td>4</td>
<td>Current Expenses</td>
<td>13000</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$22,399,982</td>
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</table>

*207 - Division of Health – Tobacco Control Special Fund*

(WV Code Chapter 16)

Fund 5218 FY 2016 Org 0506

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>13000</td>
<td>7,579</td>
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</table>

*208 - West Virginia Health Care Authority – Health Care Cost Review Fund*

(WV Code Chapter 16)

Fund 5375 FY 2016 Org 0507

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</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>3,033,821</td>
</tr>
<tr>
<td>3</td>
<td>Hospital Assistance</td>
<td>02500</td>
<td>600,000</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>09900</td>
<td>67,000</td>
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<tr>
<td>5</td>
<td>Current Expenses</td>
<td>13000</td>
<td>2,837,945</td>
</tr>
<tr>
<td>6</td>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>25,000</td>
</tr>
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</table>
### Ch. 15] APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>FY 2016 Org 0507</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 Equipment</td>
<td>07000</td>
</tr>
<tr>
<td>8 Buildings</td>
<td>25800</td>
</tr>
<tr>
<td>9 Other Assets</td>
<td>69000</td>
</tr>
<tr>
<td>10 <strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</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.

The Health Care Authority is authorized to transfer up to $1,500,000 from fund 5375 to the West Virginia Health Information Network Account (fund 5380) as authorized per W.Va. Code §16-29G-4.

#### 209 - West Virginia Health Care Authority – West Virginia Health Information Network Account

(WV Code Chapter 16)

<table>
<thead>
<tr>
<th>Fund 5380 FY 2016 Org 0507</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services and</td>
</tr>
<tr>
<td>2 Employee Benefits</td>
</tr>
<tr>
<td>3 Unclassified</td>
</tr>
<tr>
<td>4 Current Expenses</td>
</tr>
<tr>
<td>5 Technology Infrastructure</td>
</tr>
<tr>
<td>6 Network</td>
</tr>
<tr>
<td>7 <strong>Total</strong></td>
</tr>
</tbody>
</table>

#### 210 - West Virginia Health Care Authority – Revolving Loan Fund

(WV Code Chapter 16)

<table>
<thead>
<tr>
<th>Fund 5382 FY 2016 Org 0507</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Current Expenses</td>
</tr>
</tbody>
</table>
211 - Division of Human Services –
Health Care Provider Tax –
Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2016 Org 0511

1 Medical Services. ................. 18900 $ 198,381,008
2 Medical Services
3 Administrative Costs. .......... 78900 418,992
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).

212 - Division of Human Services –
Child Support Enforcement Fund

(WV Code Chapter 48A)

Fund 5094 FY 2016 Org 0511

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

Any unexpended balances remaining in the appropriations
for Unclassified (fund 5094, appropriation 09900) and Current
Expenses (fund 5094, appropriation 13000) at the close of the
Ch. 15] APPROPRIATIONS 263

9 fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

213 - Division of Human Services – Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2016 Org 0511

1 Medical Services. . . . . . . . . . . . . 18900 $ 55,858,205
2 Medical Services
3 Administrative Costs. . . . . . . . 78900 548,723
4 Total. . . . . . . . . . . . . . . . . . . . . . . . . . $ 56,406,928

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.

214 - Division of Human Services – James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2016 Org 0511

1 Personal Services and
2 Employee Benefits. . . . . . . . . . . . . 00100 $ 89,392
3 Unclassified. . . . . . . . . . . . . . . . . . . 09900 16,031
4 Current Expenses. . . . . . . . . . . . . . . 13000 1,497,688
5 Total. . . . . . . . . . . . . . . . . . . . . . . . . . $ 1,603,111
### 215 - Division of Human Services – Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2016 Org 0511

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>$1,077,982</td>
</tr>
</tbody>
</table>

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

(WV Code Chapter 9)

Fund 5467 FY 2016 Org 0511

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>$1,065,000</td>
</tr>
</tbody>
</table>

### 217 - Division of Human Services – West Virginia Works Separate State Two-Parent Program Fund

(WV Code Chapter 9)

Fund 5468 FY 2016 Org 0511

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Current Expenses</td>
<td>$3,250,000</td>
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</table>

### 218 - Division of Human Services – Marriage Education Fund

(WV Code Chapter 9)

Fund 5490 FY 2016 Org 0511

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>Personal Services and</td>
<td>$10,000</td>
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<td>Employee Benefits</td>
<td>$10,000</td>
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<td>Current Expenses</td>
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<td>$35,000</td>
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</table>
DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY

219 - Department of Military Affairs and Public Safety –
Office of the Secretary –
Law-Enforcement, Safety and Emergency Worker
Funeral Expense Payment Fund

(WV Code Chapter 15)

Fund 6003 FY 2016 Org 0601

1 Current Expenses. .................. 13000 $ 32,000

220 - State Armory Board –
General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2016 Org 0603

1 Personal Services and
2 Employee Benefits............. 00100 $ 1,643,528
3 Current Expenses............. 13000 750,000
4 Repairs and Alterations........ 06400 $ 485,652
5 Equipment. ................. 07000 300,000
6 Buildings. .............. 25800 $ 770,820
7 Land. ....................... 73000 50,000
8 Total......................... $ 4,000,000

9 From the above appropriations, the Adjutant General may
10 receive and expend funds to conduct operations and activities to
11 include functions of the Military Authority. The Adjutant
12 General may transfer funds between appropriations, except no
13 funds may be transferred to Personal Services and Employee
14 Benefits (fund 6057, appropriation 00100).
221 - Division of Homeland Security and Emergency Management –
West Virginia Interoperable Radio Project

(WV Code Chapter 24)

Fund 6295 FY 2016 Org 0606

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

2 Any unexpended balance remaining in the appropriation for
3 Unclassified – Total (fund 6295, appropriation 09600) at the
4 close of fiscal year 2015 is hereby reappropriated for expenditure
5 during the fiscal year 2016.

222 - West Virginia Division of Corrections –
Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2016 Org 0608

1 Personal Services and
2 Employee Benefits............. 00100 $ 1,013,793
3 Unclassified. .................. 09900 9,804
4 Current Expenses.............. 13000 758,480
5 Equipment. .................... 07000 30,000
6 Other Assets................. 69000 40,129
7 Total........................... $ 1,852,206

223 - West Virginia State Police –
Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2016 Org 0612

1 Personal Services and
2 Employee Benefits............. 00100 $ 1,786,923
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. Per W.Va. §17C-16-5(a) any balance remaining in the fund on the last day of June of each fiscal year, not required for the administration and enforcement of the provisions of this article, shall be transferred to the state road fund.

224 - West Virginia State Police –
Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2016 Org 0612

1 Current Expenses. . . . . . . . . . . . . . . 13000 $ 1,327,000
2 Equipment. . . . . . . . . . . . . . . . . . . 07000 3,491,895
3 BRIM Premium. . . . . . . . . . . . . . . . . 91300 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.

225 - West Virginia State Police –
Surplus Real Property Proceeds Fund

(WV Code Chapter 15)
### APPROPRIATIONS [Ch. 15]

#### Fund 6516 FY 2016 Org 0612

<table>
<thead>
<tr>
<th>Item</th>
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<tr>
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<td>Land</td>
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<tr>
<td>BRIM Premium</td>
<td>77,222</td>
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<tr>
<td>Total</td>
<td>$522,202</td>
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</table>

226 - West Virginia State Police – Surplus Transfer Account

(WV Code Chapter 15)

#### Fund 6519 FY 2016 Org 0612

<table>
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<th>Item</th>
<th>Amount</th>
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<tr>
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<tr>
<td>Repairs and Alterations</td>
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<td>Equipment</td>
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<td>Buildings</td>
<td>40,000</td>
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<td>Other Assets</td>
<td>45,000</td>
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<tr>
<td>BRIM Premium</td>
<td>18,524</td>
</tr>
<tr>
<td>Total</td>
<td>$366,065</td>
</tr>
</tbody>
</table>

227 - West Virginia State Police – Central Abuse Registry Fund

(WV Code Chapter 15)

#### Fund 6527 FY 2016 Org 0612

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
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<td>Current Expenses</td>
<td>51,443</td>
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<td>Repairs and Alterations</td>
<td>500</td>
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<td>Equipment</td>
<td>200,500</td>
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<td>Other Assets</td>
<td>500</td>
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<tr>
<td>BRIM Premium</td>
<td>18,524</td>
</tr>
<tr>
<td>Total</td>
<td>$508,348</td>
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</table>
228 - West Virginia State Police –
Bail Bond Enforcer Account

(WV Code Chapter 15)

Fund 6532 FY 2016 Org 0612

<table>
<thead>
<tr>
<th>Current Expenses</th>
<th>13000</th>
<th>8,300</th>
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</thead>
</table>

229 - West Virginia State Police –
State Police Academy Post Exchange

(WV Code Chapter 15)

Fund 6544 FY 2016 Org 0612

| Current Expenses | 13000 | 160,000 |
| Repairs and Alterations | 06400 | 40,000 |
| Total | | 200,000 |

230 - Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2016 Org 0615

| Personal Services and Employee Benefits | 00100 | 1,971,039 |
| Debt Service | 04000 | 9,000,000 |
| Current Expenses | 13000 | 495,852 |
| Repairs and Alterations | 06400 | 4,000 |
| Equipment | 07000 | 1,743 |
| Total | | 11,472,634 |

231 - Fire Commission –
Fire Marshal Fees

(WV Code Chapter 29)
<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 Employee Benefits</td>
<td>00100</td>
<td>$2,848,036</td>
</tr>
<tr>
<td>2</td>
<td>Unclassified</td>
<td>09900</td>
<td>3,800</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
<td>1,238,550</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>54,500</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>07000</td>
<td>50,800</td>
</tr>
<tr>
<td>6</td>
<td>Other Assets</td>
<td>69000</td>
<td>12,000</td>
</tr>
<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>91300</td>
<td>50,000</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$4,257,686</td>
</tr>
</tbody>
</table>

**232 - Division of Justice and Community Services – WV Community Corrections Fund**

(WV Code Chapter 62)

<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 Employee Benefits</td>
<td>00100</td>
<td>$152,000</td>
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<tr>
<td>2</td>
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<td>09900</td>
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<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
<td>1,846,250</td>
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<td>4</td>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>1,000</td>
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<tr>
<td>5</td>
<td>Total</td>
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<td>$2,000,000</td>
</tr>
</tbody>
</table>

**233 - Division of Justice and Community Services – Court Security Fund**

(WV Code Chapter 51)

<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 Employee Benefits</td>
<td>00100</td>
<td>$21,865</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>13000</td>
<td>1,478,135</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$1,500,000</td>
</tr>
</tbody>
</table>
DEPARTMENT OF REVENUE

234 - Division of Financial Institutions

(WV Code Chapter 31A)

Fund 3041 FY 2016 Org 0303

1 Personal Services and Employee Benefits............ 00100   $ 2,409,034
2 Unclassified. .................. 09900 32,290
3 Current Expenses.................. 13000 719,042
4 Repairs and Alterations. ......... 06400 1,000
5 Equipment. ...................... 07000 20,000
6 Other Assets. ................. 69000 47,710
7 Total............................... $ 3,229,076

235 - Office of the Secretary – Revenue Shortfall Reserve Fund

(WV Code Chapter 11B)

Fund 7005 FY 2016 Org 0701

1 Medical Services
2 Trust Fund – Transfer. ........ 51200 $ *14,792,331

The above appropriation for Medical Services Trust Fund – Transfer (appropriation 51200) shall be transferred to the Medical Services Trust Fund (fund 5185).

The above appropriation does not affect the provisions of W.Va. Code Chapter 11B-2-20(e).

* NOTE: The Governor reduced Item 235, lines 1 and 2, by $8,136,597, from $22,928,928 to $14,792,331. The total does NOT reflect the reductions made by the Governor.
236 - Office of the Secretary –
State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2016 Org 0701

1 Directed Transfer. .......... 70000 $ 20,000,000

2 The above appropriation for Directed Transfer shall be
3 transferred to the Consolidated Public Retirement Board – West
4 Virginia Public Employees Retirement System Employers
5 Accumulation Fund (fund 2510).

237 - Tax Division –
Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2016 Org 0702

1 Personal Services and
2 Employee Benefits........ 00100 $ 23,459
3 Current Expenses......... 13000 7,717
4 Total...................... $ 31,176

238 - Tax Division –
Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2016 Org 0702

1 Personal Services and
2 Employee Benefits........ 00100 $ 655,203
3 Unclassified.............. 09900 9,500
4 Current Expenses.......... 13000 273,297
5 Repairs and Alterations... 06400 7,000
### 239 - Tax Division –
**Wine Tax Administration Fund**

(WV Code Chapter 60)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>7087</td>
<td>2016</td>
<td>0702</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$254,162</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>13000</td>
<td>5,406</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$259,568</td>
</tr>
</tbody>
</table>

### 240 - Tax Division –
**Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund**

(WV Code Chapter 47)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>7092</td>
<td>2016</td>
<td>0702</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Line</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>$35,000</td>
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<tr>
<td>2</td>
<td>Equipment</td>
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<td>15,000</td>
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<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$50,000</td>
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</tbody>
</table>

### 241 - Tax Division –
**Local Sales Tax and Excise Tax Administration Fund**

(WV Code Chapter 11)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>7099</td>
<td>2016</td>
<td>0702</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</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>$908,968</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>10,000</td>
</tr>
</tbody>
</table>
4 Current Expenses................. 13000 84,563
5 Repairs and Alterations......... 06400 1,000
6 Equipment....................... 07000 5,000
7 Total.............................. $ 1,009,531

242 - State Budget Office –
Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2016 Org 0703
1 Public Employees Insurance
2 Reserve Fund – Transfer....... 90300 $ 6,800,000
3 The above appropriation for Public Employees Insurance
4 Reserve Fund – Transfer shall be transferred to the Medical
5 Services Trust Fund (fund 5185, org 0511) for expenditure.

243 - Insurance Commissioner –
Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2016 Org 0704
1 Personal Services and
2 Employee Benefits............. 00100 $ 718,525
3 Current Expenses............... 13000 1,359,793
4 Repairs and Alterations....... 06400 3,000
5 Equipment....................... 07000 81,374
6 Buildings...................... 25800 8,289
7 Other Assets................... 69000 11,426
8 Total............................ $ 2,182,407

244 - Insurance Commissioner –
Consumer Advocate
### Fund 7151 FY 2016 Org 0704

<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>$550,184</td>
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<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$204,196</td>
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<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>$5,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>$34,225</td>
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<tr>
<td>Buildings</td>
<td>25800</td>
<td>$4,865</td>
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<tr>
<td>Other Assets</td>
<td>69000</td>
<td>$19,460</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$817,930</strong></td>
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</table>

### Fund 7152 FY 2016 Org 0704

<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>$24,951,887</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$8,547,598</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>$68,614</td>
</tr>
<tr>
<td>Equipment</td>
<td>07000</td>
<td>$1,906,240</td>
</tr>
<tr>
<td>Buildings</td>
<td>25800</td>
<td>$25,000</td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
<td>$500,661</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$36,000,000</strong></td>
</tr>
</tbody>
</table>

### Fund 7162 FY 2016 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Benefits</td>
<td>01000</td>
<td>$100,000</td>
</tr>
</tbody>
</table>
276 Appropriations [Ch. 15]

2 Current Expenses. . . . . . . . . . . . . . . 13000  $549,900,000
3 Total. . . . . . . . . . . . . . . . . . . . . . . . . . $550,000,000

247 - Insurance Commissioner – Workers’ Compensation Uninsured Employers’ Fund

(WV Code Chapter 23)

Fund 7163 FY 2016 Org 0704

1 Current Expenses. . . . . . . . . . . . . . . 13000  $27,000,000

248 - Insurance Commissioner – Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2016 Org 0704

1 Current Expenses. . . . . . . . . . . . . . . 13000  $5,000,000

249 - Insurance Commissioner – Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2016 Org 0704

1 Current Expenses. . . . . . . . . . . . . . . 13000  $10,000,000

250 - Lottery Commission – Revenue Center Construction Fund

(WV Code Chapter 29)

Fund 7209 FY 2016 Org 0705

1 Buildings. . . . . . . . . . . . . . . . . . . . . . . . 25800  $500,000
### 251 - Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2016 Org 0706

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$246,489</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>13000</td>
<td>105,878</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>07000</td>
<td>100</td>
</tr>
<tr>
<td>4</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$352,467</strong></td>
</tr>
</tbody>
</table>

### 252 - Racing Commission – Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2016 Org 0707

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Medical Expenses – Total</td>
<td>24500</td>
<td>$57,000</td>
</tr>
</tbody>
</table>

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.

### 253 - Racing Commission – Administration and Promotion Account

(WV Code Chapter 19)

Fund 7304 FY 2016 Org 0707

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$256,665</td>
</tr>
</tbody>
</table>
## Appropriations

### 254 - Racing Commission – General Administration

(WV Code Chapter 19)

Fund 7305 FY 2016 Org 0707

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2016</th>
<th>FY 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>00100</td>
<td>Personal Services and Employee Benefits</td>
<td>$2,271,339</td>
<td></td>
</tr>
<tr>
<td>13000</td>
<td>Current Expenses</td>
<td>$566,248</td>
<td></td>
</tr>
<tr>
<td>06400</td>
<td>Repairs and Alterations</td>
<td>$7,000</td>
<td></td>
</tr>
<tr>
<td>69000</td>
<td>Other Assets</td>
<td>$50,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,894,587</strong></td>
<td></td>
</tr>
</tbody>
</table>

### 255 - Racing Commission – Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account

(WV Code Chapter 19)

Fund 7307 FY 2016 Org 0707

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2016</th>
<th>FY 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>00100</td>
<td>Personal Services and Employee Benefits</td>
<td>$864,474</td>
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<tr>
<td>13000</td>
<td>Current Expenses</td>
<td>$214,406</td>
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<tr>
<td>06400</td>
<td>Repairs and Alterations</td>
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<tr>
<td>69000</td>
<td>Other Assets</td>
<td>$200,000</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,278,880</strong></td>
<td></td>
</tr>
</tbody>
</table>

### 256 - Alcohol Beverage Control Administration – Wine License Special Fund

(WV Code Chapter 60)
### Fund 7351 FY 2016 Org 0708

<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>
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<td>Repairs and Alterations</td>
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<td>$7,263</td>
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<tr>
<td>Equipment</td>
<td>07000</td>
<td>$10,000</td>
</tr>
<tr>
<td>Buildings</td>
<td>25800</td>
<td>$100,000</td>
</tr>
<tr>
<td>Other Assets</td>
<td>69000</td>
<td>$100</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$308,888</strong></td>
</tr>
</tbody>
</table>

To the extent permitted by law, four classified exempt positions shall be provided from Personal Services and Employee Benefits appropriation for field auditors.

#### 257 - Alcohol Beverage Control Administration

(WV Code Chapter 60)

### Fund 7352 FY 2016 Org 0708

<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>$5,413,237</td>
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<td>Current Expenses</td>
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<td>Repairs and Alterations</td>
<td>06400</td>
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<td>07000</td>
<td>$108,000</td>
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<tr>
<td>Buildings</td>
<td>25800</td>
<td>$100</td>
</tr>
<tr>
<td>Purchase of Supplies for Resale</td>
<td>41900</td>
<td>$71,000,000</td>
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<tr>
<td>Transfer Liquor Profits and Taxes</td>
<td>42500</td>
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<tr>
<td>Other Assets</td>
<td>69000</td>
<td>$100</td>
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<tr>
<td>Land</td>
<td>73000</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$95,573,838</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.

DEPARTMENT OF TRANSPORTATION

258 - Division of Motor Vehicles – Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2016 Org 0802

1 Current Expenses. ................. 13000 $ 189,000

259 - Division of Motor Vehicles – Motor Vehicle Fees Fund

(WV Code Chapter 17B)

Fund 8223 FY 2016 Org 0802

1 Personal Services and
2 Employee Benefits.............. 00100 $ 2,852,799
3 Current Expenses............. 13000 4,896,057
4 Equipment. ..................... 00700 75,000
5 Repairs and Alterations. .......... 06400 16,000
6 Other Assets..................... 69000 10,000
7 BRIM Premium. .............. 91300 61,655
8 Total......................... $ 7,911,511
260 - Division of Highways –
A. James Manchin Fund

(WV Code Chapter 22)

Fund 8319 FY 2016 Org 0803

1 Current Expenses. . . . . . . . . . . 13000 $ 1,650,000

261 - Public Port Authority –
Special Railroad and Intermodal Enhancement Fund

(WV Code Chapter 17)

Fund 8254 FY 2016 Org 0806

1 Current Expenses. . . . . . . . . . . 13000 $ 10,000
2 Other Assets. . . . . . . . . . . . . . . . 69000 7,990,000
3 Total. . . . . . . . . . . . . . . . . . . . . . . . . . $ 8,000,000

DEPARTMENT OF VETERANS’ ASSISTANCE

262 - Veterans’ Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703 FY 2016 Org 0613

1 Personal Services and
2 Employee Benefits. . . . . . . . . . . . . . 00100 $ 94,210
3 Current Expenses. . . . . . . . . . . . . . 13000 2,255,997
4 Repairs and Alterations. . . . . . . . . . . . 06400 10,000
5 Equipment. . . . . . . . . . . . . . . . . . . . 07000 10,000
6 Other Assets. . . . . . . . . . . . . . . . . . . 69000 10,000
7 Total. . . . . . . . . . . . . . . . . . . . . . . . . . . . $ 2,380,207

263 - Department of Veterans’ Assistance –
WV Veterans’ Home –
### Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754 FY 2016 Org 0618

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$700,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>06400</td>
<td>$50,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$750,000</strong></td>
</tr>
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</table>

### BUREAU OF SENIOR SERVICES

264 - Bureau of Senior Services – Community Based Service Fund

(WV Code Chapter 22)

Fund 5409 FY 2016 Org 0508

<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>
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</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>$10,348,710</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$10,500,000</strong></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

265 - Higher Education Policy Commission – System – Registration Fee Capital Improvement Fund (Capital Improvement and Bond Retirement Fund) Control Account

(WV Code Chapters 18 and 18B)
Appropriations

Fund 4902 FY 2016 Org 0442

1 General Capital Expenditures. . . . 30600 $ 500,000

2 The total amount of this appropriation shall be paid from the
3 special capital improvements fund created in W.Va. Code §18B-10-8. Projects are to be paid on a cash basis and made available
4 on July 1 of each year and may be transferred to special revenue
5 funds for capital improvement projects at the institutions.

266 - Higher Education Policy Commission –
System – Tuition Fee Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2016 Org 0442

1 Debt Service. . . . . . . . . . . . . . . . . . . 04000 $ 28,901,910
2 General Capital Expenditures. . . . 30600 13,000,000
3 Facilities Planning and
4 Administration. . . . . . . . . . . . . . . 38600 421,082
5 Total. . . . . . . . . . . . . . . . . . . . . . . . . . . $ 42,322,992

6 The total amount of these appropriations shall be paid from
7 the special capital improvement fund created in W.Va. Code
8 §18B-10-8. Projects are to be paid on a cash basis and made
9 available on July 1.

10 The above appropriations, except for debt service, may be
11 transferred to special revenue funds for capital improvement
12 projects at the institutions.

267 - Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)
Any unexpended balance remaining in the appropriation for Capital Outlay (fund 4906, appropriation 51100) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

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.

268 - Community and Technical College Capital Improvement Fund

(WV Code Chapter 18B)

Any unexpended balance remaining in the appropriation for Capital Improvements – Total (fund 4908, appropriation 95800) at the close of fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

The total amount of this appropriation shall be paid from the sale of the 2009 Series A Community and Technical College Capital Improvement Revenue Bonds and anticipated interest earnings.

269 - West Virginia University – West Virginia University Health Sciences Center
(WV Code Chapters 18 and 18B)

**Fund 4179 FY 2016 Org 0463**

<table>
<thead>
<tr>
<th></th>
<th>Personal Services and Employee Benefits</th>
<th>Current Expenses</th>
<th>Repairs and Alterations</th>
<th>Equipment</th>
<th>Buildings</th>
<th>Other Assets</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>00100 $10,274,340</td>
<td>13000 4,524,300</td>
<td>06400 425,000</td>
<td>07000 512,000</td>
<td>25800 150,000</td>
<td>69000 50,000</td>
<td>15,935,640</td>
</tr>
</tbody>
</table>

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*270 - Board of Barbers and Cosmetologists – Barbers and Beauticians Special Fund*

(WV Code Chapters 16 and 30)

**Fund 5425 FY 2016 Org 0505**

<table>
<thead>
<tr>
<th></th>
<th>Personal Services and Employee Benefits</th>
<th>Current Expenses</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>00100 $504,497</td>
<td>13000 239,969</td>
<td>744,466</td>
</tr>
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</table>

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.

*271 - Hospital Finance Authority – Hospital Finance Authority Fund*

(WV Code Chapter 16)

**Fund 5475 FY 2016 Org 0509**
### APPROPRIATIONS

**[Ch. 15]**

<table>
<thead>
<tr>
<th></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>$72,682</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>1,450</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>13000</td>
<td>71,039</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$145,171</td>
</tr>
</tbody>
</table>

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.

**272 - WV State Board of Examiners for Licensed Practical Nurses – Licensed Practical Nurses**

*(WV Code Chapter 30)*

- **Fund 8517 FY 2016 Org 0906**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
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<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
<td>55,542</td>
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<td>4</td>
<td>Total</td>
<td></td>
<td>$483,457</td>
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</table>

**273 - WV Board of Examiners for Registered Professional Nurses – Registered Professional Nurses**

*(WV Code Chapter 30)*

- **Fund 8520 FY 2016 Org 0907**

<table>
<thead>
<tr>
<th></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>$1,082,344</td>
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<td>4</td>
<td>Repairs and Alterations</td>
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<td>3,000</td>
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<tr>
<td>5</td>
<td>Equipment</td>
<td>07000</td>
<td>19,500</td>
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<tr>
<td>6</td>
<td>Other Assets</td>
<td>69000</td>
<td>4,500</td>
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<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$1,404,558</td>
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</table>
## 274 - Public Service Commission

(WV Code Chapter 24)

<table>
<thead>
<tr>
<th>Description</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>8623</td>
<td>2016</td>
<td>0926</td>
<td>$11,807,314</td>
</tr>
<tr>
<td>Unclassified</td>
<td></td>
<td></td>
<td></td>
<td>147,643</td>
</tr>
<tr>
<td>Current Expenses</td>
<td></td>
<td></td>
<td></td>
<td>2,594,398</td>
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<tr>
<td>Repairs and Alterations</td>
<td></td>
<td></td>
<td></td>
<td>55,000</td>
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<tr>
<td>Equipment</td>
<td></td>
<td></td>
<td></td>
<td>160,000</td>
</tr>
<tr>
<td>Buildings</td>
<td></td>
<td></td>
<td></td>
<td>4,500,000</td>
</tr>
<tr>
<td>PSC Weight Enforcement</td>
<td></td>
<td></td>
<td></td>
<td>4,405,884</td>
</tr>
<tr>
<td>Debt Payment/Capital Outlay</td>
<td></td>
<td></td>
<td></td>
<td>350,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td></td>
<td></td>
<td></td>
<td>114,609</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td>$24,134,848</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.

## 275 - Public Service Commission – Gas Pipeline Division – Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

<table>
<thead>
<tr>
<th>Description</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services and Employee Benefits</td>
<td>8624</td>
<td>2016</td>
<td>0926</td>
<td>$284,198</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Fund</td>
<td>FY 2016</td>
<td>Org</td>
</tr>
<tr>
<td>---</td>
<td>---------------------------------------------</td>
<td>--------</td>
<td>---------</td>
<td>-------</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified.</td>
<td>09900</td>
<td>3,851</td>
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<tr>
<td>4</td>
<td>Current Expenses.</td>
<td>13000</td>
<td>93,115</td>
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<tr>
<td>5</td>
<td>Repairs and Alterations.</td>
<td>06400</td>
<td>4,000</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$ 385,164</td>
<td></td>
</tr>
</tbody>
</table>

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.

276 - Public Service Commission – Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2016 Org 0926

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 2016</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$ 2,243,526</td>
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<td>3</td>
<td>Unclassified.</td>
<td>09900</td>
<td>29,233</td>
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<tr>
<td>4</td>
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<td>13000</td>
<td>577,557</td>
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<tr>
<td>5</td>
<td>Repairs and Alterations.</td>
<td>06400</td>
<td>23,000</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Equipment.</td>
<td>07000</td>
<td>50,000</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$ 2,923,316</td>
<td></td>
</tr>
</tbody>
</table>

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

277 - Public Service Commission – Consumer Advocate Fund

(WV Code Chapter 24)

Fund 8627 FY 2016 Org 0926

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 2016</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$ 743,372</td>
<td></td>
</tr>
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</table>
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.

278 - Real Estate Commission –
Real Estate License Fund
(WV Code Chapter 30)
Fund 8635 FY 2016 Org 0927

1 Personal Services and
2 Employee Benefits.............. 00100 $ 582,413
3 Current Expenses.............. 13000 285,622
4 Repairs and Alterations........ 06400 5,000
5 Equipment..................... 07000 10,000
6 Total.......................... $ 883,035

The total amount of these appropriations shall be paid out of collections of license fees as provided by law.

279 - WV Board of Examiners for Speech-Language Pathology and Audiology –
Speech-Language Pathology and Audiology Operating Fund
(WV Code Chapter 30)
Fund 8646 FY 2016 Org 0930

1 Personal Services and
2 Employee Benefits.............. 00100 $ 73,190
3 Current Expenses.............. 13000 65,623
4 Total.......................... $ 138,813
### 280 - WV Board of Respiratory Care –
**Board of Respiratory Care Fund**

(WV Code Chapter 30)

Fund 8676 FY 2016 Org 0935

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
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<td>$78,880</td>
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<td>Current Expenses</td>
<td>13000</td>
<td>$51,750</td>
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<td>3</td>
<td>Repairs and Alterations</td>
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<td>$400</td>
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<td>4</td>
<td>Total</td>
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<td>$131,030</td>
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</tbody>
</table>

### 281 - WV Board of Licensed Dietitians –
**Dietitians Licensure Board Fund**

(WV Code Chapter 30)

Fund 8680 FY 2016 Org 0936

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$8,648</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
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<td>4</td>
<td>Total</td>
<td></td>
<td>$23,000</td>
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</tbody>
</table>

### 282 - Massage Therapy Licensure Board –
**Massage Therapist Board Fund**

(WV Code Chapter 30)

Fund 8671 FY 2016 Org 0938

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>00100</td>
<td>$102,398</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>13000</td>
<td>$24,668</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
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<td>$127,066</td>
</tr>
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</table>
### 283 - Board of Medicine – Medical Licensing Board Fund

(WV Code Chapter 30)

Fund 9070 FY 2016 Org 0945

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account Code</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>$ 997,752</td>
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<td>Current Expenses</td>
<td>13000</td>
<td>813,789</td>
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<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>06400</td>
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</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 1,831,541</td>
</tr>
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</table>

### 284 - West Virginia Enterprise Resource Planning Board

Enterprise Resource Planning System Fund

(WV Code Chapter 12)

Fund 9080 FY 2016 Org 0947

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account Code</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>$ 6,713,066</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>430,000</td>
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<td>4</td>
<td>Current Expenses</td>
<td>13000</td>
<td>42,306,934</td>
</tr>
<tr>
<td>5</td>
<td>Repairs and Alterations</td>
<td>06400</td>
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</tr>
<tr>
<td>6</td>
<td>Equipment</td>
<td>07000</td>
<td>250,000</td>
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<tr>
<td>7</td>
<td>Buildings</td>
<td>25800</td>
<td>100,000</td>
</tr>
<tr>
<td>8</td>
<td>Other Assets</td>
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<td>100,000</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td>$ 50,000,000</td>
</tr>
</tbody>
</table>

### 285 - Board of Treasury Investments – Board of Treasury Investments Fee Fund

(WV Code Chapter 12)

Fund 9152 FY 2016 Org 0950

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account Code</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>$ 711,966</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.

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>12,667</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>482,574</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>59,500</td>
</tr>
<tr>
<td>Fees of Custodians, Fund Advisors and Fund Managers</td>
<td>3,500,000</td>
</tr>
<tr>
<td>Total</td>
<td>$ 4,766,707</td>
</tr>
</tbody>
</table>

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 9067, and Fund 3514 and is authorized to transfer any such amounts to Fund 9065, Fund 4297, Fund 9067, 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.

286 - Education, Arts, Sciences and Tourism – Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2016 Org 0211

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service – Total.</td>
<td>$ 10,000,000</td>
</tr>
<tr>
<td>1</td>
<td>31000</td>
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</tbody>
</table>

287 - West Virginia Development Office – Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 2016 Org 0304

<table>
<thead>
<tr>
<th>Tourism – Telemarketing Center</th>
<th>$ 82,080</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>46300</td>
</tr>
<tr>
<td>WV Film Office</td>
<td>$ 340,434</td>
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<tr>
<td>2</td>
<td>49800</td>
</tr>
<tr>
<td>Tourism – Advertising (R)</td>
<td>$ 3,571,419</td>
</tr>
<tr>
<td>3</td>
<td>61800</td>
</tr>
<tr>
<td>Tourism – Operations (R)</td>
<td>$ 4,006,373</td>
</tr>
<tr>
<td>4</td>
<td>66200</td>
</tr>
<tr>
<td>Total</td>
<td>$ 8,000,306</td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
</tbody>
</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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

288 - Division of Natural Resources

(WV Code Chapter 20)
### Fund 3267 FY 2016 Org 0310

1. **Personal Services and Employee Benefits**
   - 00100 $ 2,133,913
2. **Current Expenses**
   - 13000 $ 47,127
3. **Pricketts Fort State Park**
   - 32400 $ 111,000
4. **Non-Game Wildlife (R)**
   - 52700 $ 389,234
5. **State Parks and Recreation Advertising (R)**
   - 61900 $ 507,578
6. **Total**
   - $ 3,188,852

Any unexpended balances remaining in the appropriations for Unclassified (fund 3267, appropriation 09900), Capital Outlay – Parks (fund 3267, appropriation 28800), Non-Game Wildlife (fund 3267, appropriation 52700), and State Parks and Recreation Advertising (fund 3267, appropriation 61900) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

### 289 - State Board of Education

(WV Code Chapters 18 and 18A)

### Fund 3951 FY 2016 Org 0402

1. **FBI Checks**
   - 37200 $ 108,031
2. **Vocational Education**
3. **Equipment Replacement**
   - 39300 $ 800,000
4. **Assessment Program (R)**
   - 39600 $ 2,935,751
5. **21st Century Technology**
6. **Infrastructure Network Tools and Support (R)**
   - 93300 $ 14,108,744
7. **Total**
   - $ 17,952,526

Any unexpended balances remaining in the appropriations for Unclassified (fund 3951, appropriation 09900), Current Expenses (fund 3951, appropriation 13000), Assessment
12 Program (fund 3951, appropriation 39600), and 21st Century Technology Infrastructure Network Tools and Support (fund 3951, appropriation 93300) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

290 - State Department of Education – School Building Authority – Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2016 Org 0402

1 Debt Service – Total. ............... 31000 $ 7,507,700
2 Directed Transfer. ............... 70000 10,492,300
3 Total................................. $ 18,000,000

4 The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18.

291 - Department of Education and the Arts – Office of the Secretary – Control Account – Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2016 Org 0431

1 Unclassified (R). ............... 09900 $ 15,881
2 Current Expenses. ............... 13000 104,119
3 Commission for National and Community Service............. 19300 350,341
4 Governor’s Honors Academy (R). 47800 400,000
5 Arts Programs (R) ............... 50000 81,165
### Appropriations

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<tr>
<th>Description</th>
<th>Fund</th>
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<tr>
<td>College Readiness</td>
<td>296</td>
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<tr>
<td>Statewide STEM 21&lt;sup&gt;st&lt;/sup&gt; Century Academy</td>
<td>181</td>
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<td>Literacy Project (R)</td>
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<td><strong>Total</strong></td>
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<td><strong>$1,586,412</strong></td>
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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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

**292 - Division of Culture and History – Lottery Education Fund**

(WV Code Chapter 29)

**Fund 3534 FY 2016 Org 0432**

<table>
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<tr>
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<td>292</td>
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<td>Preservation West Virginia (R)</td>
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<td>Fairs and Festivals (R)</td>
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<td>Archeological Curation/Capital Improvements (R)</td>
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<td>24600</td>
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<td>Historic Preservation Grants (R)</td>
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<td>31100</td>
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<td>West Virginia Public Theater</td>
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<td>George Tyler Moore Center for the Study of the Civil War</td>
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<td>Greenbrier Valley Theater</td>
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<td>Theater Arts of West Virginia</td>
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<td>46400</td>
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<td>Grants for Competitive</td>
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<td>Arts Program (R)</td>
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<td>62400</td>
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<tr>
<td>West Virginia State Fair</td>
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<td>65700</td>
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Save the Music.......................... 68000 30,000
Contemporary American
   Theater Festival.................... 81100 79,558
Independence Hall ................... 81200 37,885
Mountain State Forest Festival... 86400 53,038
WV Symphony.......................... 90700 82,025
Wheeling Symphony................... 90800 82,025
Appalachian Children’s Chorus.... 91600 75,770

Total.................................................. $ 4,745,102

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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

From the above appropriation for Preservation West Virginia (fund 3534, appropriation 09200) funding shall be provided to the African-American Heritage Family Tree Museum (Fayette) $3,713, Aracoma Story (Logan) $41,254, Arts Monongahela (Monogalia) $16,502, Barbour County Arts and Humanities Council $1,238, Beckley Main Street (Raleigh) $4,125, Buffalo Creek Memorial (Logan) $4,125, Carnegie Hall (Greenbrier) $65,138, Ceredo Historical Society (Wayne) $1,650, Ceredo Kenova Railroad Museum (Wayne) $1,650, Ceredo Museum (Wayne) $1,000, Children’s Theatre of Charleston (Kanawha) $4,343, Chuck Mathena Center (Mercer) $86,850, Collis P. Huntington Railroad Historical Society (Cabell) $8,251, Country Music Hall of Fame and Museum (Marion) $5,776, First Stage Children’s Theater Company $1,650, Flannigan Murrell House (Summers) $8,251, Fort Ashby Fort (Mineral) $1,238, Fort New
Salem (Harrison) $3,053, Fort Randolph (Mason) $4,125,
General Adam Stephen Memorial Foundation (Berkeley)
$15,286, Grafton Mother’s Day Shrine Committee (Taylor)
$7,013, Hardy County Tour and Crafts Association $16,502,
Heritage Farm Museum & Village (Cabell) $41,254, Historic
Fayette Theater (Fayette) $4,538, Historic Middleway
Conservancy (Jefferson) $825, Jefferson County Black History
Preservation Society $4,125, Jefferson County Historical
Landmark Commission $6,601, Maddie Carroll House (Cabell)
$6,188, Marshall County Historical Society $7,013, McCoy
Theater (Hardy) $16,502, Morgantown Theater Company
(Monongalia)$16,502, Mountaineer Boys’ State (Lewis)$8,251,
Nicholas Old Main Foundation (Nicholas) $1,650, Norman
Dillon Farm Museum (Berkeley) $8,251, Old Opera House
Theater Company (Jefferson) $12,376, Parkersburg Arts Center
(Wood) $16,502, Pocahontas Historic Opera House $4,950,
Raleigh County All Wars Museum $8,251, Rhododendron Girl’s
State (Ohio) $8,251, Roane County 4-H and FFA Youth
Livestock Program $4,125, Scottish Heritage Society/N. Central
WV (Harrison) $4,125, Society for the Preservation of McGrew
House (Preston) $2,888, Southern West Virginia Veterans’
Museum $3,713, Summers County Historic Landmark
Commission $4,125, Those Who Served War Museum (Mercer)
$3,300, Three Rivers Avian Center (Summers) $12,376, Tug
Valley Arts Council (Mingo) $4,125, Tug Valley Chamber of
Commerce Coal House (Mingo) $1,650, Tunnelton Historical
Society (Preston) $1,650, Veterans Committee for Civic
Improvement of Huntington (Wayne) $4,125, West Virginia
Museum of Glass (Lewis) $4,125, West Virginia Music Hall of
Fame (Kanawha) $28,878, YMCA Camp Horseshoe (Tucker)
$82,508, Youth Museum of Southern West Virginia (Raleigh)
$9,901, Z.D. Ramsdell House (Wayne) $1,000.

From the above appropriation for Fairs and Festivals (fund
3534, appropriation 12200) funding shall be provided to the
African-American Cultural Heritage Festival (Jefferson) $4,125,
<table>
<thead>
<tr>
<th>Ch. 15</th>
<th>APPROPRIATIONS</th>
<th>299</th>
</tr>
</thead>
<tbody>
<tr>
<td>85</td>
<td>Alderson 4th of July Celebration (Greenbrier) $4,125, Allegheny</td>
<td></td>
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| 86     | Echo (Pocahontas) $6,189, Alpine Festival/Leaf Peepers Festival (Tucker) $9,282, American Civil War (Grant) $4,343, American Legion Post 8 Veterans Day Parade (McDowell) $1,737, Angus Beef and Cattle Show (Lewis) $1,238, Annual Birch River Days (Nicholas) $1,800, Annual Don Redman Heritage Concert & Awards (Jefferson) $1,303, Annual Ruddle Park Jamboree (Pendleton) $6,514, Antique Market Fair (Lewis) $1,650, Apollo Theater-Summer Program (Berkeley) $1,650, Appalachian Autumn Fest (Gilmer) $3,325, Apple Butter Festival (Morgan) $4,950, Arkansaw Homemaker’s Heritage Weekend (Hardy) $2,888, Armed Forces Day-South Charleston (Kanawha) $2,475, Arthurdale Heritage New Deal Festival (Preston) $4,125, Athens Town Fair (Mercer) $1,650, Augusta Fair (Randolph) $4,125, Autumn Harvest Fest (Monroe) $1,900, Barbour County Fair $20,627, Barboursville Octoberfest (Cabell) $4,125, Bass Festival (Pleasants) $1,527, Battelle District Fair (Monongalia) $4,125, Battle of Point Pleasant Memorial Committee (Mason) $4,125, Belle Town Fair (Kanawha) $3,713, Belleville Homecoming (Wood) $16,502, Berkeley County Youth Fair $15,264, Black Bear 4K Mountain Bike Race (Kanawha) $950, Black Heritage Festival (Harrison) $4,950, Black Walnut Festival (Roane) $8,251, Blast from the Past (Upshur) $2,000, Blue-Gray Reunion (Barbour) $2,888, Boone County Fair $8,251, Boone County Labor Day Celebration $3,300, Bradshaw Fall Festival (McDowell) $1,650, Brandonville Heritage Day (Preston) $1,455, Braxton County Fair $9,489, Braxton County Monster Fest / West Virginia Autumn Festival $2,063, Brooke County Fair $2,888, Bruceton Mills Good Neighbor Days (Preston) $1,650, Buckwheat Festival (Preston) $7,014, Buffalo 4th of July Celebration (Putnam) $475, Buffalo October Fest (Putnam) $4,500, Burlington Apple Harvest Festival (Mineral) $24,752, Burlington Pumpkin Harvest Festival (Raleigh) $4,125,
300 APPROPRIATIONS [Ch. 15

120 Burnsville Harvest Festival (Braxton) $1,954, Cabell County
121 Fair $8,251, Calhoun County Wood Festival $1,650, Campbell’s
122 Creek Community Fair (Kanawha) $2,063, Cape Coalwood
123 Festival Association (McDowell) $2,063, Capon Bridge
124 Founders Day Festival (Hampshire) $1,650, Capon Springs
125 Ruritan 4th of July (Hampshire) $950, Cass Homecoming
126 (Pocahontas) $1,650, Cedarville Town Festival (Gilmer) $950,
127 Celebration in the Park (Wood) $3,300, Celebration of America
128 (Monongalia) $4,950, Ceredo Freedom Festival (Wayne) $973,
129 Chapmanville Apple Butter Festival (Logan) $950,
130 Chapmanville Fire Department 4th of July (Logan) $2,475,
131 Charles Town Christmas Festival (Jefferson) $4,125, Charles
132 Town Heritage Festival (Jefferson) $4,125, Charlie West Blues
133 Festival (Kanawha) $8,251, Cherry River Festival (Nicholas)
134 $5,363, Chester Fireworks (Hancock) $1,238, Chester 4th of July
135 Festivities (Hancock) $4,125, Chief Logan State Park-Civil War
136 Celebration (Logan) $6,601, Chilifest West Virginia State Chili
137 Championship (Cabell) $2,171, Christmas In Our Town
138 (Marion) $4,343, Christmas in Shepherdstown (Jefferson)
139 $3,300, Christmas in the Park (Brooke) $4,125, Christmas in the
140 Park (Logan) $20,627, City of Dunbar Critter Dinner (Kanawha)
141 $8,251, City of New Martinsville Festival of Memories (Wetzel)
142 $9,076, Clay County Golden Delicious Apple Festival $5,776,
143 Coal Field Jamboree (Logan) $28,878, Coalton Days Fair
144 (Randolph) $5,776, Country Roads Festival (Fayette) $1,650,
145 Cowen Railroad Festival (Webster) $2,888, Craigsville Fall
146 Festival (Nicholas) $2,888, Culturefest World Music & Arts
147 Festival (Mercer) $6,514, Delbarton Homecoming (Mingo)
148 $2,888, Doddridge County Fair $5,776, Durbin Days
149 (Pocahontas) $4,125, Eastern Kanawha Valley Homecoming
150 Festival (Kanawha) $2,171, Elbert/Filbert Reunion Festival
151 (McDowell) $1,238, Elizabethtown Festival (Marshall) $4,125,
152 Elkins Randolph County 4th of July Car Show (Randolph)
153 $1,650, Fairview 4th of July Celebration (Marion) $950, Farm
154 Safety Day (Preston) $1,650, Farmer Day Festival (Monroe)
155 $1,737, Farmers’ Day Parade (Wyoming) $1,000, FestivALL
156 Charleston (Kanawha) $16,502, Fiber Festival (Preston) $1,500,
157 Flatwoods Days (Braxton) $973, Flemington Day Fair and
158 Festival (Taylor) $2,888, Follansbee Community Days (Brooke)
159 $6,807, Fort Gay Mountain Heritage Days (Wayne) $4,125, Fort
160 Henry Days (Ohio) $4,373, Fort Henry Living History (Ohio)
161 $2,171, Fort New Salem Spirit of Christmas Festival (Harrison)
162 $3,378, Frankford Autumnfest (Greenbrier) $4,125, Franklin
163 Fishing Derby (Pendleton) $6,189, Franklin Firemen Carnival
164 (Pendleton) $4,125, Freshwater Folk Festival (Greenbrier)
165 $4,125, Friends Auxiliary of W.R. Sharpe Hospital (Lewis)
166 $4,125, Frontier Days (Harrison) $2,475, Frontier Fest/Canaan
167 Valley (Taylor) $4,125, Fund for the Arts-Wine & All that Jazz
168 Festival (Kanawha) $2,063, Gassaway Days Celebration
169 (Braxton) $4,125, Gilbert Elementary Fall Blast (Mingo) $2,171,
170 Gilbert Kiwanis Harvest Festival (Mingo) $3,300, Gilbert Spring
171 Fling (Mingo) $4,125, Gilmer County Farm Show $3,300, Grant
172 County Arts Council $1,650, Grape Stomping Wine Festival
173 (Nicholas) $1,650, Great Greenbrier River Race (Pocahontas)
174 $8,251, Greater Quinwood Days (Greenbrier) $1,086, Green
175 Spring Days (Hampshire) $950, Guyandotte Civil War Days
176 (Cabell) $8,251, Hamlin 4th of July Celebration (Lincoln)
177 $4,125, Hampshire Civil War Celebration Days (Hampshire)
178 $950, Hampshire County 4th of July Celebration $16,502,
179 Hampshire County Fair $6,948, Hampshire Heritage Days
180 (Hampshire) $3,300, Hancock County Oldtime Fair $4,125,
181 Hardy County Commission - 4th of July $8,251, Hatfield McCoy
182 Matewan Reunion Festival (Mingo) $17,125, Hatfield McCoy
183 Trail National ATV and Dirt Bike Weekend (Wyoming) $4,125,
184 Heat’n the Hills Chilifest (Lincoln) $3,474, Heritage Craft
185 Festival (Monroe) $950, Heritage Days Festival (Roane) $1,238,
186 Hilltop Festival (Cabell) $950, Hilltop Festival of Lights
187 (McDowell) $1,650, Hinton Railroad Days (Summers) $4,538,
188 Holly River Festival (Webster) $1,238, Hometown Mountain
189 Heritage Festival (Fayette) $3,378, Hundred 4th of July (Wetzel)
$5,982, Hundred American Legion Earl Kiger Post Bluegrass Festival (Wetzel) $1,650, Hurricane 4th of July Celebration (Putnam) $4,125, Iaeger Town Fair (McDowell) $1,238, Irish Heritage Festival of West Virginia (Raleigh) $4,125, Irish Spring Festival (Lewis) $950, Italian Heritage Festival-Clarksburg (Harrison) $24,752, Jackson County Fair $4,125, Jamboree (Pocahontas) $4,125, Jane Lew Arts and Crafts Fair (Lewis) $950, Jefferson County Fair Association $20,627, Jersey Mountain Ruritan Pioneer Days (Hampshire) $950, John Henry Days Festival (Monroe) $4,125, Johnnie Johnson Blues and Jazz Festival (Marion) $4,125, Johnstown Community Fair (Harrison) $2,063, Junior Heifer Preview Show (Lewis) $1,650, Kanawha Coal Riverfest-St. Albans 4th of July Festival (Kanawha) $4,125, Keeper of the Mountains-Kayford (Kanawha) $2,063, Kenova Autumn Festival (Wayne) $6,080, Kermit Fall Festival (Mingo) $2,475, Keystone Reunion Gala (McDowell) $2,171, King Coal Festival (Mingo) $4,125, Kingwood Downtown Street Fair and Heritage Days (Preston) $1,650, L.Z. Rainelle West Virginia Veterans Reunion (Greenbrier) $4,125, Lady of Agriculture (Preston) $950, Larry Joe Harless Center Octoberfest Hatfield McCoy Trail (Mingo) $8,251, Larry Joe Harless Community Center Spring Middle School Event (Mingo) $4,125, Last Blast of Summer (McDowell) $4,125, Lewis County Fair Association $2,888, Lewisburg Shanghai (Greenbrier) $1,650, Lincoln County Fall Festival $6,601, Lincoln County Winterfest $4,125, Little Levels Heritage Festival (Pocahontas) $1,650, Logan Freedom Festival $6,189, Lost Creek Community Festival (Harrison) $5,776, Main Street Arts Festival (Upshur) $4,343, Main Street Martinsburg Chocolate Fest and Book Fair (Berkeley) $3,908, Mannington District Fair (Marion) $4,950, Maple Syrup Festival (Randolph) $950, Marion County FFA Farm Fest $2,063, Marmet Labor Day Celebration (Kanawha) $4,275, Marshall County Antique Power Show $2,063, Marshall County Fair $6,189, Mason County Fair $4,125, Mason Dixon Festival (Monongalia) $5,776,
Matewan Massacre Reenactment (Mingo) $6,950, Matewan-Magnolia Fair (Mingo) $22,128, McARTS-McDowell County $16,502, McDowell County Fair $2,063, McGrew House History Day (Preston) $1,650, McNeill’s Rangers (Mineral) $6,601, Meadow Bridge Hometown Festival (Fayette) $1,032, Meadow River Days Festival (Greenbrier) $2,475, Mercer Bluestone Valley Fair (Mercer) $1,650, Mercer County Fair $1,650, Mercer County Heritage Festival $4,825, Mid Ohio Valley Antique Engine Festival (Wood) $2,475, Milton Christmas in the Park (Cabell) $2,063, Milton 4th of July Celebration (Cabell) $2,063, Mineral County Veterans Day Parade $1,238, Molasses Festival (Calhoun) $1,650, Monongahfest (Marion) $5,211, Moon Over Mountwood Fishing Festival (Wood) $2,475, Morgan County Fair-History Wagon $1,238, Moundsville Bass Festival (Marshall) $3,300, Moundsville July 4th Celebration (Marshall) $4,125, Mount Liberty Fall Festival (Barbour) $2,063, Mountain Fest (Monongalia) $16,502, Mountain Festival (Mercer) $3,816, Mountain Music Festival (McDowell) $2,063, Mountain State Apple Harvest Festival (Berkeley) $6,189, Mountain State Arts & Crafts Fair Cedar Lakes (Jackson) $37,128, Mountaineer Hot Air Balloon Festival (Monongalia) $3,300, Mullens Dogwood Festival (Wyoming) $5,776, Multi-Cultural Festival of West Virginia (Kanawha) $16,502, Music and Barbecue - Banks District VFD (Upshur) $1,776, New Cumberland Christmas Parade (Hancock) $2,475, New Cumberland 4th of July (Hancock) $4,125, New River Bridge Day Festival (Fayette) $33,003, Newburg Volunteer Fireman’s Field Day (Preston) $950, Nicholas County Fair $4,125, Nicholas County Potato Festival $2,888, Oak Leaf Festival (Fayette) $8,685, Oceana Heritage Festival (Wyoming) $4,950, Oglebay City Park - Festival of Lights (Ohio) $66,006, Oglebay Festival (Ohio) $8,251, Ohio County Country Fair $7,426, Ohio Valley Beef Association (Wood) $2,063, Ohio Valley Black Heritage Festival (Ohio) $4,538, Old Central City Fair (Cabell) $4,125, Old Century City Fair (Barbour) $1,737, Old Tyme Christmas
(Jefferson) $1,980, Paden City Labor Day Festival (Wetzel)
$5,363, Parkersburg Homecoming (Wood) $12,159, Patty Fest
(Monongalia) $1,650, Paw Paw District Fair (Marion) $2,888,
Pax Reunion Committee (Fayette) $4,125, Pendleton County 4-H
Weekend $1,650, Pendleton County Committee for Arts
$12,376, Pendleton County Fair $8,685, Pennsboro Country
Road Festival (Ritchie) $1,650, Petersburg 4th of July
Celebration (Grant) $16,502, Petersburg HS Celebration (Grant)
$8,251, Piedmont-Annual Back Street Festival (Mineral) $3,300,
Pinch Reunion (Kanawha) $1,238, Pine Bluff Fall Festival
(Harrison) $3,300, Pine Grove 4th of July Festival (Wetzel)
$5,776, Pineville Festival (Wyoming) $4,950, Pleasants County
Agriculture Youth Fair $4,125, Poca Heritage Days (Putnam)
$2,475, Pocahontas County Pioneer Days $5,776, Point Pleasant
Stern Wheel Regatta (Mason) $4,125, Potomac Highlands Maple
Festival (Grant) $4,950, Pratt Fall Festival (Kanawha) $2,063,
Princeton Autumnfest (Mercer) $2,171, Princeton Street Fair
(Mercer) $4,125, Putnam County Fair $4,125, Quartets on
Parade (Hardy) $3,300, Rainelle Fall Festival (Greenbrier)
$4,343, Rand Community Center Festival (Kanawha) $2,063,
Randolph County Community Arts Council $2,475, Randolph
County Fair $5,776, Randolph County Ramp and Rails $1,650,
Ranson Christmas Festival (Jefferson) $4,125, Ranson Festival
(Jefferson) $4,125, Ravenswood Octoberfest (Jackson) $6,601,
Renick Liberty Festival (Greenbrier) $950, Ripley 4th of July
(Jackson) $12,376, Ritchie County Fair and Exposition $4,125,
Ritchie County Pioneer Days $950, River City Festival (Preston)
$950, Riverside Blues Festival (Randolph) $4,343, Roane
County Agriculture Field Day $2,475, Rock the Park (Kanawha)
$4,500, Rocket Boys Festival (Raleigh) $2,375, Romney
Heritage Days (Hampshire) $2,606, Ronceverte River Festival
(Greenbrier) $4,125, Rowlesburg Labor Day Festival (Preston)
$950, Rupert Country Fling (Greenbrier) $2,475, Saint Spyridon
Greek Festival (Harrison) $2,063, Salem Apple Butter Festival
(Harrison) $3,300, Sistersville 4th of July (Tyler) $4,538,
Ch. 15] APPROPRIATIONS 305

295 Skirmish on the River (Mingo) $1,737, Smoke on the Water (Wetzel) $2,475, South Charleston Summerfest (Kanawha) $8,251, Southern Wayne County Fall Festival $950, Spirit of Grafton Celebration (Taylor) $8,251, Springfield Peach Festival (Hampshire) $1,026, St. Albans City of Lights - December (Kanawha) $4,125, Sternwheel Festival (Wood) $2,475, Stoco Reunion (Raleigh) $2,063, Stonewall Jackson Heritage Arts & Crafts Jubilee (Lewis) $9,076, Storytelling Festival (Lewis) $475, Strawberry Festival (Upshur) $24,752, Sylvester Big Coal River Festival $2,700, Tacy Fair (Barbour) $950, Taste of Parkersburg (Wood) $4,125, Taylor County Fair $4,538, Terra Alta VFD 4th of July Celebration (Preston) $950, The Gathering at Sweet Creek (Wood) $2,475, Three Rivers Coal Festival (Marion) $6,394, Thunder on the Tygart - Mothers’ Day Celebration (Taylor) $12,376, Town of Delbarton 4th of July Celebration (Mingo) $2,475, Town of Fayetteville Heritage Festival (Fayette) $6,189, Town of Matoaka Hog Roast (Mercer) $950, Town of Rivesville 4th of July Festival (Marion) $4,343, Town of Winfield - Putnam County Homecoming $4,500, Treasure Mountain Festival (Pendleton) $20,627, Tri-County Fair (Grant) $31,318, Tucker County Arts Festival and Celebration $14,851, Tucker County Fair $3,919, Tucker County Health Fair $1,650, Tunnelton Depot Days (Preston) $950, Tunnelton Volunteer Fire Department Festival (Preston) $950, Turkey Festival (Hardy) $2,475, Tyler County Fair $4,290, Tyler County 4th of July $475, Tyler County OctoberFest $1,000, Union Community Irish Festival (Barbour) $900, Uniquely West Virginia Festival (Morgan) $1,650, Upper Kanawha Valley Oktoberfest (Kanawha) $2,063, Upper Ohio Valley Italian Festival (Ohio) $9,901, Upper West Fork Park Bluegrass Festival (Callhoun) $475, Upshur County Youth Livestock Show $2,000, Valley District Fair (Preston) $2,888, Veterans Welcome Home Celebration (Cabell) $1,303, Vietnam Veterans of America # 949 Christmas Party (Cabell) $950, Volcano Days at Mountwood Park (Wood) $4,125, War Homecoming Fall
Festival (McDowell) $1,238, Wardensville Fall Festival (Hardy) $4,125, Wayne County Fair $4,125, Wayne County Fall Festival $4,125, Webster County Wood Chopping Festival $12,376, Webster Wild Water Weekend $1,650, Weirton July 4th Celebration (Hancock) $16,502, Welcome Home Family Day (Wayne) $2,640, Wellsburg 4th of July Celebration (Brooke) $6,189, Wellsburg Apple Festival of Brooke County $4,125, West Virginia Blackberry Festival (Harrison) $4,125, West Virginia Chestnut Festival (Preston) $950, West Virginia Coal Festival (Boone) $8,251, West Virginia Coal Show (Mercer) $2,171, West Virginia Dairy Cattle Show (Lewis) $8,251, West Virginia Dandelion Festival (Greenbrier) $4,125, West Virginia Fair and Exposition (Wood) $6,684, West Virginia Fireman’s Rodeo (Fayette) $2,063, West Virginia Oil and Gas Festival (Tyler) $9,076, West Virginia Peach Festival (Hampshire) $4,500, West Virginia Polled Hereford Association (Braxton) $1,238, West Virginia Poultry Festival (Hardy) $4,125, West Virginia Pumpkin Festival (Cabell) $8,251, West Virginia State Monarch Butterfly Festival (Brooke) $4,125, West Virginia Water Festival - City of Hinton (Summers) $13,201, Weston County Autumnfest $4,538, Wetzel County Town and Country Days $14,026, Wheeling Celtic Festival (Ohio) $1,650, Wheeling City of Lights (Ohio) $6,601, Wheeling Sternwheel Regatta (Ohio) $8,251, Wheeling Vintage Raceboat Regatta (Ohio) $16,502, Whipple Community Action (Fayette) $2,063, Wileyville Homecoming (Wetzel) $3,300, Wine Festival and Mountain Music Event (Harrison) $4,125, Winter Festival of the Waters (Berkeley) $4,125, Wirt County Fair $2,063, Wirt County Pioneer Days $1,650, Wyoming County Civil War Days $1,800, Youth Stockman Beef Expo (Lewis) $1,650.

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.
293 - Library Commission –
Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2016 Org 0433

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Books and Films</td>
<td>$360,784</td>
</tr>
<tr>
<td>2</td>
<td>Services to Libraries</td>
<td>$550,000</td>
</tr>
<tr>
<td>3</td>
<td>Grants to Public Libraries</td>
<td>$9,439,571</td>
</tr>
<tr>
<td>4</td>
<td>Digital Resources</td>
<td>$219,992</td>
</tr>
<tr>
<td>5</td>
<td>Infomine Network</td>
<td>$850,646</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$11,420,993</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Libraries – Special Projects (fund 3559, appropriation 62500) at the close of fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

294 - Bureau of Senior Services –
Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2016 Org 0508

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and Employee Benefits</td>
<td>$193,414</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$333,681</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$1,000</td>
</tr>
<tr>
<td>4</td>
<td>Local Programs Service</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Delivery Costs</td>
<td>$2,435,250</td>
</tr>
<tr>
<td>6</td>
<td>Silver Haired Legislature</td>
<td>$18,500</td>
</tr>
<tr>
<td>7</td>
<td>Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens</td>
<td>$20,503,026</td>
</tr>
</tbody>
</table>
12 Roger Tompkins Alzheimer's
13 Respite Care.................. 64300 2,296,543
14 WV Alzheimer's Hotline........ 72400 45,000
15 Regional Aged and Disabled
16 Resource Center............... 76700 425,000
17 Senior Services
18 Medicaid Transfer............. 87100 8,670,000
19 Legislative Initiatives for
20 the Elderly.................... 90400 9,671,239
21 Long Term Care Ombudsman..... 90500 297,226
22 BRIM Premium.................. 91300 6,500
23 In-Home Services and Nutrition
24 for Senior Citizens............ 91700 4,320,941
25 Total............................ $ 49,217,320

26 Any unexpended balance remaining in the appropriation for
27 Senior Citizen Centers and Programs (fund 5405, appropriation
28 46200) at the close of the fiscal year 2015 is hereby
29 reappropriated for expenditure during the fiscal year 2016.

30 Included in the above appropriation for Current Expenses
31 (fund 5405, appropriation 13000), is funding to support an in-
32 home direct care workforce registry.

33 The above appropriation for Transfer to Division of Human
34 Services for Health Care and Title XIX Waiver for Senior
35 Citizens (appropriation 53900) along with the federal monies
36 generated thereby shall be used for reimbursement for services
37 provided under the program.

295 - Higher Education Policy Commission –
Lottery Education –
Higher Education Policy Commission –
Control Account

(WV Code Chapters 18B and 18C)
<table>
<thead>
<tr>
<th></th>
<th>Appropriation Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>RHI Program and Site Support (R)</td>
<td>03600</td>
<td>$1,912,491</td>
</tr>
<tr>
<td>2</td>
<td>RHI Program and Site Support – RHEP Program</td>
<td>03700</td>
<td>146,653</td>
</tr>
<tr>
<td>3</td>
<td>RHI Program and Site Support – Grad Med Ed and Fiscal Oversight (R)</td>
<td>03800</td>
<td>85,813</td>
</tr>
<tr>
<td>4</td>
<td>Minority Doctoral Fellowship (R)</td>
<td>16600</td>
<td>129,604</td>
</tr>
<tr>
<td>5</td>
<td>Underwood–Smith Scholarship Program–Student Awards</td>
<td>16700</td>
<td>135,849</td>
</tr>
<tr>
<td>6</td>
<td>Health Sciences Scholarship (R)</td>
<td>17600</td>
<td>220,598</td>
</tr>
<tr>
<td>7</td>
<td>Vice Chancellor for Health Sciences – Rural Health Residency Program (R)</td>
<td>60100</td>
<td>62,725</td>
</tr>
<tr>
<td>8</td>
<td>WV Engineering, Science, and Technology Scholarship</td>
<td>86800</td>
<td>452,831</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td>$3,146,564</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 – RHEP Program Administration (fund 4925, appropriation 03700), 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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

The above appropriation for Underwood–Smith Scholarship Program–Student Awards (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 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.

296 - Community and Technical College – Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2016 Org 0442

1 Debt Service – Total. . . . . . . . . . . . 31000 $ 5,000,000

2 Any unexpended balance remaining in the appropriation for Capital Outlay and Improvements – Total (fund 4908, appropriation 84700) at the close of fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

297 - Higher Education Policy Commission – Lottery Education – West Virginia University – School of Medicine

(WV Code Chapter 18B)

Fund 4185 FY 2016 Org 0463

1 WVU Health Sciences –
2 RHI Program and Site
3 Support (R). . . . . . . . . . . . . . . . 03500 $ 1,125,203
4 MA Public Health Program and Health Science
5 Technology (R). . . . . . . . . . . . . 62300 54,432
Health Sciences Career Opportunities Program (R) 86900 328,462
HSTA Program (R) 87000 1,674,240
Center for Excellence in Disabilities (R) 96700 305,806
Total $ 3,488,143

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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

298 - Higher Education Policy Commission –
Lottery Education –
Marshall University

(WV Code Chapter 18B)

Fund 4267 FY 2016 Org 0471

Any unexpended balance remaining in the appropriation for Marshall University Graduate College Writing Project (fund 4267, appropriation 80700) at the close of fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

299 - Higher Education Policy Commission –
Lottery Education –
Marshall University – School of Medicine

(WV Code Chapter 18B)
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Marshall Medical School – RHI Program and Site Support (R)</td>
<td>$ 410,253</td>
</tr>
<tr>
<td>2</td>
<td>Vice Chancellor for Health Sciences – Rural Health Residency Program (R)</td>
<td>$ 169,529</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$ 579,782</td>
</tr>
</tbody>
</table>

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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

Total TITLE II, Section 4 —

|   | Lottery Revenue.                | $ 136,326,000 |

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 not sufficient to meet all the appropriations made pursuant to this section, then the Director of the Lottery shall first provide the necessary funds to meet fund 7208,
appropriation 70011 of this section; next, to provide the funds
necessary for fund 5365, appropriation 18900. Allocation of the
funds for each appropriation shall be allocated in succession
before any funds are provided for the next subsequent
appropriation.

300 - Lottery Commission –
Refundable Credit

Fund 7207 FY 2016 Org 0705

<table>
<thead>
<tr>
<th>Excess Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appropriation</td>
</tr>
<tr>
<td>----------------------</td>
</tr>
<tr>
<td>1 Directed Transfer. 70000 $</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.

301 - Lottery Commission –
General Purpose Account

Fund 7206 FY 2016 Org 0705

<table>
<thead>
<tr>
<th>General Revenue Fund – $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer. 70011</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.

302 - Higher Education Policy Commission –
Education Improvement Fund
PROMISE Scholarship – Transfer.  80000  $ 29,000,000

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.

Economic Development Authority – Economic Development Project Fund

Debt Service – Total.  31000  $ 19,000,000

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).

Department of Education – School Building Authority

Debt Service – Total.  31000  $ 19,000,000

West Virginia Infrastructure Council – West Virginia Infrastructure Transfer Fund

Fund 4295 FY 2016 Org 0441

Fund 9065 FY 2016 Org 0944

Fund 3514 FY 2016 Org 0402

Fund 3390 FY 2016 Org 0316
Directed Transfer. . . . . . . . . . . . . . . 70000 $ 36,000,000


306 - Higher Education Policy Commission – Higher Education Improvement Fund

Fund 4297 FY 2016 Org 0441

1 Directed Transfer. . . . . . . . . . . . . . . 70000 $ 15,000,000

The above appropriation shall be transferred to fund 4903, org 0442 as authorized by Senate Concurrent Resolution No. 41.

307 - Division of Natural Resources
State Park Improvement Fund

Fund 3277 FY 2016 Org 0310

1 Current Expenses (R). . . . . . . . . . . . . . 13000 $ 2,438,300
2 Repairs and Alterations (R). . . . . . . . . 06400 2,161,200
3 Equipment (R). . . . . . . . . . . . . . . . . 07000 200,000
4 Buildings (R). . . . . . . . . . . . . . . . . . 25800 100,000
5 Other Assets (R). . . . . . . . . . . . . . . . 69000 100,500
6 Total. . . . . . . . . . . . . . . . . . . . . . . . . . $ 5,000,000

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 2015 are hereby reappropriated for expenditure during the fiscal year 2016.
### 308 - Racing Commission –

**Fund 7308 FY 2016 Org 0707**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Special Breeders Compensation (WVC §29-22-18a, subsection (l)).</td>
<td>0707</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

### 309 - Lottery Commission –

**Distributions to Statutory Funds and Purposes**

**Fund 7213 FY 2016 Org 0705**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Parking Garage Fund – Transfer.</td>
<td>0705</td>
<td>$500,000</td>
</tr>
<tr>
<td>2</td>
<td>2004 Capitol Complex Parking Garage Fund – Transfer.</td>
<td>0705</td>
<td>255,249</td>
</tr>
<tr>
<td>3</td>
<td>Capitol Dome and Improvements Fund – Transfer.</td>
<td>0705</td>
<td>2,200,641</td>
</tr>
<tr>
<td>4</td>
<td>Capitol Renovation and Improvement Fund – Transfer.</td>
<td>0705</td>
<td>2,807,722</td>
</tr>
<tr>
<td>5</td>
<td>Development Office Promotion Fund – Transfer.</td>
<td>0705</td>
<td>1,531,485</td>
</tr>
<tr>
<td>6</td>
<td>Research Challenge Fund – Transfer.</td>
<td>0705</td>
<td>2,041,980</td>
</tr>
<tr>
<td>7</td>
<td>Tourism Promotion Fund – Transfer.</td>
<td>0705</td>
<td>5,694,666</td>
</tr>
<tr>
<td>8</td>
<td>Cultural Facilities and Capitol Resources Matching Grant Program Fund –</td>
<td>0705</td>
<td>1,500,000</td>
</tr>
<tr>
<td>9</td>
<td>Transfer.</td>
<td>0705</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Workers’ Compensation Debt Reduction Fund – Transfer.</td>
<td>0705</td>
<td>11,000,000</td>
</tr>
<tr>
<td>11</td>
<td>State Debt Reduction Fund – Transfer.</td>
<td>0705</td>
<td>20,000,000</td>
</tr>
<tr>
<td>12</td>
<td>General Revenue Fund – Transfer.</td>
<td>0705</td>
<td>1,794,761</td>
</tr>
<tr>
<td>Ch. 15]</td>
<td>APPROPRIATIONS</td>
<td>317</td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td>--------------------------</td>
<td>-----</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>West Virginia Racing Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Racetrack Video Lottery</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Account. ................. 70012</td>
<td>4,083,958</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Historic Resort Hotel Fund. 70013</td>
<td>34,200</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Licensed Racetrack Regular</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Purse Fund. .............. 70014</td>
<td>12,159,198</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Total. .......................</td>
<td>$ 65,603,860</td>
<td></td>
</tr>
</tbody>
</table>

**310 - Lottery Commission – Excess Lottery Revenue Fund Surplus**

Fund 7208 FY 2016 Org 0705

| 1 | General Revenue Fund – |
| 2 | Transfer. ............... 70011 | $ 18,355,000 |

3 The above appropriation for General Revenue Fund – Transfer (fund 7208, appropriation 70011) shall be transferred to the General Revenue Fund.

**311 - Governor’s Office**

(WV Code Chapter 5)

Fund 1046 FY 2016 Org 0100

| 1 | Any unexpended balance remaining in the appropriation for Publication of Papers and Transition Expenses – Lottery Surplus (fund 1046, appropriation 06600) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016. |

**312 - West Virginia Development Office**

(WV Code Chapter 5B)

Fund 3170 FY 2016 Org 0307
Any unexpended balances remaining in the appropriations for Unclassified – Total (fund 3170, appropriation 09600), Recreational Grants or Economic Development Loans (fund 3170, appropriation 25300), and Connectivity Research and Development – Lottery Surplus (fund 3170, appropriation 92300) at the close of the fiscal year 2015 are hereby reappropriated for expenditure during the fiscal year 2016.

313 - Higher Education Policy Commission – Administration – Control Account

(WV Code Chapter 18B)

Fund 4932 FY 2016 Org 0441

Any unexpended balance remaining in the appropriation for Advanced Technology Centers (fund 4932, appropriation 02800) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

314 - Division of Health – Central Office

(WV Code Chapter 16)

Fund 5219 FY 2016 Org 0506

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 5219, appropriation 75500) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

315 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2016 Org 0511
1. Medical Services. 18900 $14,422,140

316 - Division of Corrections – Correctional Units

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

Fund 6283 FY 2016 Org 0608

1. Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 6283, appropriation 75500) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

5. Total TITLE II, Section 5 — Excess Lottery Funds. $300,381,000

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 2016.

LEGISLATIVE

317 - Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2016 Org 2300

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Economic Loss Claim</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>2 Payment Fund. 33400</td>
<td></td>
</tr>
</tbody>
</table>

*NOTE: The Governor reduced Item 315, line 1, by $2,000,000, from $16,422,140 to $14,422,140.
### JUDICIAL

**318 - Supreme Court**

Fund 8867 FY 2016 Org 2400

<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>250,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13000</td>
<td>1,750,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>2,000,000</strong></td>
</tr>
</tbody>
</table>

### EXECUTIVE

**319 - Governor’s Office**

(WV Code Chapter 5)

Fund 8742 FY 2016 Org 0100

<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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**320 - Department of Agriculture**

(WV Code Chapter 19)

Fund 8736 FY 2016 Org 1400

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### 321 - Department of Agriculture – Meat Inspection Fund

(WV Code Chapter 19)

**Fund 8737 FY 2016 Org 1400**

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### 322 - Department of Agriculture – State Conservation Committee

(WV Code Chapter 19)

**Fund 8783 FY 2016 Org 1400**

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### 323 - Department of Agriculture – Land Protection Authority

(WV Code Chapter 19)

**Fund 8896 FY 2016 Org 1400**

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322 APPROPRIATIONS [Ch. 15

324 - Secretary of State –
State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2016 Org 1600

1 Personal Services and
2 Employee Benefits.............. 00100 $ 210,240
3 Unclassified. ................. 09900 7,484
4 Current Expenses.............. 13000 415,727
5 Repairs and Alterations........ 06400 15,000
6 Other Assets............... 69000 100,000
7 Total........................ $ 748,451

DEPARTMENT OF ADMINISTRATION

325 - Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2016 Org 0230

1 Personal Services and
2 Employee Benefits.............. 00100 $ 0
3 Current Expenses.............. 13000 0
Total........................ $ 0

DEPARTMENT OF COMMERCE

326 - Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2016 Org 0305

1 Personal Services and
2 Employee Benefits.............. 00100 $ 1,442,347
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### 327 - Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2016 Org 0306

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### 328 - West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2016 Org 0307

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### 329 - Division of Labor

(WV Code Chapters 21 and 47)
### 324

**APPROPRIATIONS**

**Fund 8706 FY 2016 Org 0308**

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#### 330 - Division of Natural Resources

(WV Code Chapter 20)

**Fund 8707 FY 2016 Org 0310**

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<td>2</td>
<td>Employee Benefits</td>
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#### 331 - Division of Miners’ Health, Safety and Training

(WV Code Chapter 22)

**Fund 8709 FY 2016 Org 0314**

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<tr>
<td>1</td>
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### Ch. 15] APPROPRIATIONS

#### 332 - WorkForce West Virginia

(WV Code Chapter 23)

**Fund 8835 FY 2016 Org 0323**

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<td>5 Compensation.</td>
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<td>6 Reed Act 2002 –</td>
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<td>7 Employment Services.</td>
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<td>8 Total.</td>
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</table>

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.

#### 333 - Office of the Secretary – Office of Economic Opportunity

(WV Code Chapter 5)

**Fund 8780 FY 2016 Org 0327**

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### APPROPRIATIONS

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#### 334 - Division of Energy

(WV Code Chapter 5B)

Fund **8892** FY 2016 Org **0328**

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<td>5</td>
<td>Repairs and Alterations</td>
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<td>6</td>
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#### DEPARTMENT OF EDUCATION

#### 335 - State Board of Education – State Department of Education

(WV Code Chapters 18 and 18A)

Fund **8712** FY 2016 Org **0402**

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<td>Federal Economic Stimulus</td>
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### 336 - State Board of Education – School Lunch Program

(WV Code Chapters 18 and 18A)

**Fund 8713 FY 2016 Org 0402**

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<td>07000</td>
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### 337 - State Board of Education – Vocational Division

(WV Code Chapters 18 and 18A)

**Fund 8714 FY 2016 Org 0402**

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<td>07000</td>
<td>Equipment</td>
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### 338 - State Board of Education – Aid for Exceptional Children

(WV Code Chapters 18 and 18A)
### DEPARTMENT OF EDUCATION AND THE ARTS

**339 - Department of Education and the Arts – Office of the Secretary**

(WV Code Chapter 5F)

#### Fund 8841 FY 2016 Org 0431

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#### Fund 8718 FY 2016 Org 0432

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<td>1,000</td>
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<td>25800</td>
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<td>Other Assets.</td>
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341 - Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2016 Org 0433

|   | Personal Services and Employee Benefits. | 00100 | $328,653 |
|   | Current Expenses. | 13000 | $1,081,157 |
| 4 | Equipment. | 07000 | $543,406 |
| 5 | Total. | $1,953,216 |

342 - Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2016 Org 0439

|   | Equipment. | 07000 | $750,000 |

343 - State Board of Rehabilitation – Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2016 Org 0932

|   | Personal Services and Employee Benefits. | 00100 | $12,616,894 |
|   | Current Expenses. | 13000 | $53,118,076 |
| 4 | Repairs and Alterations. | 06400 | $350,300 |
| 5 | Equipment. | 07000 | $1,275,870 |
| 6 | Total. | $67,361,140 |
344 - State Board of Rehabilitation –
Division of Rehabilitation Services –
Disability Determination Services

(WV Code Chapter 18)

Fund 8890 FY 2016 Org 0932

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DEPARTMENT OF ENVIRONMENTAL PROTECTION

345 - Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2016 Org 0313

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DEPARTMENT OF HEALTH AND HUMAN RESOURCES

346 - Consolidated Medical Service Fund

(WV Code Chapter 16)
Ch. 15] APPROPRIATIONS 331

Fund 8723 FY 2016 Org 0506

1 Personal Services and
2   Employee Benefits............ 00100 $ 627,336
3   Unclassified. ................. 09900 73,307
4   Current Expenses .......... 13000 6,630,103
5   Total......................... $ 7,330,746

347 - Division of Health –
   Central Office

(WV Code Chapter 16)

Fund 8802 FY 2016 Org 0506

1 Personal Services and
2   Employee Benefits............ 00100 $ 13,744,404
3   Unclassified. ................. 09900 910,028
4   Current Expenses .......... 13000 79,148,201
5   Equipment. ................. 07000 456,972
6   Buildings. ................. 25800 155,000
7   Other Assets............... 69000 380,000
8   Federal Economic Stimulus... 89100 150,000
9   Total......................... $ 94,944,605

348 - Division of Health –
   West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2016 Org 0506

1 West Virginia Drinking Water
2   Treatment Revolving
3   Fund – Transfer............ 68900 $ 16,000,000
### 349 - West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2016 Org 0507

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### 350 - Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2016 Org 0510

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### 351 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2016 Org 0511

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### DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

#### 352 - Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2016 Org 0601

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#### 353 - Adjutant General – State Militia

(WV Code Chapter 15)

Fund 8726 FY 2016 Org 0603

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<td>Martinsburg Starbase</td>
<td>74200</td>
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<td>Charleston Starbase</td>
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<td>Military Authority</td>
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<td>$98,270,605</td>
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</table>

8 The adjutant general shall have the authority to transfer between appropriations.

#### 354 - Adjutant General – West Virginia National Guard Counterdrug Forfeiture Fund


### Fund 8785 FY 2016 Org 0603

1. **Personal Services and Employee Benefits**: $1,350,000
2. **Current Expenses**: $300,000
3. **Equipment**: $350,000
4. **Total**: $2,000,000

### 355 - Division of Homeland Security and Emergency Management

### Fund 8727 FY 2016 Org 0606

1. **Personal Services and Employee Benefits**: $721,650
2. **Current Expenses**: $20,429,281
3. **Repairs and Alterations**: $5,000
4. **Equipment**: $100,000
5. **Total**: $21,255,931

### 356 - Division of Corrections

### Fund 8836 FY 2016 Org 0608

1. **Unclassified**: $1,100
2. **Current Expenses**: $108,900
3. **Total**: $110,000

### 357 - West Virginia State Police

### Fund 8936 FY 2016 Org 0608

(WV Code Chapter 15)
**Fund 8741 FY 2016 Org 0612**

1 Personal Services and
2   Employee Benefits.............. 00100 $ 2,325,349
3 Current Expenses.................. 13000 2,125,971
4 Repairs and Alterations.......... 06400 42,000
5 Equipment......................... 07000 2,502,285
6 Buildings.......................... 25800 750,500
7 Other Assets....................... 69000 144,500
8 Land................................. 73000 500
9 Total................................ $ 7,891,105

**358 - Fire Commission**

(WV Code Chapter 29)

**Fund 8819 FY 2016 Org 0619**

1 Current Expenses............... 13000 $ 80,000

**359 - Division of Justice and Community Services**

(WV Code Chapter 15)

**Fund 8803 FY 2016 Org 0620**

1 Personal Services and
2   Employee Benefits.............. 00100 $ 724,370
3 Unclassified...................... 09900 25,185
4 Current Expenses............... 13000 7,965,450
5 Repairs and Alterations......... 06400 1,750
6 Total.............................. $ 8,716,755

**DEPARTMENT OF REVENUE**

**360 - Tax Division –**

*Consolidated Federal Fund*
### APPROPRIATIONS

(WV Code Chapter 11)

Fund 8899 FY 2016 Org 0702

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<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
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<td>$10,000</td>
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361 - **Insurance Commissioner**

(WV Code Chapter 33)

Fund 8883 FY 2016 Org 0704

<table>
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<th>Fiscal Year</th>
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<tbody>
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<td>5</td>
<td>Equipment</td>
<td>07000</td>
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<td>6</td>
<td>Buildings</td>
<td>25800</td>
<td>25,000</td>
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<td>7</td>
<td>Other Assets</td>
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### DEPARTMENT OF TRANSPORTATION

362 - **Division of Motor Vehicles**

(WV Code Chapter 17B)

Fund 8787 FY 2016 Org 0802

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363 - **Division of Public Transit**

(WV Code Chapter 17)
### DEPARTMENT OF VETERANS’ ASSISTANCE

#### 364 - Department of Veterans’ Assistance

(WV Code Chapter 9A)

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#### 365 - Department of Veterans’ Assistance – Veterans’ Home

(WV Code Chapter 9A)

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<th>Fund 8728 FY 2016 Org 0618</th>
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### APPROPRIATIONS [Ch. 15]

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### BUREAU OF SENIOR SERVICES

366 - Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2016 Org 0508

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<td>Employee Benefits</td>
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<td>Repairs and Alterations</td>
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### MISCELLANEOUS BOARDS AND COMMISSIONS

367 - Public Service Commission –
Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2016 Org 0926

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<td>Employee Benefits</td>
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### 368 - Public Service Commission – Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2016 Org 0926

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### 369 - National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2016 Org 0941

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### 370 - Coal Heritage Highway Authority

(WV Code Chapter 29)

Fund 8861 FY 2016 Org 0942

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Total TITLE II, Section 6 –
Federal Funds. $ 4,395,605,081

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 2016.

371 - West Virginia Development Office – Community Development

Fund 8746 FY 2016 Org 0307

Personal Services and Employee Benefits 00100 $ 648,117
Unclassified 09900 483,500
Current Expenses 13000 47,226,995
Repairs and Alterations 06400 300
Total $ 48,358,912

372 - WorkForce West Virginia – Workforce Investment Act

Fund 8749 FY 2016 Org 0323

Personal Services and Employee Benefits 00100 $ 1,511,208
Unclassified 09900 23,023
Current Expenses 13000 19,864,909
Repairs and Alterations 06400 1,600
Equipment 07000 500
Buildings 25800 1,100
Total $ 21,402,340

373 - Department of Commerce
Office of the Secretary – Office of Economic Opportunity – Community Services
### 374 - Division of Health – Maternal and Child Health

**Fund 8750 FY 2016 Org 0506**

<table>
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### 375 - Division of Health – Preventive Health

**Fund 8753 FY 2016 Org 0506**

<table>
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1 Personal Services and
2 Employee Benefits........... 00100 $ 822,766
3 Unclassified. ................. 09900 115,924
4 Current Expenses............ 13000 10,653,740
5 Total................................ $ 11,592,430

377 - Division of Health – Community Mental Health Services

Fund 8794 FY 2016 Org 0506

1 Personal Services and
2 Employee Benefits........... 00100 $ 936,557
3 Unclassified. ................. 09900 33,533
4 Current Expenses............ 13000 2,383,307
5 Total................................ $ 3,353,397

378- Division of Human Services – Energy Assistance

Fund 8755 FY 2016 Org 0511

1 Personal Services and
2 Employee Benefits........... 00100 $ 1,475,000
3 Unclassified. ................. 09900 350,000
4 Current Expenses............ 13000 33,175,000
5 Total................................ $ 35,000,000

379 - Division of Human Services – Social Services

Fund 8757 FY 2016 Org 0511

1 Personal Services and
2 Employee Benefits........... 00100 $ 14,231,684
3 Unclassified. ................. 09900 171,982
4 Current Expenses............ 13000 2,870,508
5 Total................................ $ 17,274,174
### 380 - Division of Human Services – Temporary Assistance for Needy Families

Fund 8816 FY 2016 Org 0511

<table>
<thead>
<tr>
<th></th>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services and</td>
<td>00100</td>
<td>$17,964,349</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$17,964,349</td>
</tr>
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<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>$1,250,000</td>
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<tr>
<td>4</td>
<td>Current Expenses</td>
<td>13000</td>
<td>$105,785,651</td>
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<tr>
<td>5</td>
<td>Total</td>
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<td>$125,000,000</td>
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</table>

### 381 - Division of Human Services – Child Care and Development

Fund 8817 FY 2016 Org 0511

<table>
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<td>$4,654,643</td>
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<td>2</td>
<td>Employee Benefits</td>
<td>00100</td>
<td>$4,654,643</td>
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<tr>
<td>3</td>
<td>Unclassified</td>
<td>09900</td>
<td>$350,000</td>
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<tr>
<td>4</td>
<td>Current Expenses</td>
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<td>$31,995,357</td>
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<tr>
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<td>Total</td>
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<td>$37,000,000</td>
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</table>

### 382 - Division of Justice and Community Services – Juvenile Accountability Incentive

Fund 8829 FY 2016 Org 0620

<table>
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<th>Category</th>
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<tr>
<td>1</td>
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<td>Employee Benefits</td>
<td>00100</td>
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<tr>
<td>3</td>
<td>Current Expenses</td>
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<td>$235,729</td>
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<td>4</td>
<td>Repairs and Alterations</td>
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<td>5</td>
<td>Total</td>
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<td>$250,000</td>
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</tbody>
</table>

### 6 Total TITLE II, Section 7 —

### 7 Federal Block Grants                |       | $324,978,769|
Sec. 8. Awards for claims against the state. — There are hereby appropriated for fiscal year 2016, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $203,331, special revenue funds in the amount of $747,870, and state road funds in the amount of $730,433 for payment of claims against the state.

Sec. 9. Appropriations from general revenue surplus accrued. — The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 2016 out of surplus funds only, accrued from the fiscal year ending June 30, 2015, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued as of July 31, 2015 from the fiscal year ending June 30, 2015, only after first meeting requirements of W.Va. Code §11B-2-20(b).

In the event that surplus revenues available on July 31, 2015, are not sufficient to meet the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated to meet the appropriation in this section.

383 - Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2016 Org 0211

Capital Outlay, Repairs and Equipment – Surplus. . . . . . . . 67700 $ 9,000,000
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 2016 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2015, 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, 2015.

In the event that surplus revenues available from the fiscal year ending June 30, 2015, 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.
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 2016 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2015, 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, 2015.

In the event that surplus revenues available from the fiscal year ending June 30, 2015, 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.

386 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2016 Org 0511

1 Medical Services –
2 Lottery Surplus. ............... 68100 $ 20,000,000

3 Total TITLE II, Section 11 –
4 Surplus Accrued. ................. $ 20,000,000
Sec. 12. Special revenue appropriations. — There are hereby appropriated for expenditure during the fiscal year 2016 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 2016, 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 2016 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.

Sec. 20. Special permissive, one-time appropriation from Revenue Shortfall Reserve Fund. *
§1. Appropriations conditional

§2. Constitutionality

**TITLE III – ADMINISTRATION.**

**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.

*NOTE: The Governor deleted the language on lines 2 through 10, which read “— There is hereby appropriated an amount not to exceed $20,000,000 from the Revenue Shortfall Reserve Fund (fund 7005) for the renovation of State Capitol Complex Building 3 to provide for its use as state office space. In lieu of incurring additional state debt, bond issuance and interest expense, the Governor may at his discretion, direct the transfer of funds to the Capitol Dome and Capitol Improvements Fund (fund 2257) created under §5A-4-2, for expenditure.”*
CHAPTER 16

(H. B. 2760 - By Mr. Speaker (Mr. Armstead)
and Delegate Miley)
[By Request of the Executive]

[Passed March 6, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2015, organization 0508, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 14, 2015, which included a Statement of the Lottery Fund setting forth therein the unappropriated cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less regular appropriations for fiscal year 2015; and

WHEREAS, It appears from the Governor’s Statement of Lottery Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 5405, fiscal year 2015, organization 0508, be supplemented and amended by increasing an existing item of appropriation as follows:
TITLE II - APPROPRIATIONS.

Sec. 4. Appropriations from lottery net profits.

292–Bureau of Senior Services -
Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2015 Org 0508

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 19 Senior Services Medicaid</td>
<td>$ 31,355,462</td>
</tr>
<tr>
<td>2 Transfer.</td>
<td>$ 31,355,462</td>
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</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, and increase an existing item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2015.

CHAPTER 17

(H. B. 2764 - By Mr. Speaker (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed March 6, 2015; in effect from passage]
[Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the State Department of Education
- School Building Authority - Debt Service Fund, fund 3963, fiscal year 2015, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 14, 2015, which included a Statement of the Lottery Fund setting forth therein the unappropriated cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less regular appropriations for fiscal year 2015; and

WHEREAS, It appears from the Governor’s Statement of Lottery Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 3963, fiscal year 2015, organization 0402, be supplemented and amended to read as follows:

TITLE II - APPROPRIATIONS.

Sec. 4. Appropriations from lottery net profits.

288-State Department of Education -
School Building Authority -
Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2015 Org 0402

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service - Total.. . . . . . . 31000</td>
<td>$ 7,513,455</td>
</tr>
</tbody>
</table>
Directed Transfer............. 70000 10,486,545
Total........................... $ 18,000,000

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18.

CHAPTER 18

(Com. Sub. for H. B. 2766 - By Mr. Speaker, (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed March 14, 2015; in effect from passage.]
[Approved by the Governor with deletions and reductions on March 20, 2015.]

AN ACT expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015, in the amount of $5,650,000 from the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, appropriation 64200, and in the amount of $1,850,000 from the Joint Expenses, fund 0175, fiscal year 2009, organization 2300, appropriation 64200,*
NOTE: The Governor deleted language in the title which read “and in the amount of $75,365.64 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 11400, and in the amount of $67,553.27 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 23800, and in the amount of $122,113 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 23800, and in the amount of $212,500 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 23800, and in the amount of $635,179.58 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 23800, and in the amount of $346,521.90 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 23800, and in the amount of $34,378.53 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 11400, and in the amount of $397,276.39 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 11400, and in the amount of $1,272,323.47 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2006, organization 0100, appropriation 11400, and in the amount of $2,227,821.66 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, and in the amount of $901,816.89 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, appropriation 11400, and in the amount of $7,500,000 from the Treasurer’s Office - Special Income Tax Refund Reserve Fund, fund 1313, fiscal year 2015, organization 1300.”
WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 2015, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2014, and further included the estimate of revenues for fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015; and

WHEREAS, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first six months of fiscal year 2015 as prepared by the State Budget Office; and

WHEREAS, This report demonstrates that the State of West Virginia has experienced a revenue shortfall of approximately $34 million for the first six months of fiscal year 2015, as compared to the monthly revenue estimates for the first six months of the fiscal year 2015; and

WHEREAS, Current economic and fiscal trends will result in projected year-end revenue deficits, including potential significant shortfalls in Severance Tax, and smaller shortfalls in Personal Income Tax and Consumer Sales and Use Tax; and

WHEREAS, Projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and

WHEREAS, The total projected year-end revenue deficit for the General Revenue Fund is estimated at $80 million; and

WHEREAS, On December 17, 2013, the Governor issued a memorandum to Cabinet Secretaries implementing temporary restrictions on general revenue funded hiring to help reduce expenditures and close the anticipated budget gap in fiscal year 2014; and

WHEREAS, on July 1, 2014, this temporary restriction on general revenue funded hiring was extended to help close the anticipated budget gap in fiscal year 2015; and
WHEREAS, The Constitution of the State of West Virginia requires that there be a balance between the State’s revenues and expenditures for each fiscal year; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2015, in the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, appropriation 64200, be decreased by expiring the amount of $5,650,000, and in the Joint Expenses, fund 0175, fiscal year 2009, organization 2300, appropriation 64200, be decreased by expiring the amount of $1,850,000, *

and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 11400, be decreased by expiring the amount of $75,365.64, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 23800, be decreased by expiring the amount of $67,553.27, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 23800, be decreased by expiring the amount of $122,113, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 61400, be decreased by expiring the amount of $212,500, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 11400, be decreased by expiring the amount of $34,378.53, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 23800, be decreased by expiring the amount of $397,276.39, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2006, organization 0100, appropriation 61400, be decreased by expiring the amount of $1,272,323.47, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, be decreased by expiring the amount of $2,227,821.66, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, appropriation 11400, be decreased by expiring the amount of $901,816.89, and in the Treasurer’s Office - Special Income Tax
* all to the unappropriated balance of the State Fund, General Revenue, to be available during the fiscal year ending June 30, 2015.

*NOTE: The Governor deleted language in the title which read “and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 11400, be decreased by expiring the amount of $75,365.64, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 23800, be decreased by expiring the amount of $67,553.27, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 23800, be decreased by expiring the amount of $122,113, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 61400, be decreased by expiring the amount of $212,500, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 61400, be decreased by expiring the amount of $1,207,149.67, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 11400, be decreased by expiring the amount of $34,378.53, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 23800, be decreased by expiring the amount of $397,276.39, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2006, organization 0100, appropriation 61400, be decreased by expiring the amount of $1,272,323.47, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, be decreased by expiring the amount of $2,227,821.66, and in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, appropriation 11400, be decreased by expiring the amount of $901,816.89, and in the Treasurer’s Office - Special Income Tax Refund Reserve Fund, fund 1313, fiscal year 2015, organization 1300, be decreased by expiring the amount of $7,500,000.”
The purpose of this supplemental appropriation bill is to expire items from the aforesaid accounts to the General Revenue unappropriated balance for the fiscal year 2015.

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015 in the amount of $1,500,000 from the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 59200, and in the amount of $400,103.30 from the Department of Transportation, Division of Public Transit, fund 0510, fiscal year 2013, organization 0805, appropriation 25800, and in the amount of $3,861,297 from the Department of Administration, Risk and Insurance Management Board - Premium Tax Savings Fund, fund 2367, fiscal year 2015, organization 0218, and in the amount of $1,329.28 from the Department of Health and Human Resources, Division of Health, Uniform Health Professional Data Collection Systems Fund, fund 5109, fiscal year 2015, organization 0506, and in the amount of $478.81 from the Department of Health and Human Resources, Division of Health, Commonly Based Fetal and Infant Mortality Review Fund, fund 5131, fiscal year 2015, organization 0506, and in the amount of $18,609.27 from the Department of Health and Human Resources, Division of Health, Claude Worthington Benedum Foundation
Fund, fund 5132, fiscal year 2015, organization 0506, and in the amount of $2,500 from the Department of Health and Human Resources, Division of Health, Behavioral Health Clearing Fund, fund 5151, fiscal year 2015, organization 0506, and in the amount of $13,193.90 from the Department of Health and Human Resources, Division of Health, Special Education Title I Fund, fund 5161, fiscal year 2015, organization 0506, and in the amount of $45 from the Department of Health and Human Resources, Division of Health, Rural Health Networking Project Fund, fund 5184, fiscal year 2015, organization 0506, and in the amount of $1,400,000 from the Department of Health and Human Resources, Division of Health, Vital Statistics Improvement Fund, fund 5225, fiscal year 2015, organization 0506, and in the amount of $6,000,000 from the Department of Health and Human Resources, West Virginia Health Care Authority - Health Care Cost Review Fund, fund 5375, fiscal year 2015, organization 0507, and in the amount of $4,000,000 from the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Information Network Account, fund 5380, fiscal year 2015, organization 0507, and in the amount of $2,000,000 from the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Care Authority Revolving Loan Fund, fund 5382, fiscal year 2015, organization 0507, and in the amount of $4,976.37 from the Department of Health and Human Resources, Division of Human Services, Special County General Relief Fund, fund 5054, fiscal year 2015, organization 0511, and in the amount of $18,118.01 from the Department of Health and Human Resources, Division of Human Services, Individual and Family Grant Program, fund 5055, fiscal year 2015, organization 0511, and in the amount of $251,657.05 from the Department of Health and Human Resources, Division of Human Services, TRIP Fund, fund 5070, fiscal year 2015, organization 0511, and in the amount of $4,000,000 from the Department of Health and Human Resources, Division of Human Services, Medicaid Fraud Control Fund, fund 5141, fiscal year 2015, organization 0511, and in the amount of $223,310.69 from the
Department of Health and Human Resources, Division of Human Services - Marriage Education Fund, fund 5490, fiscal year 2015, organization 0511, and in the amount of $16,700,000 from the Department of Revenue, Insurance Commissioner, fund 7152, fiscal year 2015, organization 0704,*

WHEREAS, the Governor finds that the account balances in the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 59200, in the Department of Transportation, Division of Public Transit, fund 0510, fiscal year 2013, organization 0805, appropriation 25800, in the Department of Administration, Risk and Insurance Management Board - Premium Tax Savings Fund, fund 2367, fiscal year 2015, organization 0218, in the Department of Health and Human Resources, Division of Health, Uniform Health Professional Data Collection Systems Fund, fund 5109, fiscal year 2015, organization 0506, in the Department of Health and Human Resources, Division of Health, Commonly Based Fetal and Infant Mortality Review Fund, fund 5131, fiscal year 2015, organization 0506, in the Department of Health and Human Resources, Division of Health, Claude Worthington Benedum Foundation Fund, fund 5132, fiscal year 2015, organization 0506, in the Department of Health and Human Resources, Division of Health, Behavioral Health Clearing Fund, fund 5151, fiscal year 2015, organization 0506, in the Department of Health and Human Resources, Division of Health, Special Education Title I Fund, fund 5161, fiscal year 2015, organization 0506, in the Department of Health and Human Resources,

*NOTE: The Governor deleted language in the title which read “and all subject to the condition that bonds authorized in section sixteen-b, article fifteen, chapter thirty-one of the Code of West Virginia for improvements to Cacapon State Park and Beech Fork State Park have been sold.”
Division of Health, Rural Health Networking Project Fund, fund 5184, fiscal year 2015, organization 0506, in the Department of Health and Human Resources, Division of Health, Vital Statistics Improvement Fund, fund 5225, fiscal year 2015, organization 0506, in the Department of Health and Human Resources, West Virginia Health Care Authority - Health Care Cost Review Fund, fund 5375, fiscal year 2015, organization 0507, in the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Information Network Account, fund 5380, fiscal year 2015, organization 0507, in the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Care Authority Revolving Loan Fund, fund 5382, fiscal year 2015, organization 0507, in the Department of Health and Human Resources, Division of Human Services, Special County General Relief Fund, fund 5054, fiscal year 2015, organization 0511, in the Department of Health and Human Resources, Division of Human Services, Individual and Family Grant Program, fund 5055, fiscal year 2015, organization 0511, in the Department of Health and Human Resources, Division of Human Services, TRIP Fund, fund 5070, fiscal year 2015, organization 0511, in the Department of Health and Human Resources, Division of Human Services, Medicaid Fraud Control Fund, fund 5141, fiscal year 2015, organization 0511, in the Department of Health and Human Resources, Division of Human Services - Marriage Education Fund, fund 5490, fiscal year 2015, organization 0511, and in the Department of Revenue, Insurance Commissioner, fund 7152, fiscal year 2015, organization 0704, exceed that which is necessary for the purposes for which the accounts were established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 14, 2015, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015 and further included recommended expirations to the surplus balance of the State Fund General Revenue; and
WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2015, in the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 59200 be decreased by expiring the amount of $1,500,000, and in the Department of Transportation, Division of Public Transit, fund 0510, fiscal year 2013, organization 0805, appropriation 25800, be decreased by expiring the amount of $400,103.30, and in the Department of Administration, Risk and Insurance Management Board - Premium Tax Savings Fund, fund 2367, fiscal year 2015, organization 0218, be decreased by expiring the amount of $3,861,297, and in the Department of Health and Human Resources, Division of Health, Uniform Health Professional Data Collection Systems Fund, fund 5109, fiscal year 2015, organization 0506, be decreased by expiring the amount of $1,329.28, and in the Department of Health and Human Resources, Division of Health, Commonly Based Fetal and Infant Mortality Review Fund, fund 5131, fiscal year 2015, organization 0506, be decreased by expiring the amount of $478.81, and in the Department of Health and Human Resources, Division of Health, Claude Worthington Benedum Foundation Fund, fund 5132, fiscal year 2015, organization 0506, be decreased by expiring the amount of $18,609.27, Department of Health and Human Resources, Division of Health, Behavioral Health Clearing Fund, fund 5151, fiscal year 2015, organization 0506, be decreased by expiring the amount of $2,500, and in the Department of Health and Human Resources, Division of Health, Special Education Title I Fund, fund 5161, fiscal year 2015, organization 0506, be decreased by expiring the amount of $13,193.90, and in the Department of Health and Human Resources, Division of Health, Rural Health Networking
Project Fund, fund 5184, fiscal year 2015, organization 0506, be decreased by expiring the amount of $45, and in the Department of Health and Human Resources, Division of Health, Vital Statistics Improvement Fund, fund 5225, fiscal year 2015, organization 0506, be decreased by expiring the amount of $1,400,000, and in the Department of Health and Human Resources, West Virginia Health Care Authority - Health Care Cost Review Fund, fund 5375, fiscal year 2015, organization 0506, be decreased by expiring the amount of $6,000,000, and in the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Information Network Account, fund 5380, fiscal year 2015, organization 0507, be decreased by expiring the amount of $4,000,000, and in the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Care Authority Revolving Loan Fund, fund 5382, fiscal year 2015, organization 0507, be decreased by expiring the amount of $2,000,000, and in the Department of Health and Human Resources, Division of Human Services, Special County General Relief Fund, fund 5054, fiscal year 2015, organization 0511, be decreased by expiring the amount of $4,976.37, and in the Department of Health and Human Resources, Division of Human Services, Individual and Family Grant Program, fund 5055, fiscal year 2015, organization 0511, be decreased by expiring the amount of $18,118.01, and in the Department of Health and Human Resources, Division of Human Services, TRIP Fund, fund 5070, fiscal year 2015, organization 0511, be decreased by expiring the amount of $251,657.05, and in the Department of Health and Human Resources, Division of Human Services, Medicaid Fraud Control Fund, fund 5141, fiscal year 2015, organization 0511, be decreased by expiring the amount of $4,000,000, and in the Department of Health and Human Resources, Division of Human Services - Marriage Education Fund, fund 5490, fiscal year 2015, organization 0511, be decreased by expiring the amount of $223,310.69, and in the Department of Revenue, Insurance Commissioner, fund 7152, fiscal year 2015, organization 0704, be decreased by expiring the amount of $16,700,000, all to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the
The purpose of this supplemental appropriation bill is to expire items of appropriation and cash balances in the aforesaid accounts for the designated spending units during the fiscal year 2015.

CHAPTER 20

(H. B. 2770 - By Mr. Speaker, (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

[Passed March 6, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Division of Human Services, fund 5365, fiscal year 2015, organization 0511, by supplementing and amending the appropriation for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted to the Legislature, a Statement of the State Excess Lottery Revenue Fund, dated January 14, 2015,

*NOTE: The Governor deleted language in the title which read “Provided, That the expiration of funds provided herein shall not occur until such time as the bonds authorized by the provisions of section sixteen-b, article fifteen, chapter thirty-one of the Code of West Virginia for improvements to Cacapon State Park and Beech Fork State Park have been sold.”
setting forth therein the cash balance as of July 1, 2014, and further included the estimate of revenue for the fiscal year 2015, less regular appropriations for the fiscal year 2015; and

WHEREAS, It appears from the Governor’s Statement of the State Excess Lottery Revenue Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 5365, fiscal year 2015, organization 0511, be supplemented and amended to by increasing an existing item of appropriation as follows:

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 1 Medical Services. . . . . . 18900</td>
<td>$ 9,672,664</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, and increase an existing item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2015.
AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015, in the amount of $339,000 from the Department of Agriculture, fund 0131, fiscal year 2012, organization 1400, appropriation 11900, and in the amount of $411,000 from the Department of Agriculture, fund 0131, fiscal year 2013, organization 1400, appropriation 11900, and in the amount of $315,496.80 from the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 72500, and in the amount of $210,268 from the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 77900, and in the amount of $774,644.65 from the Attorney General, fund 0150, fiscal year 2014, organization 1500, appropriation 26000, and in the amount of $1,000,000 from the Auditor’s Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2015, organization 1200, and in the amount of $3,410,629 from the Treasurer’s Office - Flood Insurance Tax Fund, fund 1343, fiscal year 2015, organization 1300, and in the amount of $700,000 from the Attorney General - Antitrust Enforcement Fund, fund 1507, fiscal year 2015, organization 1500, and in the amount of *$500,000 from the Secretary of State - General Administrative Fees Account, fund 1617, fiscal year 2015, organization 1600.

* NOTE: The Governor reduced the amount by $250,000, from $750,000 to $500,000.
WHEREAS, the Legislature finds that the account balance in the Department of Agriculture, fund 0131, fiscal year 2012, organization 1400, appropriation 11900, in the Department of Agriculture, fund 0131, fiscal year 2013, organization 1400, appropriation 11900, in the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 72500, in the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 77900, in the Attorney General, fund 0150, fiscal year 2014, organization 1500, appropriation 26000, in the Auditor’s Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2015, organization 1200, in the Treasurer’s Office - Flood Insurance Tax Fund, fund 1343, fiscal year 2015, organization 1300, in the Attorney General - Antitrust Enforcement Fund, fund 1507, fiscal year 2015, organization 1500, and in the Secretary of State - General Administrative Fees Account, fund 1617, fiscal year 2015, organization 1600 exceeds that which is necessary for the purpose for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2015, in the Department of Agriculture, fund 0131 fiscal year 2012, organization 1400, appropriation 11900, be decreased by expiring the amount of $339,000, and in the Department of Agriculture, fund 0131, fiscal year 2013, organization 1400, appropriation 11900, be decreased by expiring the amount of $411,000, and in the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 72500, be decreased by expiring the amount of $315,496.80, and in the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 77900, be decreased by expiring the amount of $210,268, and in the Attorney General, fund 0150, fiscal year 2014, organization 1500, appropriation 26000, be decreased by expiring the amount of $774,644.65, and in the Auditor’s Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2015, organization 1200, be decreased by expiring the amount of $1,000,000, and in the Treasurer’s Office - Flood Insurance Tax Fund, fund 1343,
fiscal year 2015, organization 1300, be decreased by expiring the
amount of $3,410,629, and in the Attorney General - Antitrust
Enforcement Fund, fund 1507, fiscal year 2015, organization 1500, be
decreased by expiring the amount of $700,000, and in the Secretary of
State - General Administrative Fees Account, fund 1617, fiscal year
2015, organization 1600, in the amount of *$500,000, all to the
unappropriated surplus balance of the State Fund, General Revenue, to
be available for appropriation during the fiscal year ending June 30,
2015.

CHAPTER 22

(H. B. 2933 - By Delegate(s) E. Nelson,
Anderson, Canterbury, Espinosa, Frich, Hamilton,
Westfall, Moye and Williams)

[Passed March 6, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation of public moneys out
of the Treasury from the balance of moneys remaining as an
unappropriated surplus balance in the State Fund, General
Revenue, to the Department of Administration, Public Defender
Services, fund 0226, fiscal year 2015, organization 0221, by
supplementing and amending the appropriations for the fiscal year
ending June 30, 2015.

WHEREAS, The Governor submitted to the Legislature the
Executive Budget document, dated January 14, 2015, which included
a Statement of the State Fund, General Revenue, setting forth therein

*NOTE: The Governor reduced the amount by $250,000, from
$750,000 to $500,000.
the cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 0226, fiscal year 2015, organization 0221, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2015 Org 0221

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 5 Appointed Counsel Fees -</td>
<td></td>
</tr>
<tr>
<td>2 Surplus. ................. 43500</td>
<td>$12,700,000</td>
</tr>
</tbody>
</table>

3 The purpose of this supplemental appropriation bill is to supplement, amend, and increase an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2015.
AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2015, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 14, 2015, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015 and further included recommended expirations to the surplus balance of the State Fund General Revenue; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and the passage of House Bill No. 2769 and House Bill No. 2772 during the 2015 Regular Session of the Legislature, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore
Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 0450, fiscal year 2015, organization 0608, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

73-Division of Corrections-
Correctional Units

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

Fund 0450 FY 2015 Org 0608

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>21a Security System</td>
<td></td>
</tr>
<tr>
<td>21b Improvements - Surplus (R).</td>
<td>$7,100,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Security System Improvement - Surplus (fund 0450, appropriation 75501) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

The purpose of this supplemental appropriation bill is to supplement, amend, and add an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2015.
AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health, Central Office, fund 0407, fiscal year 2015, organization 0506, and to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2015, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 14, 2015, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015 and further included recommended expirations to the surplus balance of the State Fund General Revenue; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and the passage of House Bill No. 2772 and House Bill No. 2769 during the 2015 Regular Session of the Legislature, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore
Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 0407, fiscal year 2015, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

62-Division of Health -
   Central Office

(WV Code Chapter 16)

Fund 0407 FY 2015 Org 0506

<table>
<thead>
<tr>
<th>Appropriation</th>
<th></th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 40</td>
<td></td>
<td>$180,248</td>
</tr>
<tr>
<td>2 41 Care System - Surplus 91899</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 0403, fiscal year 2015, 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

66-Division of Human Services
The purpose of this supplemental appropriation bill is to supplement, amend, and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2015.

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Treasurer’s Office, fund 0126, fiscal year 2015, organization 1300, to the State Board of Education - State FFA-FHA Camp and Conference Center, fund 0306, fiscal year 2015, organization 0402, to the State Board of Education - West Virginia Schools for the Deaf and the Blind, fund 0320, fiscal year 2015, organization 0403, to Mountwest Community and Technical College, fund 0599, fiscal year 2015, organization 0444, to the
West Virginia School of Osteopathic Medicine, fund 0336, fiscal year 2015, organization 0476, and to West Virginia State University, fund 0373, fiscal year 2015, organization 0490, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 14, 2015, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015 and further included recommended expirations to the surplus balance of the State Fund General Revenue; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and the passage of House Bill No. 2772 and House Bill No. 2769 during the 2015 Regular Session of the Legislature, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 0126, fiscal year 2015, organization 1300, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

9-Treasurer’s Office -

(WV Code Chapter 12)
And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 0306, fiscal year 2015, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

**TITLE II - APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF EDUCATION**

46-State Board of Education -  
State FFA-FHA Camp and Conference Center  
(WV Code Chapters 18 and 18A)

Fund 0306 FY 2015 Org 0402

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>3a Unclassified - Surplus (R). . . . . 09700</td>
<td>$ *0</td>
</tr>
</tbody>
</table>

* **Note:** The Governor reduced the amount by $500,000, from $500,000 to $0.
Any unexpended balance remaining in the above appropriation for Unclassified - Surplus (fund 0306, appropriation 09700) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 0320, fiscal year 2015, organization 0403, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II - APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF EDUCATION**

52-State Board of Education -  
West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2015 Org 0403

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified - Surplus (R) . . . 09700 $</td>
<td>*0</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Unclassified - Surplus (fund 0320, appropriation 09700) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

* **Note:** The Governor reduced the amount by $1,500,000, from $1,500,000 to $0.
And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 0599, fiscal year 2015, organization 0444, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

92-Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2015 Org 0444

<table>
<thead>
<tr>
<th>Appropriation Fund</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mountwest Community and Technical College - Surplus... 48799</td>
<td>$ 123,962</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 0336, fiscal year 2015, organization 0476, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

107-West Virginia School of Osteopathic Medicine
Any unexpended balance remaining in the above appropriation for West Virginia School of Osteopathic Medicine - Surplus (fund 0336, appropriation 17299) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 0373, fiscal year 2015, organization 0490, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II - APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**HIGHER EDUCATION POLICY COMMISSION**

114-West Virginia State University

(WV Code Chapter 18B)

* **Note:** The Governor reduced the amount by $500,000, from $500,000 to $0.
Any unexpended balance remaining in the above appropriation for West Virginia State University - Surplus (fund 0373, appropriation 44199) at the close of the fiscal year 2015 is hereby reappropriated for expenditure during the fiscal year 2016.

The purpose of this supplemental appropriation bill is to supplement, amend, and increase and add items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2015.

CHAPTER 26

(S. B. 463 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

[Passed March 3, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June

* NOTE: The Governor reduced the amount by $500,000, from $500,000 to $0.
30, 2015, to the Department of Health and Human Resources, Division of Human Services - Health Care Provider Tax - Medicaid State Share Fund, fund 5090, fiscal year 2015, organization 0511, by supplementing and amending the appropriation for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Human Services - Health Care Provider Tax - Medicaid State Share Fund, fund 5090, fiscal year 2015, organization 0511, that is available for expenditure during the fiscal year ending June 30, 2015, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That the total appropriation for the fiscal year ending June 30, 2015, to fund 5090, fiscal year 2015, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

209-Division of Human Services-
Health Care Provider Tax-
Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2015 Org 0511
1 Medical Services. . . . . . . . . . . . 18900 $ 14,700,000

The purpose of this supplemental appropriation bill is to supplement, amend and increase an existing item of appropriations in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2015.

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2015, to the Department of Commerce, Workforce West Virginia - Workforce Investment Act, fund 8749, fiscal year 2015, organization 0323, and to the Department of Commerce, Office of the Secretary - Office of Economic Opportunity - Community Services, fund 8781, fiscal year 2015, organization 0327, by supplementing and amending the appropriation for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2015, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore
Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 8749, fiscal year 2015, organization 0323, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

371 - WorkForce West Virginia- Workforce Investment Act

Fund 8749 FY 2015 Org 0323

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 4 Current Expenses . . . . . . . 13000</td>
<td>$ 11,500,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 8781, fiscal year 2015, organization 0327, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

372 - Department of Commerce Office of the Secretary- Office of Economic Opportunity- Community Services

Fund 8781 FY 2015 Org 0327
The purpose of this supplementary appropriation bill is to supplement, amend and increase existing items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2015.

CHAPTER 28
(S. B. 467 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]
[Passed March 3, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2015, to the Department of Agriculture, State Conservation Committee, fund 8783, fiscal year 2015, organization 1400, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2015, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 8783, fiscal year 2015, organization 1400, be
supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

EXECUTIVE

320-Department of Agriculture-
State Conservation Committee

Fund 8783 FY 2015 Org 1400

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 3 Current Expenses............. 13000</td>
<td>$ 12,382,910</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend and increase an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2015.

CHAPTER 29

(S. B. 469 - By Senators Cole (Mr. President) and Kessler) [By Request of the Executive]

[Passed March 3, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2015, to the Department of Environmental Protection, Division of
Environmental Protection, fund 8708, fiscal year 2015, organization 0313, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2015, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 8708, fiscal year 2015, organization 0313, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

343-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2015 Org 0313

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 5a Buildings</td>
<td>$ 40,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend and add an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2015.
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2015, to the Department of Health and Human Resources, Human Rights Commission, fund 8725, fiscal year 2015, organization 0510, to the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2015, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2015, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 8725, fiscal year 2015, organization 0510, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.
### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

#### 348-Human Rights Commission

(WV Code Chapter 5)

**Fund 8725 FY 2015 Org 0510**

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 4 Current Expenses</td>
<td>$42,845</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2015, to fund 8722, fiscal year 2015, organization 0511, be supplemented and amended by increasing existing items of appropriation as follows:

### TITLE II—APPROPRIATIONS.

**Sec. 6. Appropriations of federal funds.**

### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

#### 349-Division of Human Services

(WV Code Chapters 9, 48, and 49)

**Fund 8722 FY 2015 Org 0511**

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  5 Medical Services</td>
<td>$100,000,000</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement, amend and increase existing items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2015.

CHAPTER 31

(S. B. 472 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

[Passed March 6, 2015; in effect from passage.]
[Approved by the Governor on March 13, 2015.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2015, to the Department of Transportation, Division of Motor Vehicles - Motor Vehicle Fees Fund, fund 8223, fiscal year 2015, organization 0802, by supplementing and amending the appropriation for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Transportation, Division of Motor Vehicles - Motor Vehicle Fees Fund, fund 8223, fiscal year 2015, organization 0802, that is available for expenditure during the fiscal year ending June 30, 2015, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore
Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 8223, fiscal year 2015, organization 0802, be supplemented and amended by increasing existing items of appropriation and adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF TRANSPORTATION

257-Division of Motor Vehicles-
Motor Vehicle Fees Fund

(WV Code Chapter 17B)

Fund 8223 FY 2015 Org 0802

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 1 Personal Services and</td>
<td></td>
</tr>
<tr>
<td>2 2 Employee Benefits........00100 $ 184,000</td>
<td></td>
</tr>
<tr>
<td>3 3 Current Expenses..........13000 2,000,000</td>
<td></td>
</tr>
<tr>
<td>4 4a Equipment.................07000 75,000</td>
<td></td>
</tr>
</tbody>
</table>

The purpose of this supplemental appropriation bill is to supplement, amend, increase existing items and add an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year.
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2015, to the Department of Military Affairs and Public Safety, West Virginia State Police, fund 8741, fiscal year 2015, organization 0612, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2015, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 8741, fiscal year 2015, organization 0612, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY
### APPROPRIATIONS

355-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2015 Org 0612

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 1 Personal Services and</td>
<td>$ 501,688</td>
</tr>
<tr>
<td>2 2 Employee Benefits</td>
<td>615,275</td>
</tr>
<tr>
<td>3 3 Current Expenses</td>
<td>381,824</td>
</tr>
<tr>
<td>4 5 Equipment</td>
<td>13,900</td>
</tr>
<tr>
<td>5 7 Other Assets</td>
<td></td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2015.

### CHAPTER 33

(S. B. 475 - By Senators Cole (Mr. President) and Kessler)

[By Request of the Executive]

[Passed March 6, 2015; in effect from passage.]

[Approved by the Governor on March 13, 2015.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2015, to the Department of Military Affairs and Public Safety, West Virginia Division of Corrections - Parolee Supervision Fees, fund 6362, fiscal year 2015, organization 0608, and to the
Whereas, the Governor has established that there now remains an unappropriated balance in the Department of Military Affairs and Public Safety, West Virginia Division of Corrections - Parolee Supervision Fees, fund 6362, fiscal year 2015, organization 0608, and in the Department of Military Affairs and Public Safety, West Virginia State Police - Motor Vehicle Inspection Fund, fund 6501, fiscal year 2015, organization 0612, that is available for expenditure during the fiscal year ending June 30, 2015, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 6362, fiscal year 2015, organization 0608, be supplemented and amended by increasing existing items of appropriation as follows:

Title II — Appropriations.

Sec. 3. Appropriations from other funds.

Department of Military Affairs and Public Safety

220-West Virginia Division of Corrections-Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2015 Org 0608
Approp- Other
riation Funds

1  1  Personal Services and
2  2  Employee Benefits........... 00100 $ 140,000
3  4  Current Expenses............ 13000 350,000

And, That the total appropriation for the fiscal year ending
June 30, 2015, to fund 6501, fiscal year 2015, organization 0612,
be supplemented and amended by increasing existing items of
appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

221-West Virginia State Police-
Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2015 Org 0612

Approp- Other
riation Funds

1  1  Personal Services and
2  2  Employee Benefits........... 00100 $ 647,363
3  3  Current Expenses............ 13000 27,523

The purpose of this supplemental appropriation bill is to
supplement, amend and increase items of appropriations in the
aforesaid accounts for the designated spending units for
expenditure during the fiscal year 2015.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2015, to the Department of Administration, Division of Purchasing - Purchasing Improvement Fund, fund 2264, fiscal year 2015, organization 0213, by supplementing and amending the appropriation for the fiscal year ending June 30, 2015.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Administration, Division of Purchasing - Purchasing Improvement Fund, fund 2264, fiscal year 2015, organization 0213, that is available for expenditure during the fiscal year ending June 30, 2015, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2015, to fund 2264, fiscal year 2015, organization 0213, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION
146-Division of Purchasing-
Purchasing Improvement Fund

(WV Code Chapter 5A)

Fund 2264 FY 2015 Org 0213

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>6a Buildings</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplemental appropriation bill is to supplement, amend, decrease and add items of appropriations in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2015.
CHAPTER 35

(S. B. 477 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

[Passed March 4, 2015; in effect from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT supplementing, amending, decreasing and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2015, organization 0803, for the fiscal year ending June 30, 2015.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 2015, which included a statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2014, and further included the estimate of revenues for the fiscal year 2015, less net appropriation balances forwarded and regular appropriations for the fiscal year 2015; and

WHEREAS, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2015, organization 0803, be supplemented and amended by decreasing existing items of appropriation as follows:
Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

116–Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2015 Org 0803

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 2 Maintenance</td>
<td>$ 5,000,000</td>
</tr>
</tbody>
</table>

And, That the items of the total appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2015, organization 0803, be supplemented and amended by increasing existing items of appropriation as follows:

Sec. 2. Appropriations from State Road Fund.

DEPARTMENT OF TRANSPORTATION

116–Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2015 Org 0803

<table>
<thead>
<tr>
<th>Appropriation</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 8 General Operations</td>
<td>$ 5,000,000</td>
</tr>
</tbody>
</table>
The purpose of this supplemental appropriation bill is to supplement, amend, decrease and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year ending June 30, 2015.

CHAPTER 36

(Com. Sub. for S. B. 411 - By Senators Takubo, Carmichael, Ferns, Gaunch and Mullins)

[Passed March 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7F-1, §55-7F-2, §55-7F-3, §55-7F-4, §55-7F-5, §55-7F-6, §55-7F-7, §55-7F-8, §55-7F-9, §55-7F-10 and §55-7F-11; and that said code be amended by adding thereto a new article, designated §55-7G-1, §55-7G-2, §55-7G-3, §55-7G-4, §55-7G-5, §55-7G-6, §55-7G-7, §55-7G-8, §55-7G-9 and §55-7G-10, all relating to procedures for determining liability for exposures to asbestos or silica; setting forth findings and purposes; setting forth definitions; requiring disclosures of existing and potential asbestos bankruptcy trust claims; establishing legal standards and procedures for the handling of certain asbestos and silica claims; providing for sanctions; establishing procedures for set offs and credits; establishing medical criteria procedures for certain asbestos and silica claims; providing for statute of limitations standards and other limitations on liability; and providing for applicability future asbestos and silica claims.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7F-1, §55-7F-2, §55-7F-3, §55-7F-4, §55-7F-5, §55-7F-6, §55-7F-7, §55-7F-8, §55-7F-9, §55-7F-10 and §55-7F-11; and that said code be amended by adding thereto a new article, designated §55-7G-1, §55-7G-2, §55-7G-3, §55-7G-4, §55-7G-5, §55-7G-6, §55-7G-7, §55-7G-8, §55-7G-9 and §55-7G-10, all to read as follows:

ARTICLE 7F. ASBESTOS BANKRUPTCY TRUST CLAIMS TRANSPARENCY ACT.

§55-7F-1. Short title.

This article shall be known and may be cited as the Asbestos Bankruptcy Trust Claims Transparency Act.

§55-7F-2. Findings and purpose.

(a) The West Virginia Legislature finds that:

(1) The United States Supreme Court in Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 598 (1997) described the asbestos litigation as a crisis;

(2) Approximately one hundred employers have declared bankruptcy at least partially due to asbestos-related liability;

(3) These bankruptcies have resulted in a search for more solvent companies, resulting in over eight thousand five hundred companies being named as asbestos defendants, including many small- and medium-sized companies, in industries that cover eighty-five percent of the United States economy;

(4) Scores of trusts have been established in asbestos-related bankruptcy proceedings to form a multibillion dollar asbestos...
bankruptcy trust compensation system outside of the tort system, and new asbestos trusts continue to be formed;

(5) Asbestos claimants often seek compensation for alleged asbestos-related conditions from solvent defendants in civil actions and from trusts or claims facilities formed in asbestos bankruptcy proceedings;

(6) There is limited coordination and transparency between these two paths to recovery;

(7) An absence of transparency between the asbestos bankruptcy trust claim system and the civil court systems has resulted in the suppression of evidence in asbestos actions and potential fraud;

(8) West Virginia’s Mass Litigation Panel has previously entered cases management orders that apply substantive transparency provisions requiring plaintiffs to disclose, among other things, any claims that may exist against asbestos bankruptcy trusts; and

(9) It is in the interest of justice that there be transparency for claims made in the asbestos bankruptcy trust claim system and for claims made in civil asbestos litigation.

(b) It is the purpose of this article to:

(1) Provide transparency for claims made in the asbestos bankruptcy trust claim system and for claims made in civil asbestos litigation; and

(2) Reduce the opportunity for fraud or suppression of evidence in asbestos actions.

§55-7F-3. Definitions.

For the purpose of this article:
(1) “Asbestos action” means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers’ compensation law or for veterans’ benefits as defined by article seven-g of this chapter.

(2) “Asbestos trust” means a government-approved or court-approved trust, qualified settlement fund, compensation fund or claims facility created as a result of an administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U. S. C. §524(g) or 11 U. S. C. §1121(a) or other applicable provision of law, that is intended to provide compensation to claimants arising out of, based on or related to the health effects of exposure to asbestos.

(3) “Plaintiff” means a person asserting an asbestos action, a decedent if the action is brought through or on behalf of an estate, or a parent or guardian if the action is brought through or on behalf of a minor or incompetent.

(4) “Trust claims materials” means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including claims forms and supplementary materials, affidavits, depositions and trial testimony, work history, medical and health records, documents reflecting the status of a claim against an asbestos trust, and if the asbestos trust claim has settled, all documents relating to the settlement of the asbestos trust claim.

(5) “Trust governance documents” means all documents that relate to eligibility and payment levels, including claims
payment matrices, trust distribution procedures or plans for reorganization, for an asbestos trust.

§55-7F-4. Required disclosures by plaintiff.

(a) For each asbestos action filed in this state, the plaintiff shall provide all parties with a sworn statement identifying all asbestos trust claims that have been filed by the plaintiff or by anyone on the plaintiff’s behalf, including claims with respect to asbestos-related conditions other than those that are the basis for the asbestos action or that potentially could be filed by the plaintiff against an asbestos trust. The sworn statement shall be provided no later than one hundred twenty days prior to the date set for trial for the asbestos action. For each asbestos trust claim or potential asbestos trust claim identified in the sworn statement, the statement shall include the name, address and contact information for the asbestos trust, the amount claimed or to be claimed by the plaintiff, the date the plaintiff filed the claim, the disposition of the claim and whether there has been a request to defer, delay, suspend or toll the claim. The sworn statement shall include an attestation from the plaintiff, under penalties of perjury, that the sworn statement is complete and is based on a good faith investigation of all potential claims against asbestos trusts.

(b) The plaintiff shall make available to all parties all trust claims materials for each asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff’s behalf against an asbestos trust, including any asbestos-related disease.

(c) The plaintiff shall supplement the information and materials provided pursuant to this section within ninety days after the plaintiff files an additional asbestos trust claim, supplements an existing asbestos trust claim or receives additional information or materials related to any claim or potential claim against an asbestos trust.
(d) Failure by the plaintiff to make available to all parties all trust claims materials as required by this article shall constitute grounds for the court to extend the trial date in an asbestos action.

§55-7F-5. Discovery; use of materials.

(a) Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence. No claims of privilege apply to any trust claims materials or trust governance documents.

(b) A defendant in an asbestos action may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release information and materials sought by a defendant.

§55-7F-6. Scheduling trial; stay of action.

(a) A court shall stay an asbestos action if the court finds that the plaintiff has failed to make the disclosures required under section four of this article within one hundred twenty days prior to the trial date.

(b) If, in the disclosures required by section four of this article, a plaintiff identifies a potential asbestos trust claim, the judge shall have the discretion to stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials for the claim. The plaintiff shall also state whether there has been a request to defer, delay, suspend or toll the claim against the asbestos trust.

§55-7F-7. Identification of additional or alternative asbestos trusts by defendant.

(a) Not less than ninety days before trial, if a defendant identifies an asbestos trust claim not previously identified by the
plaintiff that the defendant reasonably believes the plaintiff can file, the defendant shall meet and confer with plaintiff to discuss why defendant believes plaintiff has an additional asbestos trust claim, and thereafter the defendant may move the court for an order to require the plaintiff to file the asbestos trust claim. The defendant shall produce or describe the documentation it possesses or is aware of in support of the motion.

(b) Within ten days of receiving the defendant’s motion under subsection (a) of this section, the plaintiff shall, for each asbestos trust claim identified by the defendant, make one of the following responses:

(1) File the asbestos trust claim;

(2) File a written response with the court setting forth the reasons why there is insufficient evidence for the plaintiff to file the asbestos trust claim; or

(3) File a written response with the court requesting a determination that the plaintiff’s expenses or attorney’s fees and expenses to prepare and file the asbestos trust claim identified in the defendant’s motion exceed the plaintiff’s reasonably anticipated recovery from the trust.

(c) (1) If the court determines that there is a sufficient basis for the plaintiff to file the asbestos trust claim identified by a defendant, the court shall order the plaintiff to file the asbestos trust claim and shall stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials no later than thirty days before trial.

(2) If the court determines that the plaintiff’s expenses or attorney’s fees and expenses to prepare and file the asbestos trust claim identified in the defendant’s motion exceed the plaintiff’s reasonably anticipated recovery from the asbestos trust, the court shall stay the asbestos action until the plaintiff files with the
court and provides all parties with a verified statement of the
plaintiff’s history of exposure, usage or other connection to
asbestos covered by the asbestos trust.

(d) Not less than thirty days prior to trial in an asbestos
action, the court shall enter into the record a trust claims
document that identifies each claim the plaintiff has made
against an asbestos trust.

§55-7F-8. Valuation of asbestos trust claims; judicial notice.

(a) If a plaintiff proceeds to trial in an asbestos action before
an asbestos trust claim is resolved, the filing of the asbestos trust
claim may be considered as relevant and admissible evidence.

(b) Trust claim materials that are sufficient to entitle a claim
to consideration for payment under the applicable trust
governance documents may be sufficient to support a jury
finding that the plaintiff may have been exposed to products for
which the asbestos trust was established to provide
compensation and that such exposure may be a substantial factor
in causing the plaintiff’s injury that is at issue in the asbestos
action.

§55-7F-9. Setoff; credit.

In any asbestos action in which damages are awarded, a
defendant is entitled to a setoff or credit in the amount of the
valuation established under the applicable trust governance
documents, including payment percentages for asbestos trust
claims pending at trial and any amount the plaintiff has been
awarded from an asbestos trust claim that has been identified at
the time of trial. If multiple defendants are found liable for
damages, the court shall distribute the amount of setoff or credit
proportionally between the defendants, according to the liability
of each defendant.
§55-7F-10. Failure to provide information; sanctions.

A plaintiff who fails to provide all of the information required under this article is subject to sanctions as provided in the West Virginia Rules of Civil Procedure and any other relief for the defendants that the court considers just and proper.

§55-7F-11. Application.

The provisions of this article apply to all asbestos actions filed on or after the effective date of this article.

ARTICLE 7G. ASBESTOS AND SILICA CLAIMS PRIORITIES ACT.

§55-7G-1. Short title.

This article shall be known and may be cited as the Asbestos and Silica Claims Priorities Act.

§55-7G-2. Findings and purpose.

(a) The West Virginia Legislature finds that:

(1) Asbestos is a mineral that was widely used prior to the 1980s for insulation, fireproofing and other purposes;

(2) Millions of American workers and others were exposed to asbestos, especially during and after World War II and prior to the promulgation of regulations by the Occupational Safety and Health Administration in the early 1970s;

(3) Exposure to asbestos has been associated with various types of cancer, including mesothelioma and lung cancer, as well as nonmalignant conditions such as asbestosis and diffuse pleural thickening;
(4) Diseases caused by asbestos often have long latency periods;

(5) Although the use of asbestos has dramatically declined since the 1970s and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, past exposures will continue to result in significant claims of death and disability as a result of such exposure;

(6) Over the years, West Virginia courts have been deluged with asbestos lawsuits;

(7) The United States Supreme Court in Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 598 (1997), described the asbestos litigation as a crisis;

(8) Lawyer-sponsored x-ray screenings have been used to amass large numbers of claims by unimpaired plaintiffs;

(9) One of the country’s most prolific B-readers was a doctor from West Virginia;

(10) Approximately one hundred employers have declared bankruptcy at least partially due to asbestos-related liability;

(11) These bankruptcies have resulted in a search for more solvent companies, resulting in over eight thousand five hundred companies being named as asbestos defendants nationally and many in West Virginia, including many small- and medium-sized companies, in industries that cover eighty-five percent of the United States economy;

(12) Silica is a naturally occurring mineral as the earth’s crust is over ninety percent silica, and crystalline silica dust is the basic component of sand, quartz and granite;
Silica-related illness, including silicosis, can develop from the prolonged inhalation of respirable silica particles;

Silica claims, like asbestos claims, have involved individuals with no demonstrable physical impairment, and plaintiffs have been identified through the use of for-profit, screening companies;

Silica screening processes have been found subject to substantial abuse and potential fraud;

The cost of compensating plaintiffs who have no present asbestos-related or silica-related physical impairment, and the cost of litigating their claims, jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases and adversely affects defendant companies;

Concerns about statutes of limitations and available funds can prompt unimpaired asbestos and silica claimants to bring lawsuits in order to protect against losing their rights to future compensation should they become impaired;

Trial consolidations, joinders and similar trial procedures used by some courts to handle asbestos and silica cases can undermine the appropriate functioning of the courts, deny due process to plaintiffs and defendants and encourage the filing of cases by unimpaired asbestos and silica plaintiffs; and

The public interest requires giving priority to the claims of exposed individuals who are sick in order to help preserve, now and for the future, defendants’ ability to compensate people who develop cancer and other serious asbestos-related diseases, as well as silica-related injuries, and to safeguard the jobs, benefits and savings of workers in West Virginia and the well-being of the West Virginia economy.
(b) It is the purpose of this article to:

1. Give priority to asbestos and silica claimants who can demonstrate actual physical impairment caused by exposure to asbestos or silica;

2. Toll the running of the statutes of limitations for persons who have been exposed to asbestos or to silica but who have no present physical impairment caused by such exposure;

3. Enhance the ability of the courts to supervise and manage asbestos and silica cases;

4. Reduce the opportunity for fraud in asbestos and silica litigation; and

5. Conserve the defendants’ resources to allow compensation to present and future claimants with physical impairment caused by exposure to asbestos or silica.

§55-7G-3. Definitions.

For the purpose of this article:

1. “AMA Guides to the Evaluation of Permanent Impairment” means the American Medical Association’s Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required under this article.

2. “Asbestos” means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 C. F. R. §1910 at the time an asbestos action is filed.
(3) “Asbestos action” means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers’ compensation law or for veterans’ benefits.

(4) “Asbestosis” means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(5) “Board-certified in internal medicine” means a physician who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(6) “Board-certified in occupational medicine” means a physician who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(7) “Board-certified in pathology” means a physician who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Pathology, whose certification was current at the time of the performance of any examination and rendition of any report required by this act, and whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or postmortem specimens.
(8) “Board-certified in pulmonary medicine” means a physician who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(9) “Certified B-reader” means an individual who has qualified as a National Institute for Occupational Safety and Health (NIOSH) “final” or “B-reader” of x-rays under 42 C. F. R. §37.51(b), whose certification was current at the time of any readings required under this article, and whose B-reads comply with the NIOSH B-Reader’s Code of Ethics, Issues in Classification of Chest Radiographs and Classification of Chest Radiographs in Contested Proceedings.

(10) “Chest x-ray” means chest films taken in accordance with all applicable state and federal regulatory standards and taken in the posterior-anterior view.

(11) “DLCO” means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(12) “Exposed person” means a person whose exposure to asbestos or silica or to asbestos-containing or silica-containing products is the basis for an asbestos or silica action.

(13) “FEV1” means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

(14) “FEV1/FVC” means the ratio between the actual values for FEV1 over FVC.
(15) “FVC” means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(16) “ILO” system and “ILO scale” mean the radiological ratings and system for the classification of chest x-rays of the International Labor Office provided in Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect on the day any x-rays of the exposed person were reviewed by a certified B-reader.

(17) “Nonmalignant condition” means any condition that can be caused by asbestos or silica other than a diagnosed cancer.

(18) “Official statements of the American Thoracic Society” means lung function testing standards set forth in statements from the American Thoracic Society including standardizations of spirometry, standardizations of lung volume testing, standardizations of diffusion capacity testing or single-breath determination of carbon monoxide uptake in the lung and interpretive strategies for lung function tests, which are in effect on the day of the pulmonary function testing of the exposed person.

(19) “Pathological evidence of asbestosis” means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies graded 1(B) or higher under the criteria published in Asbestos-Associated Diseases, 106 Archive of Pathology and Laboratory Medicine 11, Appendix 3 (October 8, 1982), or grade one or higher in Pathology of Asbestosis, 134 Archive of Pathology and Laboratory Medicine 462-80 (March 2010) (Tables 2 and 3), or as amended at the time of the exam, and there is no other more likely explanation for the presence of the fibrosis.
“Pathological evidence of silicosis” means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates complicated silicosis with characteristic confluent silicotic nodules or lesions equal to or greater than one centimeter and birefringent crystals or other demonstration of crystal structures consistent with silica (well-organized concentric whorls of collagen surrounded by inflammatory cells) in the lung parenchyma and no other more likely explanation for the presence of the fibrosis exists, or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

“Plaintiff” means a person asserting an asbestos or silica action, a decedent if the action is brought through or on behalf of an estate, and a parent or guardian if the action is brought through or on behalf of a minor or incompetent.

“Plethysmography or body (BOX) plethysmography” means the test for determining lung volume in which the exposed person is enclosed in a chamber equipped to measure pressure, flow or volume change.

“Predicted lower limit of normal” means any test value is the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent of the reference population, based on age, height and gender, according to the recommendations by the American Thoracic Society and as referenced in the applicable AMA Guides to the Evaluation of Permanent Impairment, primarily National Health and Nutrition Examination Survey (NHANES) predicted values, or as amended.

“Pulmonary function test” means spirometry, lung volume testing and diffusion capacity testing, including
appropriate measurements, quality control data and graphs, performed in accordance with the methods of calibration and techniques provided in the applicable AMA Guides to the Evaluation of Permanent Impairment and all standards provided in the Official Statements of the American Thoracic Society in effect on the day pulmonary function testing of the exposed person was conducted.

(25) “Qualified physician” means a board-certified internist, pathologist, pulmonary specialist or specialist in occupational and environmental medicine, as may be appropriate to the actual diagnostic specialty in question, that meets all of the following requirements:

(A) The physician has conducted a physical examination of the exposed person and has taken or has directed to be taken under his or her supervision, direction and control, a detailed occupational, exposure, medical, smoking and social history from the exposed person, or the physician has reviewed the pathology material and has taken or has directed to be taken under his or her supervision, direction and control, a detailed history from the person most knowledgeable about the information forming the basis of the asbestos or silica action;

(B) The physician has treated or is treating the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board-certified pathologist, examined tissue samples or pathological slides of the exposed person;

(C) The physician prepared or directly supervised the preparation and final review of any medical report under this article; and

(D) The physician has not relied on any examinations, tests, radiographs, reports or opinions of any doctor, clinic, laboratory
or testing company that performed an examination, test, radiograph or screening of the exposed person in violation of any law, regulation, licensing requirement or medical code of practice of the state in which the examination, test or screening.

(26) “Radiological evidence of asbestosis” means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral small, irregular opacities (s, t or u) occurring primarily in the lower lung zones graded by a certified B-reader as at least 1/0 on the ILO scale.

(27) “Radiological evidence of diffuse bilateral pleural thickening” means a quality 1 or 2 chest x-ray under the ILO system, showing diffuse bilateral pleural thickening of at least b2 on the ILO scale and blunting of at least one costophrenic angle as classified by a certified B-reader.

(28) “Radiological evidence of silicosis” means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral predominantly nodular or rounded opacities (p, q or r) occurring in the lung fields graded by a certified B-reader as at least 1/0 on the ILO scale or A, B or C sized opacities representing complicated silicosis or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(29) “Silica” means a respirable crystalline form of silicon dioxide, including quartz, cristobalite and tridymite.

(30) “Silica action” means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to silica, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made
by or on behalf of a person exposed to silica or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers’ compensation law, veterans’ benefits or claims brought by a person as a subrogee by virtue of the payment of benefits under a workers’ compensation law. The term does not include any administrative claim or civil action related to coal workers’ pnuemoconiosis.

(31) “Silicosis” means simple silicosis, acute silicosis, accelerated silicosis or chronic silicosis caused by the inhalation of respirable silica. “Silicosis” does not mean coal workers’ pnuemoconiosis.

(32) “Spirometry” means a test of air capacity of the lung through a spirometer to measure the volume of air inspired and expired.

(33) “Supporting test results” means copies of the following documents and images:

   (A) Pulmonary function tests, including printouts of the flow volume loops, volume time curves, DLCO graphs, lung volume tests and graphs, quality control data and other pertinent data for all trials and all other elements required to demonstrate compliance with the equipment, quality, interpretation and reporting standards set forth herein;

   (B) B-reading and B-reader reports;

   (C) Reports of x-ray examinations;

   (D) Diagnostic imaging of the chest;

   (E) Pathology reports; and

   (F) All other tests reviewed by the diagnosing physician or a qualified physician in reaching the physician’s conclusions.
(34) “Timed gas dilution” means a method for measuring total lung capacity in which the subject breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of that inert and insoluble gas in the lung is compared to the concentration of that type of gas in the spirometer.

(35) “Total lung capacity” means the volume of gas contained in the lungs at the end of a maximal inspiration.

(36) “Veterans’ benefits” means a program for benefits in connection with military service administered by the Veterans’ Administration under Title 38 of the United States Code.

(37) “Workers’ compensation law” means a law relating to a program administered by the United States or a state to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries. The term includes the Longshore and Harbor Workers’ Compensation Act, 33 U. S. C. §§901 et seq., and the Federal Employees’ Compensation Act, Chapter 81 of Title 5 of the United States Code, but does not include the Federal Employers’ Liability Act of April 22, 1908, 45 U. S. C. §§51 et seq.

§55-7F-4. Filing claims; establishment of a prima facie case; additional required information for new nonmalignant claims; individual actions to be filed.

(a) A plaintiff in an asbestos or silica action alleging a nonmalignant condition shall file within ninety days of filing the complaint or other initial pleading a detailed narrative medical report and diagnosis, signed by a qualified physician and accompanied by supporting test results, constituting prima facie evidence that the exposed person meets the requirements of this
article. The report shall not be prepared by a lawyer or person
working for or on behalf of a lawyer or law firm.

(b) A defendant in an asbestos or silica action shall be
afforded a reasonable opportunity before trial to challenge the
adequacy of the prima facie evidence that the exposed person
meets the requirements of this article. An asbestos or silica
action shall be dismissed without prejudice upon a finding that
the exposed person has failed to make the prima facie showing
required by this article.

(c) A plaintiff in an asbestos or silica action filed on or after
the effective date of this article shall also include an information
form with the complaint for nonmalignant conditions containing
all of the following:

(1) The name, address, date of birth, social security number,
marital status, occupation and employer of the exposed person
and any person through which the exposed person alleges
exposure;

(2) The plaintiff’s relationship to the exposed person or the
person through which the exposure is alleged;

(3) To the best of the plaintiff’s ability, the location and
manner of each alleged exposure, including the specific location
and manner of exposure for any person through which the
exposed person alleges exposure, the beginning and ending dates
of each alleged exposure and the identity of the manufacturer of
the specific asbestos or silica product for each exposure when
this information is reasonably available;

(4) The identity of the defendant or defendants against whom
the plaintiff asserts a claim;

(5) The specific asbestos-related or silica-related disease
claimed to exist; and
(6) Any supporting documentation relating to subdivisions (3), (4) and (5) of this subsection.

(d) Asbestos and silica actions must be individually filed. No asbestos or silica action filed on or after the effective date of this article shall be permitted on behalf of a group or class of plaintiffs.

§55-7F-5. Elements of proof for asbestos actions alleging a nonmalignant asbestos-related condition.

(a) No asbestos action related to an alleged nonmalignant asbestos-related condition may be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment for which asbestos exposure was a substantial contributing factor. The plaintiff shall make a prima facie showing of claim for each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

(1) Radiological or pathological evidence of asbestosis or radiological evidence of diffuse bilateral pleural thickening or a high-resolution computed tomography scan showing evidence of asbestosis or diffuse pleural thickening;

(2) A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all of the exposed person’s principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including asbestos fibers or other disease-causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure;

(3) A detailed medical, social and smoking history from the exposed person or, if that person is deceased, from the person
most knowledgeable, including a thorough review of the past and present medical problems of the exposed person and their most probable cause;

(4) Evidence verifying that at least fifteen years have elapsed between the exposed person’s date of first exposure to asbestos and the date of diagnosis;

(5) Evidence from a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, from the person’s medical records, that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA’s Guides to the Evaluation of Permanent Impairment or reported significant changes year to year in lung function for FVC, FEV1 or DLCO as defined by the American Thoracic Society’s Interpretative Strategies for Lung Function Tests, 26 European Respiratory Journal 948-68, 961-62, Table 12 (2005) and as updated;

(6) Evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial factor to the exposed person’s physical impairment, based on a determination the exposed person has:

(A) Forced vital capacity below the predicted lower limit of normal and FEV1/FVC ratio (using actual values) at or above the predicted lower limit of normal;

(B) Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; or

(C) A chest x-ray showing bilateral small, irregular opacities (s, t or u) graded by a certified B-reader as at least 2/1 on the ILO scale; and

(7) The specific conclusion of the qualified physician signing the report that exposure to asbestos was a substantial
contributing factor to the exposed person’s physical impairment and not more probably the result of other causes. An opinion that the medical findings and impairment are consistent with or compatible with exposure to asbestos, or words to that effect, do not satisfy the requirements of this subdivision.

(b) If the alleged nonmalignant asbestos-related condition is a result of an exposed person living with or having extended contact with another exposed person who, if the asbestos action had been filed by the other exposed person would have met the requirements of subdivision (2), subsection (a) of this section, and the exposed person alleges extended contact with the other exposed person during the relevant time period, the detailed narrative medical report and diagnosis shall include all of the information required by subsection (a) of this section, except that the exposure history required under subdivision (2), subsection (a) of this section shall describe the exposed person's history of exposure to the other exposed person.

§55-7G-6. Elements of proof for silica actions alleging silicosis.

No silica action related to alleged silicosis may be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment as a result of silicosis. The plaintiff shall make a prima facie showing of claim for each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

1. Radiological or pathological evidence of silicosis or a high-resolution computed tomography scan showing evidence of silicosis;

2. A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of
the action, including identification of all principal places of
employment and exposures to airborne contaminants and
whether each place of employment involved exposures to
airborne contaminants, including silica or other disease causing
dusts or fumes, that may cause pulmonary impairment and the
nature, duration and level of any exposure;

(3) A detailed medical, social and smoking history from the
exposed person or, if that person is deceased, from the person
most knowledgeable, including a thorough review of the past and
present medical problems and their most probable cause;

(4) Evidence that a sufficient latency period has elapsed
between the exposed person’s date of first exposure to silica and
the day of diagnosis;

(5) Evidence based upon a personal medical examination
and pulmonary function testing of the exposed person or, if the
exposed person is deceased, based upon the person’s medical
records, demonstrating that the exposed person has or the
deceased person had a permanent respiratory impairment rating
of at least Class 2 as defined by and evaluated pursuant to the
AMA’s Guides to the Evaluation of Permanent Impairment or
reported significant changes year to year in lung function for
FVC, FEV1 or DLCO as defined by the American Thoracic
Society’s Interpretative Strategies for Lung Function Tests, 26
European Respiratory Journal 948-68, 961-62, Table 12 (2005)
and as updated; and

(6) The specific conclusion of the qualified physician
signing the report that exposure to silica was a substantial
contributing factor to the exposed person’s physical impairment
and not more probably the result of other causes. An opinion
stating that the medical findings and impairment are consistent
with or compatible with exposure to silica, or words to that
effect, do not satisfy the requirements of this subdivision.
§55-7G-7. Evidence of physical impairment.

Evidence relating to physical impairment, including pulmonary function testing and diffusing studies, offered in any action governed by this article or article seven-f of this chapter, shall:

1. Comply with the quality controls, equipment requirements, methods of calibration and techniques set forth in the AMA’s Guides to the Evaluation of Permanent Impairment and all standards set forth in the Official Statements of the American Thoracic Society which are in effect on the date of any examination or pulmonary function testing of the exposed person required by this article;

2. Not be obtained and may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted, or of this state; and

3. Not be obtained under the condition that the plaintiff or exposed person retains the legal services of the attorney or law firm sponsoring the examination, test or screening.

§55-7G-8. Procedures.

(a) Evidence relating to the prima facie showings required under this article shall not create any presumption that the exposed person has an asbestos-related or silica-related injury or impairment and shall not be conclusive as to the liability of any defendant.

(b) No evidence shall be offered at trial, and the jury shall not be informed of:
§55-7G-8. Grant or denial of a motion to dismiss.

(1) The grant or denial of a motion to dismiss an asbestos or silica action under the provisions of this article; or

(2) The provisions of this article with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) Until a court enters an order determining that the exposed person has established prima facie evidence of impairment, no asbestos or silica action shall be subject to discovery, except discovery related to establishing or challenging the prima facie evidence or by order of the trial court upon motion of one of the parties and for good cause shown.

(d) Consolidation of cases. —

(1) A court may consolidate for trial any number and type of nonmalignant asbestos or silica actions with the consent of all the parties. In the absence of such consent, the court may consolidate for trial only asbestos or silica actions relating to the exposed person and members of that person’s household.

(2) No class action or any other form of mass aggregation relating to more than one exposed person and members of that person’s household shall be permitted.

(3) The provisions of this subsection do not preclude consolidation of cases by court order for pretrial or discovery purposes.


(a) With respect to an asbestos or silica action not barred by limitations as of this article’s effective date, an exposed person’s
cause of action shall not accrue, nor shall the running of
limitations commence, prior to the earlier of the date:

(1) The exposed person received a medical diagnosis of an
asbestos-related impairment or silica-related impairment;

(2) The exposed person discovered facts that would have led
a reasonable person to obtain a medical diagnosis with respect to
the existence of an asbestos-related impairment or silica-related
impairment; or

(3) The date of death of the exposed person having an
asbestos-related or silica-related impairment.

(b) Nothing in this section shall be construed to revive or
extend limitations with respect to any claim for asbestos-related
impairment or silica-related impairment that was otherwise
time-barred on the effective date of this article.

(c) Nothing in this section shall be construed so as to
adversely affect, impair, limit, modify, or nullify any settlement
or other agreements with respect to an asbestos or silica action
entered into prior to the effective date of this article.

(d) An asbestos or silica action arising out of a nonmalignant
condition shall be a distinct cause of action from an action for an
asbestos-related or silica-related cancer. Where otherwise
permitted under state law, no damages shall be awarded for fear
or increased risk of future disease in an asbestos or silica action.

§55-7G-10. Application.

This article shall apply to all asbestos actions and silica
actions filed on or after the effective date of this article.
CHAPTER 37

(H. B. 2138 - By Delegate(s) Folk, Gearheart, Householder, Howell, J. Nelson, Ireland, Faircloth, Williams, Lynch, Shott and McGeehan)

[Passed February 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on February 18, 2015.]

AN ACT to amend and reenact §19-25-5 of the Code of West Virginia, 1931, as amended, relating to adding aircraft operations on private airstrips and farms to the definition of “recreational purpose” for the purpose of limiting the liability of landowners.

Be it enacted by the Legislature of West Virginia:

That §19-25-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.


Unless the context used clearly requires a different meaning, as used in this article:

“Charge” means:

(A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in section two of this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience or occasion which may not exceed $50 a year per recreational participant: Provided, That the monetary cap on charges imposed pursuant to this article does not apply to the
provisions of article fourteen, chapter twenty of this code pertaining to the Hatfield-McCoy regional recreational authority or activities sponsored on the Hatfield-McCoy recreation area;

(B) For purposes of limiting liability for military, law-enforcement or homeland-defense training set forth in section six of this article, the amount of money asked in return for an invitation to enter or go upon the land;

“Land” includes, but is not limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment when attached to the realty;

“Noncommercial recreational activity” does not include any activity for which there is any charge which exceeds $50 per year per participant;

“Owner” includes, but is not limited to, tenant, lessee, occupant or person in control of the premises;

“Recreational purposes” includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, spelunking, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites, aircraft or ultralight operations on private airstrips or farms or otherwise using land for purposes of the user;

“Wildlife propagation purposes” applies to and includes all ponds, sediment control structures, permanent water impoundments or any other similar structure created in connection with surface mining activities as governed by article three, chapter twenty-two of this code or from the use of surface in the conduct of underground coal mining as governed by that article and any rules promulgated because of the article, which ponds, structures or impoundments are designated and certified
in writing by the Director of the Division of Environmental Protection and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life and finds and determines that the premises have the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures or impoundments may not be removed without the joint consent of the director and the owner; and

“Military, law-enforcement or homeland-defense training” includes, but is not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment or other use of land by a member of the Army National Guard or Air National Guard, a member of a reserve unit of the armed forces of the United States, a person on active duty in the armed forces of the United States, a state or federal law-enforcement officer, a federal agency or service employee, a West Virginia military authority employee or a civilian contractor supporting the military and/or government employees acting in that capacity.

CHAPTER 38

(S. B. 545 - By Senators Nohe, Walters, Palumbo and Gaunch)

[Passed March 10, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §31A-4-26 of the Code of West Virginia, 1931, as amended, relating to removing requirement of
prior approval of overdrafts made by a director or executive officer of a banking institution under certain conditions.

Be it enacted by the Legislature of West Virginia:

That §31A-4-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.

(a) (1) The total loans and extensions of credit made by a state-chartered banking institution to any one person or common enterprise and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, may not exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension of credit is made.

(2) Where the total loans and extensions of credit by a state-chartered banking institution to any one person or common enterprise are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the outstanding amount of such loans and extensions, then the bank may provide such loans or extensions of up to ten percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension is made. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.
(3) For the purposes of this subsection:

   (A) The term “loans and extensions of credit” includes all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and to the extent specified by the Commissioner of Banking; the terms also include any liability of a state-chartered banking institution to advance funds to or on behalf of a person pursuant to a contractual commitment;

   (B) The term “person” includes an individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

   (C) The term “unimpaired capital and unimpaired surplus” means the amount of total equity capital outstanding as indicated in the bank’s most recent quarterly report of condition and income as filed with the Commissioner of Banking pursuant to section nineteen of this article, plus the amount of the allowance for loan losses, minus the amount of goodwill or other nonmarketable intangible assets included in the quarterly report pursuant to generally accepted accounting principles. Unrealized gains and losses on the bank’s securities and loan portfolios shall be included in the calculation of total equity capital to the extent required by generally accepted accounting principles and applicable federal or state law, rule or regulation; and

   (D) The term “common enterprise” includes, but is not limited to, persons and entities who are so related by business or otherwise that the expected source of repayment on the loan or
extension of credit is substantially the same for each person or entity.

(4) The limitations contained in this subsection are subject to the following exceptions:

(A) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse are not subject to any limitation based on capital and surplus;

(B) The purchase of bankers’ acceptances of the kind described in section thirteen of the Federal Reserve Act and issued by other banks are not subject to any limitation based on capital and surplus;

(C) Loans and extensions of credit having a term of ten months or less and secured by bills of lading, warehouse receipts or similar documents transferring or securing title to readily marketable staples are subject to a limitation of twenty percent of unimpaired capital and unimpaired surplus in addition to the general limitations set forth in subdivision (1) of this subsection, provided the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure the staples. If collateral values of the staples fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general fifteen percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or treasury bills of the United States
or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the state of West Virginia or by other such obligations fully guaranteed as to principal and interest by the state of West Virginia are not subject to any limitation based on capital and surplus;

(E) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the State of West Virginia or any corporation wholly owned directly or indirectly by the United States are not subject to any limitation based on capital and surplus;

(F) Loans or extensions of credit secured by a segregated deposit account in the lending bank are not subject to any limitation based on capital and surplus;

(G) Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution, when the loans or extensions of credit are approved by the Commissioner of Banking, are not subject to any limitation based on capital and surplus;

(H) (i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person or common enterprise transferring the paper are subject under this section to a maximum limitation equal to twenty-five percent of such unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;
(ii) If the bank’s files or the knowledge of its officers of the financial condition of each maker of consumer paper is reasonably adequate and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker are the sole applicable loan limitations;

(I) (i) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent of the face amount of the note covered shall be subject under this section to a maximum limitation equal to twenty-five percent of the unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(ii) Loans and extensions of credit which arise from the discount by dealers in livestock of paper given in payment for livestock, which paper carries a full recourse endorsement or unconditional guarantee of the seller and which are secured by the livestock being sold, are subject under this section to a limitation of twenty-five percent of the unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(iii) If collateral values of the livestock documents, instruments or discount paper fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general fifteen percent limitation, the loan must be brought into conformance within thirty business days, except where judicial proceedings,
regulatory actions or other extraordinary occurrences prevent the
bank from taking action;

(J) Loans or extensions of credit to the Student Loan
Marketing Association are not subject to any limitation based on
capital and surplus; and

(K) Loans or extensions of credit to a corporation owning
the property in which that state-chartered banking institution is
located, when that state-chartered banking institution has an
unimpaired capital and surplus of not less than $1 million or
when approved in writing by the Commissioner of Banking, are
not subject to any limitation based on capital and surplus.

(5) (A) The Commissioner of Banking may prescribe rules
to administer and carry out the purposes of this subsection
including rules to define or further define terms used in this
subsection and to establish limits or requirements other than
those specified in this subsection for particular classes or
categories of loans or extensions of credit;

(B) The Commissioner of Banking may also prescribe rules
to deal with loans or extensions of credit, which were not in
violation of this section prior to the effective date of this article,
but which will be in violation of this section upon the effective
date of this article; and

(C) The Commissioner of Banking may also determine when
a loan putatively made to a person is, for purposes of this
subsection, attributed to another person.

(b) (1) Except as hereinafter provided or otherwise permitted
by law, nothing herein contained authorizes the purchase by a
state-chartered banking institution for its own account of any
shares of stock of any corporation: Provided, That a
state-chartered banking institution may purchase and sell
securities and stock without recourse, solely upon the order and 
for the account of customers.

(2) The total amount of investment securities of any one 
obligor or maker held by a state-chartered banking institution for 
its own account may not exceed that percentage of the 
unimpaired capital and unimpaired surplus of that state-chartered 
banking institution as is permitted for investment by national 
banks or for any federally insured depository institution.

(3) For purposes of this subsection:

(A) The term “investment securities” means a marketable 
obligation in the form of a stock, bond, note or debenture 
commonly regarded as an investment security and that is salable 
under ordinary circumstances with reasonable promptness at a 
fair value. “Derivative security” means a type of investment 
security involving a financial contract whose value depends on 
the values of one or more underlying assets or indexes of asset 
values. The term “derivative” refers inter alia to financial 
contracts such as collateralized mortgage obligations, forwards, 
futures, forward rate agreements, swaps, options and 
caps/floors/collars whose primary purpose is to transfer price 
risks associated with fluctuations in asset values;

(B) The term “person” includes any individual, partnership, 
sole proprietorship, society, association, firm, institution, 
company, public or private corporation, not-for-profit 
corporation, state, governmental agency, bureau, department, 
division or instrumentality, political subdivision, county 
commission, municipality, trust, syndicate, estate or any other 
legal entity whatsoever, formed, created or existing under the 
laws of this state or any other jurisdiction; and

(C) The term “unimpaired capital and unimpaired surplus” 
has the same meaning as set forth in subsection (a) of this 
section.
(4) Notwithstanding any other provision of this subsection, a state-chartered banking institution may invest its funds in any investment authorized for national banking associations or for any other federally insured depository institution. The investments by state-chartered banking institutions shall be on the same terms and conditions applicable to national banking associations or any other federally insured depository institution: Provided, That: (i) The purchase of investment securities under this subdivision may be made only when in the bank’s prudent judgment, which judgment may be based in part on estimates which it believes to be reliable, there is adequate evidence that the obligor will be able to perform all it undertakes to perform in connection with the securities, including all debt service requirements, and that the securities may be sold with reasonable promptness at a price that corresponds to their fair value; and (ii) the purchase conforms to the requirement of subdivision (5) of this subsection. The Commissioner of Banking may, from time to time, provide notice to state-chartered banking institutions of authorized investments under this paragraph.

(5) The purchase of investment securities, including derivative securities, in which the investment characteristics are considered distinctly or predominantly speculative, or the purchase of such securities that are in default, whether as to principal or interest, is prohibited. The proper management of interest rate risk through the use of derivative or other investment securities may not be held a speculative purpose.

(6) The Commissioner of Banking may prescribe rules to administer and carry out the purposes of this subsection, including rules to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of investment securities.

(c) If there is a material decline of unimpaired capital and unimpaired surplus of a state-chartered bank during any
quarterly reporting period of more than twenty percent from that amount reported in the bank’s most recent report of income and condition, or where there is a decrease of more than thirty percent in any twelve-month period, the bank shall review its outstanding loans, extensions of credit and investments and report to the Commissioner of Banking those loans, extensions and investments that exceed the limitations of this section using the bank’s current reevaluated unimpaired capital and unimpaired surplus. The report shall detail the bank’s position in each such loan, extension of credit and investment. The commissioner may, within his or her discretion, require that such loans, extensions of credit and investments be brought into conformity with the bank’s current reevaluated legal lending and investment limitation.

(d) Notwithstanding any other provision of this section, in order to ensure a bank’s safety and soundness, the Commissioner of Banking retains the authority to direct any state-chartered bank to recalculate its lending and investment limits at more frequent intervals than otherwise provided herein and to require all outstanding loans, extensions of credit and investments be brought into conformance with the reevaluated limitations. In such cases, the commissioner will provide the bank a written notice explaining briefly the specific reasons why the determination was made to require the more frequent calculations.

(e) Loans to directors or executive officers are subject to the following limitations:

(1) A director or executive officer of any banking institution may not borrow, directly or indirectly, from a banking institution with which he or she is connected any sum of money without the prior approval of a majority of the board of directors or discount committee of the banking institution, or of any duly constituted committee whose duties include those usually performed by a
discount committee. The approval shall be by resolution adopted by a majority vote of the board or committee, exclusive of the director or executive officer to whom the loan is made.

(2) If any director or executive officer of any bank owns or controls a majority of the stock of any corporation, or is a partner in any partnership, a loan to the corporation or partnership constitutes a loan to the director or officer.

(3) For purposes of this subsection, an “executive officer” means:

(A) A person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the company or bank, regardless of any official title, salary or other compensation. The chairman of the board, the president, every vice president, the cashier, the secretary and the treasurer of a company or bank are considered executive officers unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company from participation, other than in the capacity of director, in major policy-making functions of the bank or company and the officer does not actually participate therein.

(B) An executive officer of a company of which the bank is a subsidiary, and any other subsidiary of that company, unless the executive officer of the subsidiary is excluded, by name or by title, from participation in major policy-making functions of the bank by resolutions of the boards of directors of both the subsidiary and the bank and does not actually participate in such major policy-making functions.

(4) Prior approval under subdivision (1) of this subsection is not required for:

(A) Payments of overdrafts pursuant to: (i) A written, preauthorized, interest-bearing extension of credit plan that has
been approved by the board of directors or an appropriate committee and that specifies a method of repayment; or (ii) a written, preauthorized transfer of funds from another account of the account holder at the bank; or

(B) Payments of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less: Provided, That: (i) The account is not overdrawn for more than five consecutive business days; and (ii) the bank charges the director or executive officer the same fee charged to any other customer of the bank in similar circumstances.

(f) An employee of the Division of Banking whose regulatory activities involve participation in an examination, audit, visitation, review, investigation or any other particular matter involving depository institutions chartered by the division may not borrow, directly or indirectly, any sum of money from a state-chartered bank or state-chartered credit union. An employee of the Division of Banking whose regulatory activities involve participation in an examination, audit, visitation, review, investigation or any other particular matter involving nondepository institutions licensed by the division may not borrow, directly or indirectly, any sum of money from a nondepository entity that is licensed by the division. The commissioner, deputy commissioner and in-house legal counsel of the Division of Banking may not borrow, directly or indirectly, any sum of money from any entity that is under the jurisdiction of the division.

(g) Securities purchased by a state-chartered banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities may not be valued at a valuation exceeding their present cost as determined by amortization of premiums and accretion of discounts pursuant to generally accepted accounting principles, that is, by charging
to profit and loss a sum sufficient to bring them to par at maturity: *Provided*, That securities held for trade or permissible marketable equity securities and any other types of debt securities which pursuant to generally accepted accounting principles are to be carried on the bank’s books at fair market value shall have the unrealized market appreciation and depreciation included in the income and capital as permitted by generally accepted accounting principles.

(h) The market value of securities purchased and loans extended by a state-chartered banking institution shall be reported in all public reports and quarterly reports to the commissioner pursuant to section nineteen of this article in accordance with generally accepted accounting principles and any applicable state or federal law, rule or regulation.

CHAPTER 39

(S. B. 283 - By Senators Nohe, Gaunch and Plymale)

[Passed March 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §31A-4-40 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31A-8-12d of said code, all relating to state banking institutions; removing restrictions on closure of banks on weekdays; removing requirement of board resolution and legal advertisement for any change in days or hours a bank office is open for business; establishing certain requirements to be met prior to changing days or hours a bank office is open for business; and reducing time for consideration of expedited branch applications from thirty-five days to twenty-one days.
Be it enacted by the Legislature of West Virginia:

That §31A-4-40 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §31A-8-12d of said code be amended and reenacted, all to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.

§31A-4-40. Permissive closing on fixed weekday or portions of weekdays; notice of closings; emergency closings; procedures.

1. (a) Any banking institution may elect to operate branches that are open for business on the days and for the hours as determined appropriate by that banking institution. Prior to changing the days or hours a branch or main office will be open for business, the banking institution shall provide notice of the change to its customers in the form of conspicuous signage in the lobby and any drive-through lanes at that branch posted at least forty-five days prior to the change. The banking institution shall also provide the Commissioner of Financial Institutions with forty-five days’ advance written notice of the change.

(b) Any banking institution may close, without notice, during any period of actual or threatened enemy attack affecting the community in which the banking institution is located or during any period of other emergency including, but not limited to, fire, flood, hurricane, riot, snow or civil commotion: Provided, That the commissioner shall be notified of any closing made pursuant to this subsection as soon as practical thereafter.

(c) Any fixed weekday and/or portion of one or more weekdays on which any banking institution elects to close and any period during which the commissioner may permit it to close pursuant to the authority of this section is a legal holiday with respect to the banking institution and not a business day or
banking day for the purposes of the law relating to negotiable
instruments and any act or contract authorized, required or
permitted to be carried out or performed at, by or with respect to
the banking institution may be performed on the next business or
banking day and no liability or loss of rights on the part of any
person or banking institution shall result therefrom.

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES;
JUDICIAL REVIEW; UNLAWFUL ACTS;
PENALTIES.

§31A-8-12d. Expedited procedure for authorization of de novo
branch banks.

(a) As an alternative to using the procedures established in
subdivisions (g) through (j), inclusive, section twelve of this
article, a banking institution desiring to establish a branch bank
by de novo construction or lease may file a notice, containing
information as prescribed by the commissioner, of its intent
which must be received by the commissioner at least twenty-one
days prior to the date on which the proposed branch will be
established accompanied by a fee of $250. The commissioner
shall provide written notice of his or her acceptance or rejection
of the branch notice prior to the expiration of the 21-day period.
However, if the commissioner requests additional information
from the branching institution, the period for the commissioner’s
consideration of the notice is extended an additional fifteen days
from the time the information requested is received by the
commissioner.

(b) A state banking institution may not establish a branch
bank under this section until the commissioner provides written
approval of the notice for that branch bank. The commissioner’s
approval or rejection of the notice must be accompanied by
findings of fact on whether the applicant bank:

(1) Satisfies such reasonable and appropriate requirements
as to sound financial condition. For purposes of this subdivision,
“sound financial condition” means that a state banking institution meets the required minimum level to be well capitalized for each capital measure as determined by its primary federal regulator and is not subject to supervisory action by either a state or federal financial regulatory agency;

(2) Meets a satisfactory standard of compliance with federal and state community reinvestment act requirements as evidenced by its most recent state or federal examination;

(3) Meets a satisfactory standard of compliance with federal and state consumer compliance law and regulations as evidenced by its most recent state or federal regulatory examination;

(4) Meets the acceptable standards for investment in premises and fixed assets as permitted by section thirteen, article four of this chapter; and

(5) Does not present a significant supervisory concern or raise a significant legal or policy issue by filing the application.

(c) Any party who is adversely affected by an action of the commissioner taken pursuant to the criteria established by subsection (b) of this section may appeal within ten business days of the commissioner’s decision to the Board of Banking and Financial Institutions which must, after holding a hearing pursuant to the provisions of subdivision (12), subsection (b), section two, article three of this chapter, affirm, reverse or modify the order of the commissioner. Any party who is adversely affected by an order of the Board of Banking and Financial Institutions issued pursuant to the provisions of this subsection is entitled to judicial review in the same manner as provided by the provisions of subsection (k), section twelve of this article.
AN ACT to repeal §5B-2-3a and §5B-2-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-2-2, §5B-2-3, §5B-2-4, §5B-2-5 and §5B-2-6 of said code; to amend and reenact §15-5-28 of said code; to amend and reenact §18A-3-2c of said code; and to amend and reenact §33-16D-16 of said code, all relating to eliminating unnecessary, inactive or redundant councils, committees and boards; terminating the Council for Community and Economic Development and transferring powers and duties to the Executive Director of the West Virginia Development Office; terminating the Statewide Intrastate Mutual Aid Committee and making technical corrections to the code to reference a state of preparedness; terminating the Principals Standards Advisory Council; and terminating the West Virginia Health Insurance Plan Board.

Be it enacted by the Legislature of West Virginia:

That §5B-2-3a and §5B-2-7 of the Code of West Virginia, 1931, as amended, be repealed; that §5B-2-2, §5B-2-3, §5B-2-4, §5B-2-5 and §5B-2-6 of said code be amended and reenacted; that §15-5-28 of said code be amended and reenacted; that §18A-3-2c of said code be amended and reenacted; and that §33-16D-16 of said code be amended and reenacted, all to read as follows:
CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-2. Appointment and compensation of the Executive Director of the West Virginia Development Office.

(a) The Governor shall appoint the Executive Director of the West Virginia Development Office who is qualified for the position by reason of his or her extensive education and experience in the field of professional economic development. The executive director serves at the will and pleasure of the Governor. The executive director shall have overall management responsibility and administrative control and supervision within the West Virginia Development Office. It is the intention of the Legislature that the executive director provide professional and technical expertise in the field of professional economic and tourism development. Subject to the provisions of the contract provided in section four of this article, the executive director may hire and fire economic development representatives employed pursuant to the provisions of section five of this article.

(b) The Executive Director of the West Virginia Development Office may promulgate rules to carry out the purposes and programs of the West Virginia Development Office to include generally the programs available and the procedure and eligibility of applications relating to assistance under the programs. These rules are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the Secretary of State. The executive director may adopt any of the rules previously promulgated by the council for community and economic development.

§5B-2-3. Powers and duties of the executive director.

The executive director shall enhance economic growth and development through the development of a comprehensive
economic development strategy for West Virginia. “Comprehensive economic development strategy” means a plan that outlines strategies and activities designed to continue, diversify or expand the economic base of the state as a whole; create jobs; develop a highly skilled workforce; facilitate business access to capital, including venture capital; advertise and market the resources offered by the state with respect to the needs of business and industry; facilitate cooperation among local, regional and private economic development enterprises; improve infrastructure on a state, regional and community level; improve the business climate generally; and leverage funding from sources other than the state, including federal and private sources.

§5B-2-4. Public-private partnerships.

The West Virginia Development Office is authorized to enter into contractual or joint venture agreements with a nonprofit corporation organized pursuant to the corporate laws of the state, organized to permit qualification pursuant to section 501(c) of the Internal Revenue Code and for purposes of the economic development of West Virginia, and funded from sources other than the state. The contract shall include provisions relating to the employment of economic development representatives assigned to the West Virginia Development Office to be paid a base salary by the state and performance-based economic incentives from private funds of the nonprofit corporation. Provisions relating to hiring practices with respect to economic development representatives, job descriptions, accountability, public-private liaison and performance standards may be the subject of contract negotiations. The contract shall include provision for continuing education and certification in the field of economic or industrial development for persons employed as economic development representatives. Agreements providing for the payment of
performance-based incentives to the Executive Director of the West Virginia Development Office are authorized. Agreements providing for the payment of travel and expenses to the Executive Director of the West Virginia Development Office or to economic development representatives from private funds by the nonprofit corporation are authorized. The prohibitions of subdivisions (b) and (d), section five, article two, chapter six-b of this code are not applicable to the receipt by economic development representatives or by the executive director of performance-based incentives and other payments made by the nonprofit corporation and specifically authorized pursuant to this section.

From time to time the executive director may enter into joint ventures wherein the West Virginia Development Office and the nonprofit corporation share in the development and funding of economic development programs.

All contracts and joint venture agreements must be approved by the executive director. Contracts entered into pursuant to this section for longer than one fiscal year shall contain, in substance, a provision that the contract shall be considered cancelled without further obligation on the part of the state if the State Legislature or, where appropriate, the federal government, shall fail to appropriate sufficient funds therefor or shall act to impair the contract or cause it to be cancelled.

§5B-2-5. Economic development representatives.

(a) The executive director may employ economic development representatives to be paid a base salary within legislative appropriations to the West Virginia Development Office, subject to applicable contract provisions pursuant to section four of this article. Economic development representatives may receive performance-based incentives and
expenses paid from private funds from a nonprofit corporation
contracting with the West Virginia Development Office pursuant
to the provisions of section four of this article. The executive
director shall establish job descriptions and responsibilities of
economic development representatives, subject to the provisions
of any contract with a nonprofit corporation entered into
pursuant to section four of this article.

(b) Notwithstanding any provision of this code to the
contrary, economic development representatives employed
within the West Virginia Development Office are not subject to
the procedures and protections provided by articles six and six-a,
chapter twenty-nine of this code. Any employee of the West
Virginia Development Office on the effective date of this article
who applies for employment as an economic development
representative is not entitled to the protections of article six,
chapter twenty-nine with respect to hiring procedures and
qualifications; and upon accepting employment as an economic
development representative, the employee relinquishes the
protections provided for in article two, chapter six-c and article
six, chapter twenty-nine of this code.

§5B-2-6. Transition; savings provision.

All programs, orders, determinations, rules, permits, grants,
contracts, certificates, bonds, authorizations and privileges which
have been issued, made, granted or allowed to become effective
pursuant to any prior enactments of this article or by the
Governor, the Governor’s Office of Community and Industrial
Development or its director, or by a court of competent
jurisdiction, and which are in effect on February 1, 1992, shall
continue in effect according to their terms until modified,
terminated, superseded, set aside or revoked by the Governor or
the Executive Director of the West Virginia Development Office
pursuant to this article, by a court of competent jurisdiction or by
operation of law.
ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.


(a) The Legislature hereby finds that emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential for the protection of lives and property and for the best use of available assets, both public and private. The purpose of this section is to create a system of intrastate mutual aid between participating political subdivisions in the state. The system shall provide for mutual assistance among the participating political subdivisions in the prevention of, response to and recovery from any disaster that results in a formal state of emergency or state of preparedness in a participating political subdivision, subject to that participating political subdivision’s criteria for declaration. The system shall provide for mutual cooperation among the participating subdivisions in conducting disaster-related exercises, testing or other training activities outside actual declared emergency periods. This section provides no immunity, rights or privileges for any individual responding to a state of emergency or state of preparedness that is not requested or authorized to respond by a participating political subdivision. Participating political subdivisions will be ensured, to the fullest extent possible, eligibility for state and federal disaster funding.

(b) Upon the enactment of this legislation, all political subdivisions within the state are members of the statewide mutual aid system: Provided, That a political subdivision within the state may elect not to participate or to withdraw from the system upon the enactment of an appropriate resolution by its governing body declaring that it elects not to participate in the statewide mutual aid system. A copy of any such resolution shall
be provided to the Division of Homeland Security and Emergency Management.

(c) This section does not preclude participating political subdivisions from entering into supplementary agreements with another political subdivision and does not affect any other agreement to which a political subdivision may currently be a party to, or decide to be a party to.

(d) “Emergency responder”, as used in this article, shall mean anyone with special skills, qualifications, training, knowledge and experience in the public or private sectors that would be beneficial to a participating political subdivision in response to a locally declared emergency as defined in any applicable law or ordinance or authorized drill or exercises; and who is requested and authorized to respond. Under this definition, an emergency responder may be required to possess a license, certificate, permit or other official recognition for his or her expertise in a particular field or area of knowledge. An emergency responder could include, but is in no way limited to, the following: Law-enforcement officers, firefighters, emergency medical services personnel, physicians, nurses, other public health personnel, emergency management personnel, public works personnel, local emergency debris removal teams, those persons with specialized equipment operations skills or training or any other skills needed to provide aid in a declared emergency.

(e) It shall be the responsibility of each participating political subdivision with jurisdiction over and responsibility for emergency management within that certain subdivision to do all of the following:

(1) Identify potential hazards that could affect the participant using an identification system common to all participating jurisdictions.
(2) Conduct joint planning, intelligence sharing and threat assessment development with contiguous participating political subdivisions and conduct joint training at least biennially.

(3) Identify and inventory the current services, equipment, supplies, personnel and other resources related to planning, prevention, mitigation, response and recovery activities of the participating political subdivision.

(4) Adopt and implement the National Incident Management System approved by the State of West Virginia.

(f) A participating political subdivision may request assistance of other participating political subdivisions in preventing, mitigating, responding to and recovering from disasters that result in locally declared emergencies or in concert with authorized drills or exercises as allowed under this section. Requests for assistance shall be made to the Division of Homeland Security and Emergency Management through the designated county emergency management director by the chief executive officer of a participating political subdivision, or his or her designee, for response. Requests may be verbal or in writing. Verbal requests will be followed up with a written request as soon as is practical or such number of days as the state, in its discretion, may dictate.

(g) The obligation of a participating political subdivision to provide assistance in the prevention of, response to and recovery from a locally declared emergency or in authorized drills or exercises is subject to the following conditions:

(1) A participating political subdivision requesting assistance must have either declared a state of emergency in the manner outlined in this section or authorized drills and exercises;
A responding participating political subdivision may withhold resources to the extent necessary to provide reasonable protection and services for its own jurisdiction;

Emergency response personnel of a responding participating political subdivision shall continue under the command and control of their responding jurisdiction to include medical protocols, standard operating procedures and other protocols, but shall be under the operational control of the appropriate officials within the National Incident Management System of the participating political subdivision receiving the assistance; and

Assets and equipment of a responding participating political subdivision shall continue under the control of the responding jurisdiction, but shall be under the operational control of the appropriate officials within the National Incident Management System of the participating political subdivision receiving the assistance.

If a person or entity holds a license, certificate or other permit issued by a participating political subdivision or the state evidencing qualification in a professional, mechanical or other skill and the assistance of that person or entity is requested by a participating political subdivision, the person or entity shall be deemed to be licensed, certified or permitted in the political subdivision requesting assistance for the duration of the declared emergency or authorized drills or exercises and subject to any limitations and conditions the chief executive of the participating political subdivision receiving the assistance may prescribe by executive order or otherwise.

(i) (1) Any requesting political subdivision shall reimburse the participating political subdivision rendering aid under this system provided the request for aid is authorized by the Division of Homeland Security and Emergency Management. A
(2) Should a dispute arise between parties to the system regarding reimbursement, involved parties will make every effort to resolve the dispute within thirty days of written notice of the dispute by the party asserting noncompliance. In the event that the dispute is not resolved within ninety days of the notice of the claim, either party may request the dispute be solved through arbitration. Any arbitration under this provision shall be conducted under the commercial arbitration rules of the American Arbitration Association.

(j) Personnel of a participating political subdivision responding to or rendering assistance for a request who sustain injury or death in the course of, and arising out of, their employment are entitled to all applicable benefits normally available to personnel while performing their duties for their employer. Responders shall receive any additional state and federal benefits that may be available to them for line-of-duty deaths.

(k) All activities performed under this section are deemed hereby to be governmental functions. For the purposes of liability, all persons responding under the operational control of the requesting political subdivision are deemed to be employees of the requesting participating political subdivision.

(l) Whenever the law-enforcement officials of any political subdivision are rendering outside aid pursuant their lawful authority, and with the approval of the Director of the West Virginia Division of Homeland Security and Emergency Management, and under the authority of a state of emergency or state of preparedness as officially proclaimed by the Governor, such law-enforcement officials shall have the same authority,
powers, duties, rights, privileges and immunities as if they were performing their law-enforcement duties in the political subdivisions in which they are normally employed. The authority vested in the law-enforcement official, in accordance with this section, shall vest upon reporting in person to the Emergency Management Agency official in charge and on duty at the county or city of destination assignment. The law-enforcement official shall act under the authority, supervision and control of the highest ranking law-enforcement official within the assigned outside jurisdiction. Law enforcement and powers of arrest authority will not attach to the law-enforcement official while in transit from his or her jurisdiction of origin en route to his or her assigned jurisdiction under intrastate mutual aid assistance.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-2c. Training through the principals academy.

(a) Principal training and professional development required. — After the effective date of this section and subject to the provisions of subsection (c) of this section, every principal shall complete training and professional development through the principals academy as provided in subsection (b) of this section.

(b) Principal training and professional development through the academy. — The academy and the persons required to complete training and professional development through the academy shall adhere to the following guidelines:

(1) All persons assigned as a principal for the first time in a West Virginia school after July 1, 2002, shall complete specialized training and professional development for newly
appointed principals through the academy within the first twelve
months following assignment;

(2) All principals of schools which have been designated as
seriously impaired, in accordance with section five, article two-e,
chapter eighteen of this code, shall complete specialized training
and professional development through the academy specifically
designed to assist the principal to improve school performance
commencing as soon as practicable following receipt of the
designation;

(3) All principals who are subject to an improvement plan,
in accordance with section twelve, article two of this chapter,
shall complete specialized training and professional development
through the academy specifically designed for principals subject
to an improvement plan. The specialized training and
professional development shall be completed within twelve
months from the date that the principal is first subject to the
improvement plan;

(4) All principals who transfer to a school with a
significantly different grade configuration shall complete
specialized training and professional development for principals
in schools with the grade configuration to which they transferred
through the academy within the first twelve months following
transfer; and

(5) All persons serving as school principals shall complete
training and professional development through the academy
designed to build the qualities, proficiencies and skills required
of all principals as determined by the state board.

(c) Academy and requirements to complete training and
professional development subject to funding. — The requirement
that principals complete training and professional development
through the academy shall be subject to the availability of funds
for the principals academy from legislative appropriation and from other sources. If these funds are insufficient to provide for the total cost of the training and professional development required by subsection (b) of this section, then the academy shall provide training and professional development for the persons described in subdivisions (1) through (5), inclusive, subsection (b) of this section according to the priority in which the subdivisions appear in said subsection. If such funds are insufficient to provide for the training and professional development of all the persons described in one or more of subdivisions (1) through (5), inclusive, subsection (b) of this section, the academy is authorized to determine which persons described within the subdivision or subdivisions shall be admitted and which shall not be admitted: Provided, That the principals academy shall make every effort to ensure that all principals receive training and professional development through the academy at least once every six years effective July 1, 2002, and thereafter: Provided, however, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

(d) Establishment of standards. — On or before October 1, 1996, the state board shall approve and promulgate rules regarding the minimum qualities, proficiencies and skills that will be required of principals after January 1, 1997. 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) 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;

(2) 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;

(3) 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

(4) Administrative skills, including, but not limited to,
organizational, fiscal, public policy and total quality
management skills and techniques.

(e) Waivers. — Any person desiring to be relieved of the
requirements of all or any part of this section may apply in
writing to the state board for a waiver. Upon a showing of
reasonable cause why relief should be granted, the state board
may grant a waiver, upon such terms and conditions as the state
board shall determine proper, as to all or any part of this section.

(f) Failure to comply. — Any person who fails or refuses to
complete training and professional development through the
academy, as required by the provisions of this section, and who
fails to obtain a waiver, as described in subsection(e) of this
section, shall be ineligible to be employed as, or serve in the
capacity of, a principal.

(g) Tracking of requirement. — On or before January 1,
1997, the state board shall establish a system to track the
progress of each person required to complete training through
the academy and shall regularly advise such persons of their
progress.

(h) Payment of reasonable and necessary expenses and
stipends. — The center for professional development shall
reimburse persons attending the academy for reasonable and
necessary expenses. A person may not be required to complete
training and professional development through the principals academy before September 15, and after June 1, of the school year. The center for professional development shall utilize alternative methods of instructional delivery and scheduling, including electronic delivery, as considered appropriate to minimize the amount of time principals completing training and professional development through the academy are required to be away from their school duties. Nothing in this section shall be construed to require any specific level of funding by the Legislature.

CHAPTER 33. INSURANCE.

ARTICLE 16D. MARKETING AND RATE PRACTICES.


(a) Upon filing with and approval by the commissioner, any carrier licensed pursuant to this chapter which accesses a health care provider network to deliver services may offer a health benefit plan and rates associated with the plan to a small employer subject to the conditions of this section and subject to the provisions of this article. The health benefit plan is subject to the following conditions:

(1) The health benefit plan may be offered by the carrier only to small employers which have not had a health benefit plan covering their employees for at least six consecutive months before the effective date of this section. After the passage of six months from the effective date of this section, the health benefit plan under this section may be offered by carriers only to small employers which have not had a health benefit plan covering their employees for twelve consecutive months;

(2) If a small employer covered by a health benefit plan offered pursuant to this section no longer meets the definition of a small employer as a result of an increase in eligible employees,
that employer shall remain covered by the health benefit plan until the next annual renewal date;

(3) The small employer shall pay at least fifty percent of its employees’ premium amount for individual employee coverage;

(4) The commissioner shall promulgate emergency rules under the provisions of article three, chapter twenty-nine-a of this code on or before September 1, 2004, to place additional restrictions upon the eligibility requirements for health benefit plans authorized by this section in order to prevent manipulation of eligibility criteria by small employers and otherwise implement the provisions of this section;

(5) Carriers must offer the health benefit plans issued pursuant to this section through one of their existing networks of health care providers;

(A) The West Virginia Health Care Authority shall, on or before May 1, 2004, and each year thereafter, by regular mail, provide a written notice to all known in-state health care providers that:

(i) Informs the health care provider regarding the provisions of this section; and

(ii) Notifies the health care provider that if the health care provider does not give written refusal to the West Virginia Health Care Authority within thirty days from receipt of the notice or the health care provider has not previously filed a written notice of refusal to participate, the health care provider must participate with and accept the products and provider reimbursements authorized pursuant to this section;

(B) The carrier’s network of health care providers, as well as any health care provider which provides health care goods or services to beneficiaries of any departments or divisions of the
state, as identified in article twenty-nine-d, chapter sixteen of
this code, shall accept the health care provider reimbursement
rates set pursuant to this section unless the health care provider
gives written refusal to the West Virginia Health Care Authority
between May 1 and June 1 that the provider will not participate
in this program for the next calendar year. Notwithstanding any
provision of this code to the contrary, health care providers may
not be mandated to participate in this program except under the
opt-out provisions of subdivision (5), subsection (a) of this
section and therefore the health care provider shall annually have
the ability to file with the West Virginia Health Care Authority
written notice that the health care provider will not participate
with products issued pursuant to this section. Once a health care
provider has filed a notice of refusal with the West Virginia
Health Care Authority, the notice shall remain effective until
rescinded by the provider and the provider shall not be required
to renew the notice each year;

(C) The West Virginia Health Care Authority is responsible
for receiving the responses, if any, from the health care providers
that have elected not to participate and for providing a list to the
commissioner of those health care providers that have elected
not to participate;

(D) Those health care providers that do not file a notice of
refusal shall be considered to have accepted participation in this
program and to accept Public Employees Insurance Agency
health care provider reimbursement rates for their services as set
by this section;

(E) Health care provider reimbursement rates used by the
carrier for a health benefit plan offered pursuant to this section
shall have no effect on provider rates for other products offered
by the carrier and most-favored-nation clauses do not apply to
the rates;
(6) With respect to the health benefit plans authorized by this section, the carrier shall reimburse network health care providers at the same health care provider reimbursement rates in effect for the managed care and health maintenance organization plans offered by the West Virginia Public Employees Insurance Agency. Beginning in the year 2004, and in each year thereafter, the health care provider reimbursement rates set under this section may not be lowered from the level of the rates in effect on July 1 of that year for the managed care and health maintenance plans offered by the Public Employees Insurance Agency. While it is the intent of this paragraph to govern rates for plans offered pursuant to this section for annual periods, this subdivision in no way prevents the Public Employees Insurance Agency from making provider reimbursement rate adjustments to Public Employees Insurance Agency plans during the course of each year. If there is a dispute regarding the determination of appropriate rates pursuant to this section, the Director of the Public Employees Insurance Agency shall, in his or her sole discretion, specify the appropriate rate to be applied;

(A) The health care provider reimbursement rates as authorized by this section shall be accepted by the health care provider as payment in full for services or products provided to a person covered by a product authorized by this section;

(B) Except for the health care provider rates authorized under this section, a carrier’s payment methodology, including copayments and deductibles and other conditions of coverage, remains unaffected by this section;

(C) The provisions of this section do not require the Public Employees Insurance Agency to give carriers access to the purchasing networks of the Public Employees Insurance Agency. The Public Employees Insurance Agency may enter into agreements with carriers offering health benefit plans under this section to permit the carrier, at its election, to participate in drug
114 purchasing arrangements pursuant to article sixteen-c, chapter
115 five of this code, including the multistate drug purchasing
116 program. This paragraph provides authorization of the
117 agreements pursuant to section four of said article;

118 (7) Carriers may not underwrite products authorized by this
119 section more strictly than other small group policies governed by
120 this article;

121 (8) With respect to health benefit plans authorized by this
122 section, a carrier shall have a minimum anticipated loss ratio of
123 seventy-seven percent to be eligible to make a rate increase
124 request after the first year of providing a health benefit plan
125 under this section;

126 (9) Products authorized under this section are exempt from
127 the premium taxes assessed under sections fourteen and
128 fourteen-a, article three of this chapter;

129 (10) A carrier may elect to nonrenew any health benefit plan
130 to an eligible employer if, at any time, the carrier determines, by
131 applying the same network criteria which it applies to other
132 small employer health benefit plans, that it no longer has an
133 adequate network of health care providers accessible for that
134 eligible small employer. If the carrier makes a determination that
135 an adequate network does not exist, the carrier has no obligation
136 to obtain additional health care providers to establish an
137 adequate network;

138 (11) Upon thirty days’ advance notice to the commissioner,
139 a carrier may, at any time, elect to nonrenew all health benefit
140 plans issued pursuant to this section. If a carrier nonrenews all its
141 business issued pursuant to this section for any reason other than
142 the adequacy of the provider network, the carrier may not offer
143 this health benefit plan to any eligible small employer for a
144 period of at least two years after the last eligible small employer
145 is nonrenewed; and
(12) The Insurance Commissioner may not approve any
health benefit plan issued pursuant to this section until it has
obtained any necessary federal governmental authorizations or
waivers. The Insurance Commissioner shall apply for and obtain
all necessary federal authorizations or waivers.

(b) Health benefit plans authorized by this section are not
intended to violate the prohibition set out in subsection (a),
section four of this article.

(c) Carriers offering health benefit plans pursuant to this
section shall annually or before December 1 of each year report
in a form acceptable to the commissioner the number of health
benefit plans written by the carrier and the number of individuals
covered under the health benefit plans.

(d) To the extent that provisions of this section differ from
those contained elsewhere in this chapter, the provisions of this
section control.

CHAPTER 41

(Com. Sub. for S. B. 488 - By Senators Williams,
Prezioso and Stollings)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2015.]

AN ACT to repeal §31-15C-10, §31-15C-11 and §31-15C-14 of the
Code of West Virginia, 1931, as amended; and to amend and
reenact §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7
and §31-15C-9 of said code, all relating to creation of Broadband
Enhancement Council; modifying definitions; establishing
membership; outlining powers and duties; establishing Broadband
Enhancement Fund; requiring Secretary of the Department of Commerce to administer and control the Broadband Enhancement Fund; transferring funds from Broadband Deployment Fund to Department of Commerce; modifying requirements for retention of outside expert consultant; and granting legislative rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended, be repealed; and that §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 15C. BROADBAND ENHANCEMENT.

§31-15C-2. Definitions.

1 For the purposes of this article:

2 (1) “Broadband” or “broadband service” means any service providing advanced telecommunications capability with the same downstream data rate and upstream data rate as is specified by the Federal Communications Commission and that does not require the end-user to dial up a connection that has the capacity to always be on, and for which the transmission speeds are based on regular available bandwidth rates, not sporadic or burstable rates, with latency suitable for real-time applications and services such as voice-over Internet protocol and video conferencing, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas: Provided, That as the Federal Communications Commission updates the downstream data rate and the upstream data rate the council will publish the revised data rates in the State Register within sixty days of the federal update.
(2) “Broadband demand promotion project” means a statewide or regional project to undertake activities to promote demand for broadband services and broadband applications.

(3) “Broadband deployment project” means a project to provide broadband services in areas as defined in section six of this article.

(4) “Council” means the Broadband Enhancement Council.

(5) “Downstream data rate” means the transmission speed from the service provider source to the end-user.

(6) “Upstream data rate” means the transmission speed from the end-user to the service provider source.

(7) “Unserved area” means a community that has no access to broadband service.

§31-15C-3. Broadband Enhancement Council; members of council; administrative support.

(a) The Broadband Enhancement Council is hereby established. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties are considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose. The council is created under the Department of Commerce for administrative, personnel and technical support services only.

(b) The council shall consist of thirteen voting members, designated as follows:

(1) The Secretary of Commerce or his or her designee;

(2) The Department of Administration Chief Technology Officer or his or her designee; and
(3) The Vice Chancellor for Administration of the Higher Education Policy Commission or his or her designee;

(4) The State Superintendent of Schools or his or her designee; and

(5) Nine public members that serve at the will and pleasure of the Governor and are appointed by the Governor with the advice and consent of the Senate, as follows:

(i) One member representing users of large amounts of broadband services in this state;

(ii) One member from each congressional district representing rural business users in this state;

(iii) One member from each congressional district representing rural residential users in this state;

(iv) One member representing urban business users in this state; and

(v) One member representing urban residential users in this state.

(6) In addition to the thirteen voting members of the council, the President of the Senate shall name two senators from the West Virginia Senate, one from each party, and the Speaker of the House shall name two delegates from the West Virginia House of Delegates, one from each party, each to serve in the capacity of an ex officio, nonvoting advisory member of the council.

(c) The Secretary of Commerce shall chair the first meeting at which time a chair and vice chair shall be elected from the members of the council. In the absence of the chair, the vice chair shall serve as chair. The council shall appoint a
secretary-treasurer who need not be a member of the council and
who, among other tasks or functions designated by the council,
shall keep records of its proceedings.

(d) The council may appoint committees or subcommittees
to investigate and make recommendations to the full council.
Members of these committees or subcommittees need not be
members of the council.

(e) Seven voting members of the council constitute a quorum
and the affirmative vote of a simple majority of those members
present is necessary for any action taken by vote of the council.

(f) The council is part time. Public members appointed by
the Governor may pursue and engage in another business or
occupation or gainful employment. Any person employed by,
owning an interest in or otherwise associated with a broadband
deployment project, project sponsor or project participant may
serve as a council member and is not disqualified from serving
as a council member because of a conflict of interest prohibited
under section five, article two, chapter six-b of this code and is
not subject to prosecution for violation of said section when the
violation is created solely as a result of his or her relationship
with the broadband deployment project, project sponsor or
project participant so long as the member recuses himself or
herself from board participation regarding the conflicting issue
in the manner set forth in legislative rules promulgated by the
West Virginia Ethics Commission.

(g) No member of the council who serves by virtue of his or
her office receives any compensation or reimbursement of
expenses for serving as a member. The public members and
members of any committees or subcommittees are entitled to be
reimbursed for actual and necessary expenses incurred for each
day or portion thereof engaged in the discharge of his or her
official duties in a manner consistent with the guidelines of the
Travel Management Office of the Department of Administration.
§31-15C-4. Powers and duties of the council generally.

(a) The council shall:

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The council may request the assistance of the Legislative Auditor in gathering this data;

(3) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;

(4) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; and

(5) Cooperate and assist in the expansion of electronic instruction and distance education services.

(b) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any broadband deployment project;
(2) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;

(3) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages, encourage one-stop government access and that all public entities stream audio and video of all public meetings;

(4) To make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in the mapping of the state and categorization of areas within the state;

(5) Acquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article;

(6) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties; and

(7) Perform any and all other activities in furtherance of its purpose.

(c) The council shall exercise its powers and authority to advise the Legislature on bringing broadband service to unserved and underserved areas.

(d) The council shall report to the Joint Committee on Government and Finance on or before January 1 of each year. The report shall include the action that was taken by the council during the previous year in carrying out the provisions of this article. To the extent the report addresses data gathered in
58 in connection with subdivision (2), subsection a, section four of this
59 article, a copy of the report shall be provided to the Attorney
60 General. The council shall also make any other reports as may be
61 required by the Legislature or the Governor.


1 All moneys collected by the council, which may, in addition
2 to appropriations, include gifts, bequests or donations, shall be
3 deposited in a special revenue account in the State Treasury
4 known as the Broadband Enhancement Fund. The fund shall be
5 administered by and under the control of the Secretary of the
6 Department of Commerce. Expenditures from the fund shall be
7 for the purposes set forth in this article and are not authorized
8 from collections but are to be made only in accordance with
9 appropriation by the Legislature and in accordance with the
10 provisions of article two, chapter eleven-b of this code:
11 Provided, That any funds remaining in the fund of the former
12 Broadband Development Council shall be transferred to the
13 Department of Commerce by June 30, 2015.

§31-15C-7. Retention of outside expert consultant.

1 In order to assist the council with the highly technical task
2 of categorizing the areas of the state and evaluating and
3 prioritizing projects, the council may retain an outside expert
4 consultant or consultants qualified to map the state on the basis
5 of broadband availability, to evaluate, categorize and prioritize
6 projects, to assist in public outreach and education in order to
7 stimulate demand and to provide other support and assistance as
8 necessary to accomplish the purposes of this article.

§31-15C-9. Development of guidelines and application for funding
assistance; legislative rule-making authority.

1 In order to implement and carry out the intent of this article,
and recommendation of the council, shall propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 42

(Com. Sub. for H. B. 2878 - By Delegate(s) Miller, Manchin, Espinosa, Skinner, Hornbuckle, Lane, Hill, Stansbury, Rowe, Williams and Upson)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31D-1-131, relating to creating a web-based electronic business portal in West Virginia; requiring the Secretary of State to create a web-based business portal to facilitate interaction between government and businesses in West Virginia; requiring Secretary of State to establish a call center to assist businesses obtain information regarding compliance with state law; requiring the Secretary of State to develop requirements for the web-based business portal; and requiring the Secretary of State to propose rules for legislative approval to implement the provisions of the bill.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §31D-1-131, to read as follows:
ARTICLE 1. GENERAL PROVISIONS.


(a) The Secretary of State shall establish a web-based business portal to facilitate interaction among businesses and governmental agencies in West Virginia. The web-based business portal shall provide a single point-of-entry to state government for businesses based in the state and for businesses looking to establish a presence in the state. The web-based business portal shall:

(1) Provide guidance to users who want to start, operate or expand a business in the state;

(2) Permit e-payments and provide businesses information about transaction statuses in a paperless environment;

(3) Provide business owners with the option to electronically:

(A) Make application, including the payment of fees, for permits and licenses;

(B) Make application, including the payment of fees, for the renewal of permits and licenses;

(C) File annual reports;

(D) Pay unemployment taxes;

(E) Pay sales and use taxes through a link to the web-based portal maintained by the Tax Division of the Department of Revenue for electronic payment; and

(F) Pay any other fees or remittances that the business owners are subject to under state law;
(4) Provide businesses with downloadable access to all editable forms that are necessary for compliance with all reporting and filing requirements with the following agencies:

(A) West Virginia State Tax Department;

(B) Workforce West Virginia;

(C) West Virginia Division of Labor; and

(D) West Virginia Secretary of State;

(5) Provide for the electronic filing of documents by city, county and local governments: Provided, That nothing in this section shall be construed to permit the Secretary of State to receive tax returns, or any other documents required to be filed with the State Tax Commissioner, or to require any taxpayer to file tax returns, or any other documents required to be filed with the State Tax Commissioner, with the Secretary of State. Nor shall the Secretary of State be permitted to receive payments for taxes, including interest, penalties or additions to tax, that are required to be collected by the Tax Commissioner. Notwithstanding the foregoing, the Secretary of State and the Tax Commissioner may develop policies and procedures allowing the Secretary of State to accept applications and renewals, and to collect the appropriate fee, for Business Registration Certificates. Provided, further, That nothing in this section shall be construed as requiring the State Tax Commissioner or the Tax Division of the Department of Revenue to disclose confidential taxpayer information to the Secretary of State.

(b) The Secretary of State shall establish a consolidated call center to be staffed by trained and knowledgeable persons who are able to assist businesses obtain information and services relating to compliance with state law.
(c) The Secretary of State shall:

(1) Develop the requirements of the web-based business portal by August 31, 2015, including but not limited to:

(A) Establishing, through cooperative efforts, the standards and requirements necessary to design, build, implement and maintain the business portal; and

(B) Establishing the standards and requirements necessary for a state or local agency to participate in the business portal;

(2) Coordinate and cooperate with the appropriate entities to facilitate the payment by businesses of any payments or remittances made pursuant to this section, via the web-based business portal; and

(3) Propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article.

CHAPTER 43

(Com. Sub. for S. B. 237 - By Senators D. Hall, Romano, Snyder, Facemire and Williams)

[Passed February 13, 2015; in effect from passage.]
[Approved by the Governor on February 25, 2015.]

code, all relating to the Captive Cervid Farming Act; regulating captive cervid farming as an agricultural business; stating legislative findings and definitions; permitting sale of venison; stating powers and duties of the Department of Agriculture and commissioner; creating application process and classes of licenses; issuing, renewing, modifying and transferring licenses; inspecting facilities; transitioning current facilities to new licensure procedures; creating penalties for noncompliance with article; amending other statutes to comport with the Captive Cervid Farming Act; permitting rulemaking; prohibiting certain conduct; and providing for certain criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-2H-1, §19-2H-2, §19-2H-3, §19-2H-4, §19-2H-5, §19-2H-6, §19-2H-7, §19-2H-8, §19-2H-9, §19-2H-10, §19-2H-11 and §19-2H-12; that §19-29-2 of said code be amended and reenacted; that §20-1-2 of said code be amended and reenacted; and that §20-2-11 and §20-2-12 of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 2H. CAPTIVE CERVID FARMING ACT.

§19-2H-1. Short title; legislative findings.

(a) This article shall be called the Captive Cervid Farming Act.

(b) The Legislature finds that captive cervid farming is primarily an agricultural business and that captive cervids should be regulated like other livestock.

(c) The Legislature further finds that the Department of Agriculture possesses the knowledge, training and expertise to
regulate captive cervid farming as an agricultural business and
to adequately protect the health and safety of animals and the
general public. Matters related to licensure, the sale of venison,
animal health and testing, fencing, interstate and intrastate
movement, animal identification system, recordkeeping, animal
husbandry, equipment and other related matters shall be
regulated by the department.


As used in this article:

(a) “Biosecurity” means measures, actions or precautions
taken to prevent the transmission of disease in, among or
between free-ranging and captive cervids.

(b) “Captive cervid” or the plural means a member of the
Cervidae family of animals including, but not limited to, fallow
deer, red deer, white-tailed deer, axis deer, elk, moose, reindeer
and caribou which are domesticated animals under the control of
the owner of the animal.

(c) “Captive cervid farming facility”, “facility” or the plural
means the captive cervids, property, fenced area, operations and
equipment regulated and licensed by the department pursuant to
this article.

(d) “Commissioner” means the Commissioner of the West
Virginia Department of Agriculture.

(e) “Department” means the West Virginia Department of
Agriculture.

(f) “Identification system” means a process or procedure that
allows an individual cervid to be continuously recognized as a
unique animal throughout its lifetime.
(g) “License” means the authorization issued by the department for the operation of a captive cervid farming facility pursuant to this article.

(h) “Owner” means the person who owns or operates a captive cervid farming facility.

(i) “Person” means an individual, corporation, limited liability company, partnership, association, joint venture or other legal entity.

(j) “Release” means to allow a cervid from a licensed captive cervid farming facility to be outside the perimeter fence of that licensed captive cervid farming facility without being under the direct control of the owner or his or her agent.

§19-2H-3. Authority of the department; duties and obligations of the commissioner.

(a) The department is hereby granted authority to regulate captive cervid farming facilities in this state in accordance with this article. Subject to the transition provisions contained in this article, no person may operate a captive cervid farming facility in this state unless that person holds a license issued by the commissioner pursuant to this article.

(b) The commissioner or his or her designees may:

(1) Establish a section and designate staff responsible for the enforcement of this article;

(2) Contract with veterinarians, biologists or other professionals to implement this article;

(3) Enter into contracts or compacts with state agencies or other states to enhance the biosecurity of captive cervid farming facilities in this and other states;
(4) Lease, rent, purchase, construct, maintain, operate, sell, encumber or assign rights of real or personal property to meet the objectives of this article;

(5) Hold hearings, subpoena witnesses, administer oaths, take testimony, require the production of evidence and designate hearing examiners and employees;

(6) Take any other action necessary or incidental to the performance of his or her duties pursuant to this article;

(7) Regulate the movement of captive cervids and require the documentation of the origin and destination of all shipments of captive cervids; and

(8) Prohibit captive cervid facilities in this state from receiving live captive cervids or any byproduct thereof, or captive cervid genetic materials from a captive cervid facility that has had a confirmed chronic wasting disease or tuberculosis positive cervid in the last sixty months.


(a) A person desiring to operate a captive cervid farming facility in this state must submit an application for a license to the department. The department shall provide the forms and instructions for the filing of applications.

(b) The application form shall require submission of the following information:

(1) The mailing address of the proposed captive cervid farming facility and the size, location and an adequate legal description of the facility;

(2) The number of each species of cervid to be included in the proposed facility;
12 (3) The biosecurity measures to be utilized;
13 (4) The proposed method of flushing wild cervids from the
14 enclosure, if applicable;
15 (5) The proposed record-keeping system;
16 (6) The method of verification that all wild cervids have
17 been removed;
18 (7) The current zoning of the property proposed for the
19 facility; and
20 (8) Any other information requested by the department.
21
22 (c) The application shall be accompanied by the annual
23 license fee as follows:
24
25 (1) Class one license. — For a facility to breed and
26 propagate captive cervids, and create cervid byproducts, for sale
27 to others, $375; or
28
29 (2) Class two license. — For a facility to breed, propagate,
30 harvest or slaughter captive cervids, create cervid byproducts,
31 permit hunting of captive cervids or sell venison to others, $750.

§19-2H-5. Action on applications.

1 (a) The department shall act on a complete application for a
2 license within sixty days of receipt. The department may issue
3 a provisional license for a proposed facility that has not yet been
4 constructed, but operations shall not begin under a provisional
5 license until the fully constructed facility has been inspected and
6 approved by the department.

7 (b) The department may not issue a license until the
8 commissioner has determined that the facility meets all of the
9 following criteria:
(1) The facility has been inspected by the department and it meets the requirements of this article and the rules promulgated thereunder;

(2) The applicant has all necessary federal, state and local governmental permits; and

(3) The owner has paid all applicable license fees and all departmental charges for services provided to the facility.

(c) If the department finds a deficiency in the license application, then the owner shall be given at least thirty days to remedy the deficiency before the license application is denied.

(d) If the department finds that the proposed captive cervid farming facility does not comply with the requirements of this article, then the owner shall be given at least thirty days to remedy the deficiency at the facility before the license application is denied.

(e) The applicant may request a hearing, pursuant to article five, chapter twenty-nine-a of this code, to contest the denial of a license or any limitations placed upon the issuance of a license.

(f) The department shall retain the license fee for its services in the event a license is denied.

§19-2H-6. License certificate; renewal; sale or transfer of license.

(a) Once approved, the department shall issue a license certificate to the owner of a captive cervid farming facility containing the following information:

(1) The class of license, the license number and expiration date;

(2) The captive cervid species and number of captive cervids approved for the licensed facility; and
§19-2H-7. License modification.

An owner shall apply to the department for a license modification if there is any proposed change in the class of license, cervid species, number of captive cervids or other requirement necessitating an application for modification.

§19-2H-8. Inspection of facility by the department.

The department shall have access at all reasonable hours to any captive cervid farming facility to conduct inspections, secure samples or specimens or determine whether the owner is in compliance with the requirements of this article. Inspections and sampling shall be conducted in a manner which will not unnecessarily jeopardize the health of the captive cervids.

§19-2H-9. Transition to captive cervid farming licenses; statutory conflicts.

(a) A captive cervid farming facility in existence on the effective date of this article may continue operation under its existing authorization until the department acts on its application so long as the facility applies for a license under this article within sixty days after application forms are made available.
(b) Notwithstanding any other provision of the law to the contrary, an owner or an owner’s customer harvesting captive cervids from a captive cervid farming facility is not subject to laws regarding possession limits and closed seasons. Further, a facility is not subject to sections thirteen, fourteen and forty-seven, article two, chapter twenty of this code or the rules promulgated thereunder.

§19-2H-10. Administrative penalties; hearing.

(a) Upon finding that a person has violated any requirement or rule promulgated under this article, the commissioner may:

(1) Issue a warning;

(2) Impose a civil penalty of not more than $1,000 plus the costs of investigation for each violation;

(3) Suspend, revoke or modify a license;

(4) Obtain a declaratory judgment that a particular action is a violation of this article; or

(5) Obtain an injunction.

(b) A person aggrieved by an administrative action under this section may request an informal hearing or a hearing pursuant to article five, chapter twenty-nine-a of this code.

§19-2H-11. Prohibited conduct; criminal penalties.

(a) A person may not release or permit the release of any captive cervids from a captive cervid farming facility.

(b) A person may not cause the entry or introduction of wild cervids into a captive cervid farming facility.
(c) An owner may not cease operation of or abandon a captive cervid farming facility without complying with the requirements and rules promulgated under this article.

(d) Any person who violates subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than ninety days, or fined not more than $300, or both fined and confined for a first offense. Any person who violates subsection (a) or (b) of this section for a second or subsequent offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, or fined not more than $1,000, or both fined and confined.

(e) Any person who intentionally or knowingly violates subsection (a), (b) or (c) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than three years, or fined not more than $1,000, or both fined and imprisoned.


(a) The commissioner shall propose legislative rules in accordance with article three, chapter twenty-nine-a of this code to implement and enforce this article. The rules shall be consistent with the rules of the United States Department of Agriculture in so far as practicable. Any rules promulgated by the commissioner before September 1, 2015, may be emergency rules.

(b) The rules shall include, but not be limited to:

(1) Preventing the spread of diseases between captive and wild cervids;

(2) Implementing an identification system that allows individual captive cervids to be recognized and identified throughout the animal’s life;
(3) Establishing specifications for fencing necessary to prevent the escape of captive cervids and the infiltration of wild cervids into a captive cervid farming facility;

(4) Specifying record-keeping standards required of captive cervid farming facilities, including standards for documenting purchases, propagation, sales, harvesting, sales of venison and other documentation required to maintain accurate and complete business records;

(5) Establishing animal health testing criteria, inoculation requirements and statistical information to track, discover and prevent the spread of animal diseases, including chronic wasting disease;

(6) Regulating the intrastate and interstate movement of captive cervids and maintaining documentation of the origin and destination of all cervid shipments, disease and identification records and any other requisite documentation;

(7) Creating regulations for the sale and slaughtering of captive cervids for venison;

(8) Establishing a schedule of fees and charges for services provided by the department to captive cervid farming facilities;

(9) Procedures for captive cervid farming facilities to close and wind down operations.

ARTICLE 29. PRODUCTION OF NONTRADITIONAL AGRICULTURE PRODUCTS.


(a) “Aquaculture” means the commercial production of fish and/or other aquatic life.
(b) “Commissioner” means the Commissioner of Agriculture or his or her designee.

(c) “Domestic purposes” means for the purposes of food production, for resale as breeding stock or for the sale of immature stock for the purposes of further feeding.

(d) “Nontraditional agriculture” means the production of animals domesticated from wild stock, either native or nonnative, and are being confined, bred or fed for domestic purposes; captive cervids pursuant to article two-h of this chapter; aquaculture; or other agricultural products as defined in this article.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

“Agency” means any branch, department or unit of the state government, however designated or constituted.

“Alien” means any person not a citizen of the United States.

“Bag limit” or “creel limit” means the maximum number of wildlife which may be taken, caught, killed or possessed by any person.

“Big game” means elk, deer, black bears, wild boars and wild turkeys.

“Bona fide resident, tenant or lessee” means a person who permanently resides on the land.
“Citizen” means any native-born citizen of the United States and foreign-born persons who have procured their final naturalization papers.

“Closed season” means the time or period during which it shall be unlawful to take any wildlife as specified and limited by this chapter.

“Commission” means the Natural Resources Commission.

“Commissioner” means a member of the advisory commission of the Natural Resources Commission.

“Director” means the Director of the Division of Natural Resources.

“Fishing” or “to fish” means the taking, by any means, of fish, minnows, frogs or other amphibians, aquatic turtles and other forms of aquatic life used as fish bait.

“Fur-bearing animals” includes: (a) The mink; (b) the weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f) the skunk and civet cat, commonly called polecat; (g) the otter; (h) the red fox; (i) the gray fox; (j) the wildcat, bobcat or bay lynx; (k) the raccoon; and (l) the fisher.

“Game” means game animals, game birds and game fish as herein defined.

“Game animals” includes: (a) The elk; (b) the deer; (c) the cottontail rabbits and hares; (d) the fox squirrels, commonly called red squirrels, and gray squirrels and all their color phases - red, gray, black or albino; (e) the raccoon; (f) the black bear; and (g) the wild boar. The term “game animals” does not include captive cervids regulated pursuant to article two-h, chapter nineteen of this code.
“Game birds” includes: (a) The anatidae, commonly known as swan, geese, brants and river and sea ducks; (b) the rallidae, commonly known as rails, sora, coots, mudhens and gallinule; (c) the limicolae, commonly known as shorebirds, plover, snipe, woodcock, sandpipers, yellow legs and curlews; (d) the galliformes, commonly known as wild turkey, grouse, pheasants, quails and partridges (both native and foreign species); (e) the columbidae, commonly known as doves; (f) the icteridae, commonly known as blackbirds, redwings and grackle; and (g) the corvidae, commonly known as crows.

“Game fish” includes: (a) Brook trout; (b) brown trout; (c) rainbow trout; (d) golden rainbow trout; (e) largemouth bass; (f) smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m) rock bass; (n) white bass; (o) white crappie; (p) black crappie; (q) all sunfish species; (r) channel catfish; (s) flathead catfish; (t) blue catfish; (u) sauger; and (v) all game fish hybrids.

“Hunt” means to pursue, chase, catch or take any wild birds or wild animals. However, the definition of “hunt” does not include an officially sanctioned and properly licensed field trial, water race or wild hunt as long as that field trial is not a shoot-to-retrieve field trial.

“Lands” means land, waters and all other appurtenances connected therewith.

“Migratory birds” means any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States, known as the Migratory Bird Treaty Act, for the protection of migratory birds and game mammals concluded, respectively, August 16, 1916, and February 7, 1936.

“Nonresident” means any person who is a citizen of the United States and who has not been a domiciled resident of the
State of West Virginia for a period of thirty consecutive days immediately prior to the date of his or her application for a license or permit except any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition.

“Open season” means the time during which the various species of wildlife may be legally caught, taken, killed or chased in a specified manner and shall include both the first and the last day of the season or period designated by the director.

“Person”, except as otherwise defined elsewhere in this chapter, means the plural “persons” and shall include individuals, partnerships, corporations or other legal entities.

“Preserve” means all duly licensed private game farmlands, or private plants, ponds or areas, where hunting or fishing is permitted under special licenses or seasons other than the regular public hunting or fishing seasons. The term “preserve” does not include captive cervid farming facilities regulated pursuant to article two-h, chapter nineteen of this code.

“Protected birds” means all wild birds not included within the definitions of “game birds” and “unprotected birds”.

“Resident” means any person who is a citizen of the United States and who has been a domiciled resident of the State of West Virginia for a period of thirty consecutive days or more immediately prior to the date of his or her application for license or permit. However, 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 a nonresident tuition, shall be considered a resident under this chapter.
“Roadside menagerie” means any place of business, other than a commercial game farm, commercial fish preserve, place or pond, where any wild bird, game bird, unprotected bird, game animal or fur-bearing animal is kept in confinement for the attraction and amusement of the people for commercial purposes.

“Small game” includes all game animals, fur-bearing animals and game birds except elk, deer, black bears, wild boars and wild turkeys.

“Take” means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity, gig, spear, trap, ensnare, wound or injure any wildlife, or attempt to do so. However, the definition of “take” does not include an officially sanctioned and properly licensed field trial, water race or wild hunt as long as that field trial is not a shoot-to-retrieve field trial.

“Unprotected birds” shall include: (a) The English sparrow; (b) the European starling; and (c) the cowbird.

“Wild animals” means all mammals native to the State of West Virginia occurring either in a natural state or in captivity, except house mice or rats. The term “wild animals” does not include captive cervids regulated pursuant to article two-h, chapter nineteen of this code.

“Wild birds” shall include all birds other than: (a) Domestic poultry—chickens, ducks, geese, guinea fowl, peafowls and turkeys; (b) psittacidae, commonly called parrots and parakeets; and (c) other foreign cage birds such as the common canary, exotic finches and ring dove. All wild birds, either: (i) Those occurring in a natural state in West Virginia; or (ii) those imported foreign game birds, such as waterfowl, pheasants, partridges, quail and grouse, regardless of how long raised or held in captivity, shall remain wild birds under the meaning of this chapter.
“Wildlife” means wild birds, wild animals, game and fur-bearing animals, fish (including minnows), reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish bait, whether dead or alive. The term “wildlife” does not include captive cervids regulated pursuant to article two-h, chapter nineteen of this code.

“Wildlife refuge” means any land set aside by action of the director as an inviolate refuge or sanctuary for the protection of designated forms of wildlife.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-11. Sale of wildlife; transportation of same.

(a) A person, except those legally licensed to operate private game preserves for the purpose of propagating game for commercial purposes and those legally licensed to propagate or sell fish, amphibians and other forms of aquatic life, may not purchase or offer to purchase, sell or offer to sell, expose for sale or have in his or her possession for the purpose of sale any wildlife, or part thereof, which has been designated as game animals, fur-bearing animals, game birds, game fish or amphibians, or any of the song or insectivorous birds of the state, or any other species of wildlife which the director may designate, except for captive cervids regulated pursuant to the provisions of article two-h, chapter nineteen of this code. However, pelts of game or fur-bearing animals taken during the legal season may be sold and live red and gray foxes and raccoon taken by legal methods during legal and established trapping seasons may be sold within the state. In addition, the hide, head, antlers and feet of a legally killed deer and the hide, head and skull of a legally killed black bear may be sold.

(b) A person, including a common carrier, may not transport, carry or convey, or receive for such purposes, any wildlife, the
sale of which is prohibited, if such person knows or has reason
to believe that such wildlife has been or is to be sold in violation
of this section.

(c) Each separate act of selling or exposing for sale, having
in possession for sale, transporting or carrying in violation of
this section constitutes a separate misdemeanor offense.
Notwithstanding this or any other section of this chapter, any
game birds or game bird meats sold by licensed retailers may be
served at any hotel, restaurant or other licensed eating place in
this state.

(d) The director may propose rules for promulgation in
accordance with article three, chapter twenty-nine-a of this code,
dealing with the sale of wildlife and the skins thereof.

§20-2-12. Transportation of wildlife out of state; penalties.

(a) A person may not transport or have in his or her
possession with the intention of transporting beyond the limits
of the state any species of wildlife or any part thereof killed,
taken, captured or caught within this state, except as provided in
this section.

(1) A person legally entitled to hunt and fish in this state
may take with him or her personally, when leaving the state, any
wildlife that he or she has lawfully taken or killed, not
exceeding, during the open season, the number that any person
may lawfully possess.

(2) Licensed resident hunters and trappers and resident and
nonresident fur dealers may transport beyond the limits of the
state pelts of game and fur-bearing animals taken during the
legal season.

(3) A person may transport the hide, head, antlers and feet of
a legally killed deer and the hide, head, skull, organs and feet of
a legally killed black bear beyond the limits of the state.
(4) A person legally entitled to possess an animal according to section four of this article may transport that animal beyond the limits of the state.

(b) The director may promulgate rules in accordance with chapter twenty-nine-a of this code dealing with the transportation and tagging of wildlife and the skins.

(c) A person who violates this section by transporting or possessing with the intention of transporting beyond the limits of this state deer or wild boar shall be considered to have committed a separate offense for each animal so transported or possessed. This section does not apply to captive cervids regulated pursuant to article two-h, chapter nineteen of this code.

(d) A person violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $20 nor more than $300 and be confined in jail not less than ten nor more than sixty days.

(e) This section does not apply to persons legally entitled to propagate and sell wild animals, wild birds, fish, amphibians and other forms of aquatic life beyond the limits of the state.

CHAPTER 44

(Com. Sub. for S. B. 351 - By Senator Ferns)

[Passed March 6, 2015; in effect ninety days from passage.] [Approved by the Governor on March 11, 2015.]
organization by an independent certified public accountant; and
requiring additional information on registration statement.

Be it enacted by the Legislature of West Virginia:

That §29-19-5 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-5. Registration of charitable organizations; fee.

(a) Every charitable organization, except as provided in
section six of this article, which intends to solicit contributions,
donations or grants within this state or to have funds solicited or
received on its behalf shall, prior to any solicitation, file a
registration statement with the Secretary of State upon forms
prescribed by him or her which shall be good for one full year
and which shall be refiled in the next and each following year in
which the charitable organization is engaged in solicitation
activities. If an organization discontinues solicitation at any time
after its last registration filing, then it shall file a registration
statement reflecting its activities during its last fiscal year in
which solicitation in West Virginia took place. The president,
chairman or principal officer of the charitable organization shall
file the statements required under this article. The statements
shall be sworn to and shall contain the following information:

(1) The name of the organization and the purpose for which
it was organized;

(2) The principal address of the organization and the address
of any offices in this state. If the organization does not maintain
an office, the name and address of the person having custody of
its financial records;

(3) The names and addresses of any chapters, branches or
affiliates in this state;
(4) The place where and the date when the organization was legally established and the form of its organization;

(5) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;

(6) A copy of a balance sheet and a statement or report of income and expenses for the organization’s immediately preceding fiscal year or a financial statement reporting information showing the kind and amount of funds raised during the preceding fiscal year, the costs and expenses incidental to the fundraising and showing how the funds were disbursed or allocated for the same fiscal year: Provided, That in addition to the financial documents required by this subdivision:

(A) Charitable organizations raising more than $500,000 per year in contributions, excluding grants from governmental agencies or private foundations, shall submit a report of an audit by an independent certified public accountant; and

(B) Charitable organizations raising more than $200,000 per year, but less than $500,000 per year in contributions, excluding grants from governmental agencies or private foundations, shall submit a statement of financial review by an independent certified public accountant;

(7) A copy of any determination of the organization’s tax exempt status under the provisions of 26 U. S. C. §501(c)(3) and a copy of the last filed Internal Revenue Service Form 990 and Schedule A for every charitable organization and any parent organization;

(8) Whether the organization intends to solicit contributions, donations or grants from the public directly or have other solicitation done on its behalf by others;

(9) Whether the organization is authorized by any other governmental authority to solicit contributions, donations or
grants and whether it is or has ever been enjoined by any court from soliciting contributions;

(10) The general purpose or purposes for which the contributions to be solicited shall be used;

(11) The name or names under which it intends to solicit contributions;

(12) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions;

(13) The names of the individuals or officers of the organization responsible for the final distribution of the contributions;

(14) Copies of all contract documentation from professional fund-raising counsels and professional solicitors as provided in subsection (d), section seven of this article; and

(15) The amount of money received in the state and the amount spent in the state for charitable purposes.

(b) Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, may separately report the information required by this section or report the information to its parent organization which shall then furnish the information regarding its West Virginia affiliates, chapters and branches in a consolidated form to the Secretary of State. An independent member agency of a federated fund-raising organization, as defined in section two of this article, shall comply with the provisions of this article independently. Each organization shall file a separate registration form for each name under which funds will be solicited.
(c) The registration forms and any other documents prescribed by the Secretary of State shall be signed by an authorized officer or by an independent public accountant and by the chief fiscal officer of the charitable organization and shall be verified under oath.

(d) Every charitable organization receiving less than $1 million during any year which submits an independent registration to the Secretary of State shall pay an annual registration fee of $15; every charitable organization collecting more than $1 million during one year which submits an independent registration to the Secretary of State shall pay an annual registration fee of $50; and a parent organization filing on behalf of one or more chapters, branches or affiliates or a single organization filing under different names shall pay a single annual registration fee of $50 for itself and the chapters, branches or affiliates included in the registration statement. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the State General Revenue Fund and one-half shall be deposited in the services fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(e) For good cause shown, the Secretary of State may extend the due date for the annual filing of a registration statement or report by a charitable organization or a professional fundraiser for a period not to exceed ninety days. During that period, the previously filed registration statement or report of the charitable organization which has been granted the extension remains in effect.

(f) In addition to the registration fee required by this section, a charitable organization or professional fundraiser, or both,
which fails to file a registration statement or report by the
original or extended due date for filing as required by this
section shall, for each month or part of the month thereafter in
which the registration statement or report is not filed, pay an
additional fee of $25: Provided, That the total amount of the
additional fees for a registration statement or report required to
be filed in any one year may not exceed $500. All fees and
moneys collected by the Secretary of State pursuant to the
provisions of this article shall be deposited by the Secretary of
State as follows: One-half shall be deposited in the State General
Revenue Fund and one-half shall be deposited in the service fees
and collections account established by section two, article one,
chapter fifty-nine of this code for the operation of the office of
the Secretary of State. The Secretary of State shall dedicate
sufficient resources from that fund or other funds to provide the
services required in this article.

CHAPTER 45

(Com. Sub. for H. B. 2527 - By Delegate(s) Pasdon,
Marcum, Kessinger, R. Phillips and Upson)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto two new sections, designated §49-2-126 and
§49-2-814, all relating to the welfare of children; establishing the
Task Force on Prevention of Sexual Abuse of Children;
authorizing section to be called “Erin Merryn’s Law”; specifying
membership; specifying responsibilities, including report of
recommendations to Legislature and Governor; precluding member
compensation or expense reimbursement; relating to legislative
findings and declaration of intent for goals for foster children; requiring the Department of Health and Human Resources to propose legislative rules; providing that no new cause of action against the state is created; providing that no expenditure of funds is required; and providing for notifying former foster parents of child’s availability for placement.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §49-2-126 and §49-2-814, all to read as follows:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.


(a) This section may be referred to as “Erin Merryn’s Law”.

(b) The Task Force on Prevention of Sexual Abuse of Children is established. The task force consists of the following members:

(1) The Chair of the West Virginia Senate Committee on Health and Human Resources, or his or her designee;

(2) The Chair of the House of Delegates Committee on Health and Human Resources, or his or her designee;

(3) The Chair of the West Virginia Senate Committee on Education, or his or her designee;

(4) The Chair of the House of Delegates Committee on Education, or his or her designee;

(5) One citizen member appointed by the President of the Senate;

(6) One citizen member appointed by the Speaker of the House of Delegates;
17 (7) One citizen member, who is a survivor of child sexual abuse, appointed by the Governor;

19 (8) The President of the State Board of Education, or his or her designee;

21 (9) The State Superintendent of Schools, or his or her designee;

23 (10) The Secretary of the Department of Health and Human Resources, or his or her designee;

25 (11) The Director of the Prosecuting Attorney’s Institute, or his or her designee;

27 (12) One representative of each statewide professional teachers’ organization, each selected by the leader of his or her respective organization;

30 (13) One representative of the statewide school service personnel organization, selected by the leader of the organization;

33 (14) One representative of the statewide school principals’ organization, appointed by the leader of the organization;

35 (15) One representative of the statewide professional social workers’ organization, appointed by the leader of the organization;

38 (16) One representative of a teacher preparation program of a regionally accredited institution of higher education in the state, appointed by the Chancellor of the Higher Education Policy Commission;

42 (17) The Chief Executive Officer of the Center for Professional Development, or his or her designee;
(18) The Director of Prevent Child Abuse West Virginia, or his or her designee;

(19) The Director of the West Virginia Child Advocacy Network, or his or her designee;

(20) The Director of the West Virginia Coalition Against Domestic Violence, or his or her designee;

(21) The Director of the West Virginia Foundation for Rape Information and Services, or his or her designee;

(22) The Administrative Director of the West Virginia Supreme Court of Appeals, or his or her designee;

(23) The Executive Director of the West Virginia Sheriffs’ Association, or his or her designee;

(24) One representative of an organization representing law enforcement, appointed by the Superintendent of the West Virginia State Police; and

(25) One practicing school counselor appointed by the leader of the West Virginia School Counselors Association.

c) To the extent practicable, members of the task force shall be individuals actively involved in the fields of child abuse and neglect prevention and child welfare.

d) At the joint call of the House of Delegates and Senate Education Committee Chairs, the task force shall convene its first meeting and by majority vote of members present elect presiding officers. Subsequent meetings shall be at the call of the presiding officer.

e) The task force shall make recommendations for decreasing incidence of sexual abuse of children in West Virginia. In making those recommendations, the task force shall:
(1) Gather information regarding sexual abuse of children throughout the state;

(2) Receive related reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations;

(3) Create goals for state education policy that would prevent sexual abuse of children;

(4) Create goals for other areas of state policy that would prevent sexual abuse of children; and

(5) Submit a report with its recommendations to the Governor and the Legislature.

(f) The recommendations may include proposals for specific statutory changes and methods to foster cooperation among state agencies and between the state and local governments. The task force shall consult with employees of the Bureau for Children and Family Services, the Division of Justice and Community Services, the West Virginia State Police, the State Board of Education, and any other state agency or department as necessary to accomplish its responsibilities under this section.

(g) Task force members serve without compensation and do not receive expense reimbursement.

§49-2-126. Legislative findings and declaration of intent for goals for foster children.

(a) The Legislature finds and declares that the design and delivery of child welfare services should be directed by the principle that the health and safety of children should be of paramount concern and, therefore, establishes the goals for children in foster care. A child in foster care should have:
(1) Protection by a family of his or her own, and be provided readily available services and support through care of an adoptive family or by plan, a continuing foster family;

(2) Nurturing by foster parents who have been selected to meet his or her individual needs, and who are provided services and support, including specialized education, so that the child can grow to reach his or her potential;

(3) A safe foster home free of violence, abuse, neglect and danger;

(4) The ability to communicate with the assigned social worker or case worker overseeing the child’s case and have calls made to the social worker or case worker returned within a reasonable period of time;

(5) Permission to remain enrolled in the school the child attended before being placed in foster care, if at all possible;

(6) Participation in school extracurricular activities, community events, and religious practices;

(7) Communication with the biological parents. Communication is necessary if the child placed in foster care receives any immunizations and if any additional immunizations are needed, if the child will be transitioning back into a home with his or her biological parents;

(8) A bank or savings account established in accordance with state laws and federal regulations;

(9) Identification and other permanent documents, including a birth certificate, social security card and health records by the age of sixteen, to the extent allowed by federal and state law;
(10) The use of appropriate communication measures to maintain contact with siblings if the child placed in foster care is separated from his or her siblings; and

(11) Meaningful participation in a transition plan for those phasing out of foster care.

(b) A person shall not have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. Nothing in this section requires the expenditure of funds to meet the goals established in this section, except funds specifically appropriated for that purpose.

(c) The West Virginia Department of Health and Human Resources shall propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to ensure that a child has an effective means of being heard if he or she believes the goals of this section are not being met.

(d) When a child who was previously placed into foster care, but left the custody or guardianship of the department, is again placed into foster care, the department shall notify the foster parents who most recently cared for the child of the child’s availability for foster care placement to determine if the foster parents are desirous of seeking a foster care arrangement for the child. The arrangement may only be made if the foster parents are otherwise qualified or can become qualified to enter into the foster care arrangement with the department and if the arrangement is in the best interests of the child: Provided, That the department may petition the court to waive notification to the foster parents. This waiver may be granted, ex parte, upon a showing of compelling circumstances.
AN ACT to amend and reenact chapter forty-nine of the Code of West Virginia, 1931, as amended, all relating to child welfare generally; revising, rearranging, consolidating and recodifying the laws of the State of West Virginia relating to child welfare; and removing outdated language and modifying the code to comply with court decisions concerning child welfare.

Be it enacted by the Legislature of West Virginia:

That chapter forty-nine of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

PART I. GENERAL PROVISIONS AND PURPOSE.

§49-1-101. Short title; intent of recodification.

1 (a) This chapter shall be known and may be cited as the “West Virginia Child Welfare Act.”

3 (b) The recodification of this chapter during the regular session of the Legislature in the year 2015 is intended to embrace in a revised, consolidated, and codified form and arrangement the laws of the State of West Virginia relating to child welfare at the time of that enactment.
§49-1-102. Legislative Intent; continuation of existing statutory provisions; no increase in funding obligations.

In recodifying the child welfare law of this state during the regular session of the Legislature in the year 2015, it is intended by the Legislature that each specific reenactment of a substantively similar prior statutory provision will be construed as continuing the intended meaning of the corresponding prior statutory provision and any existing judicial interpretation of the prior statutory provision. It is not the intent of the Legislature, by recodifying the child welfare law of this state during the regular session of the Legislature in the year 2015 to alter the substantive law of this state as it relates to child welfare or to increase or enlarge any funding obligation of any spending unit of the state.

§49-1-103. Operative date of enactment; effect on existing law.

The amendment and reenactment of chapter forty-nine of this code, as enacted by the Legislature during the regular session, 2015, are operative ninety days from passage. The prior enactments of chapter forty-nine of this code, whether amended and reenacted or repealed by the action of the Legislature during the 2015 regular session, have full force and effect until that time.

§49-1-104. West Virginia Code replacement; no increase of funding obligations to be construed.

(a) The Department of Health and Human Resources and the Department of Military Affairs and Public Safety are not required to change any form or letter that contains a citation to this code that is changed or otherwise affected by the recodification of this chapter during the 2015 regular session of the Legislature unless specifically required by a provision of this code.
§49-1-105. Purpose.

(a) It is the purpose of this chapter to provide a system of coordinated child welfare and juvenile justice services for the children of this state. The state has a duty to assure that proper and appropriate care is given and maintained.

(b) The child welfare and juvenile justice system shall:

(1) Assure each child care, safety and guidance;

(2) Serve the mental and physical welfare of the child;

(3) Preserve and strengthen the child family ties;

(4) Recognize the fundamental rights of children and parents;

(5) Develop and establish procedures and programs which are family-focused rather than focused on specific family members, except where the best interests of the child or the safety of the community are at risk;

(6) Involve the child, the child’s family or the child’s caregiver in the planning and delivery of programs and services;

(7) Provide community-based services in the least restrictive settings that are consistent with the needs and potentials of the child and his or her family;

(8) Provide for early identification of the problems of children and their families, and respond appropriately to prevent abuse and neglect or delinquency;
(9) Provide for the rehabilitation of status offenders and juvenile delinquents;

(10) As necessary, provide for the secure detention of juveniles alleged or adjudicated delinquent;

(11) Provide for secure incarceration of children or juveniles adjudicated delinquent and committed to the custody of the director of the Division of Juvenile Services; and

(12) Protect the welfare of the general public.

(c) It is also the policy of this state to ensure that those persons and entities offering quality child care are not over-encumbered by licensure and registration requirements and that the extent of regulation of child care facilities and child placing agencies be moderately proportionate to the size of the facility.

(d) Through licensure, approval, and registration of child care, the state exercises its benevolent police power to protect the user of a service from risks against which he or she would have little or no competence for self protection. Licensure, approval, and registration processes shall, therefore, continually balance the child’s rights and need for protection with the interests, rights and responsibility of the service providers.

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

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

(b) The Department of Health and Human Resources is
designated as the state entity to cooperate with the United States
Department of Health and Human Services and United States
Department of Justice in extending and improving child welfare
services, to comply with federal regulations, and to receive and
expend federal funds for these services. The Division of Juvenile
Services of the Department of Military Affairs and Public Safety
is designated as the state entity to cooperate with the United
States Department of Health and Human Services and United
States Department of Justice in operating, maintaining and
improving juvenile correction facilities and centers for the
predispositional detention of children, to comply with federal
regulations, and to receive and expend federal funds for these
services.

(c) The Division of Juvenile Services of the Department of
Military Affairs and Public Safety is authorized to operate and
maintain centers for juveniles needing detention pending
disposition by a court having juvenile jurisdiction or temporary
care following that court action.

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

* Note: This section was also amended by Com. Sub. For H. B. 2939
(Chapter 47) which passed subsequent to this Act.
to, child abuse and neglect, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

“Abandonment” means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child;

“Abused child” means 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 section fourteen-h, article two, chapter sixty-one of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

“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 part seven, article two of this chapter, 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 section two hundred two, article twenty-seven, chapter forty-eight 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 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 thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, 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 or a 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 section one hundred one, article one, chapter sixty-a 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; or

(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;

(C) “Neglected child” does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

“Petitioner or co-petitioner” means the Department or any reputable person who files a child abuse or neglect petition pursuant to section six hundred one, article four, of this chapter.

“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 co-petitioners.

“Sexual abuse” means:

(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section three, article eight-c, chapter sixty-one, 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 sixteen years of age the child may have willingly participated in that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct or, for a child sixteen 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; or

(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.

“Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one 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 section one, article eight-c, chapter sixty-one of this code; or

(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.

“Sexual intercourse” means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.
“Sexual intrusion” means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Serious physical abuse” means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

§49-1-202. Definitions related, but not limited, to adult, child, developmental disability, and transitioning adult status.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, adult, child, developmental disability, and transitioning adult status, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

“Adult” means a person who is at least eighteen years of age.

“Child” or “Juvenile” means any person under eighteen years of age or is a transitioning adult. Once a child or juvenile is transferred to a court with criminal jurisdiction pursuant to section seven hundred ten, article four of this chapter, he or she shall remain a child or juvenile for the purposes of the applicability of this chapter. Unless otherwise stated, for the purpose of child care services “child” means an individual who meets one of the following conditions:

(A) Is under thirteen years of age;

(B) Is thirteen to eighteen years of age and under court supervision; or

(C) Is thirteen to eighteen years of age and presenting a significant delay of at least twenty-five percent in one or more
areas of development, or a six month delay in two or more areas as determined by an early intervention program, special education program or other multidisciplinary team.

“Juvenile delinquent” means a juvenile who has been adjudicated as one who commits an act which would be a crime under state law or a municipal ordinance if committed by an adult.

“Status offender” means a juvenile who has been adjudicated as one:

(A) Who habitually and continually refuses to respond to the lawful supervision by his or her parents, guardian or legal custodian such that the juvenile’s behavior substantially endangers the health, safety or welfare of the juvenile or any other person;

(B) Who has left the care of his or her parents, guardian or custodian without the consent of that person or without good cause; or

(C) Who is habitually absent from school without good cause.

“Transitioning adult” means an individual with a transfer plan to move to an adult setting who meets one of the following conditions:

(A) Is eighteen years of age but under twenty-one years of age, was in the custody of the Department of Health and Human Resources upon reaching eighteen years of age and committed an act of delinquency before reaching eighteen years of age, remains under the jurisdiction of the juvenile court, and requires supervision and care to complete an education and or treatment program which was initiated prior to the eighteenth birthday; or
(B) Is eighteen years of age but under twenty-one years of age, was adjudicated abused, neglected, or in the custody of the Department of Health and Human Resources upon reaching eighteen years of age and enters into a contract with the Department of Health and Human Resources to continue in an educational, training, or treatment program which was initiated prior to the eighteenth birthday.

§49-1-203. Definitions related, but not limited, to licensing and approval of programs.

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 is 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, upon receipt of a self-certification statement of compliance with the legislative rules promulgated pursuant to this chapter.

“License” means the grant of official permission to a facility to engage in an activity which would otherwise be prohibited.

“Registration” means the process by which a family child care home, informal family child care home or a relative family child care home self-certifies 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 Department of Health and Human Resources of the standards to be applied in the various areas of child care.

“Variance” means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

“Waiver” means a declaration that a certain legislative rule is inapplicable in a particular circumstance.

§49-1-204. Definitions related, but not limited, to custodians, legal guardians and family.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, custodians, legal guardians and family, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.
“Caregiver” means any person who is at least eighteen years of age and:

(A) Is related by blood, marriage or adoption to the minor, but who is not the legal custodian or guardian of the minor; or

(B) Has resided with the minor continuously during the immediately preceding period of six months or more.

“Custodian” means a person who has or shares actual physical possession or care and custody of a child, regardless of whether that person has been granted custody of the child by any contract or agreement.

“Dysfunctional family,” for the purposes of part two, article two of this chapter, means a parent or parents or an adult or adults and a child or children living together and functioning in an impaired or abnormal manner so as to cause substantial physical or emotional danger, injury or harm to one or more children thereof regardless of whether those children are natural offspring, adopted children, step children or unrelated children to that parents.

“Legal or minor guardianship” means the permanent relationship between a child and a caretaker, established by order of the court having jurisdiction over the child or juvenile, pursuant to this chapter and chapter forty-four of this code.

“Parent” means an individual defined as a parent by law or on the basis of a biological relationship, marriage to a person with a biological relationship, legal adoption or other recognized grounds.

“Parental rights” means any and all rights and duties regarding a parent to a minor child.

“Parenting skills” means a parent’s competency in providing physical care, protection, supervision and psychological support appropriate to a child’s age and state of development.
“Siblings” means children who have at least one biological parent in common or who have been legally adopted by the same parent or parents.

§49-1-205. Definitions related, but not limited, to developmental disabilities.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, developmental disabilities, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

“Developmental disability” means a severe, chronic disability of a person which:

(A) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(B) Is manifested before the person attains age twenty-two;

(C) Results in substantial functional limitations in three or more of the following areas of major life activity:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; and

(vii) Economic self-sufficiency; and
(D) Reflects the person’s need for services and supports which are of lifelong or extended duration and are individually planned and coordinated.

(E) The term “developmental disability”, when applied to infants and young children, means individuals from birth to age five, inclusive, who have substantial developmental delays or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

“Family or primary caregiver,” for the purposes of part six, article two of this chapter, means the person or persons with whom the developmentally disabled person resides and who is primarily responsible for the physical care, education, health and nurturing of the disabled person pursuant to the provisions of part six, article two of this chapter. The term does not include hospitals, nursing homes, personal care homes or any other similar institution.

“Legal guardian,” for the purposes of part six of article two of this chapter, means the person who is appointed legal guardian of a developmentally disabled person and who is responsible for the physical and financial aspects of caring for that person, regardless of whether the disabled person resides with his or her legal guardian or another family member.

*§49-1-206. Definitions related, but not limited, to child advocacy, care, residential, and treatment programs.*

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 is used clearly indicates that a different meaning is intended.

*Note: This section was also amended by S. B. 393 (Chapter 150), which passed subsequent to this act.*
“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 section one hundred one, article three of this chapter.

“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 part nine, article two of this chapter. It includes the provision of child care services or residential services.

“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 thirteen or more children for child care services in any setting, if the facility is open for more than thirty days per year per child.

“Child care services” means direct care and protection of children during a portion of a twenty-four 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 sixteen or seventeen 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 part nine, article two of this chapter, 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, alcoholism and any treatment and other rehabilitation services.

“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 twelve children, including children who are living in the household, who are under six years of age. No more than four of the total number of children may be under twenty-four
months of 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. No more than two of the total number of children may be under twenty-four months 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 part six, article two of this chapter, 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 Human Services 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.

“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, 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 part six, article two of this chapter.

“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 and or treatment 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.

“Secure facility” means any public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of children or other individuals held in lawful custody in that 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 that 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.

“State family support council” means the council established by the Department of Health and Human Resources pursuant to part six, article two of this chapter to carry out the responsibilities specified in article two of this chapter.

“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 fifteen of the most recent twenty-two 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 sixty days after the child or juvenile is removed from home.

§49-1-207. Definitions related to court actions.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, court actions, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

“Court” means the circuit court of the county with jurisdiction of the case or the judge in vacation unless otherwise specifically provided.

“Court appointed special advocate (CASA) program” means a community organization that screens, trains and supervises
CASA volunteers to advocate for the best interests of children who are involved in abuse and neglect proceedings section one hundred two, article three of this chapter.

“Extrajudicial Statement” means any utterance, written or oral, which was made outside of court.

“Multidisciplinary team” means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, educational, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children.

“Community team” means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.

“Res gestae” means a spontaneous declaration made by a person immediately after an event and before the person has had an opportunity to conjure a falsehood.

“Valid court order” means an order issued by a court of competent jurisdiction relating to a child brought before the court and who is the subject of that order. Prior to the entry of the order the child shall have received the full due process rights guaranteed to that child or juvenile by the Constitutions of the United States and the State of West Virginia.

“Violation of a traffic law of West Virginia” means a violation of chapter seventeen-a, seventeen-b, seventeen-c or seventeen-d of this code except a violation of section one or two,
§49-1-208. Definitions related, but not limited, to state and local agencies.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, state and local agencies, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

“Department” or “state department” means the West Virginia Department of Health and Human Resources.

“Division of Juvenile Services” means the division within the West Virginia Department of Military Affairs and Public Safety.

“Law-enforcement officer” means a law-enforcement officer of the State Police, a municipality or county sheriff’s department.

“Secretary” means the Secretary of the West Virginia Department of Health and Human Resources.

§49-1-209. Definitions related, but not limited, to missing children.

As used in article six of this chapter:

“Child” means an individual under the age of eighteen years who is not emancipated;

“Clearinghouse” means the West Virginia missing children information clearinghouse;
“Custodian” means a parent, guardian, custodian or other person who exercises legal physical control, care or custody of a child;

“Missing child” means a child whose whereabouts are unknown to the child’s custodian and the circumstances of whose absence indicate that:

(A) The child did not leave the care and control of the custodian voluntarily and the taking of the child was not authorized by law; or

(B) The child voluntarily left the care and control of his or her custodian without the custodian’s consent and without intent to return;

“Missing child report” means information that is:

(A) Given to a law-enforcement agency on a form used for sending information to the national crime information center; and

(B) About a child whose whereabouts are unknown to the reporter and who is alleged in the form submitted by the reporter to be missing;

“Possible match” means the similarities between an unidentified body of a child and a missing child that would lead one to believe they are the same child;

“Reporter” means the person who reports a missing child; and

“State agency” means an agency of the state, political subdivision of the state or public post-secondary educational institution.
ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

PART I. GENERAL AUTHORITY AND DUTIES OF THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES.


(a) The Department of Health and Human Resources is authorized to provide care, support and protective services for children who are handicapped by dependency, neglect, single parent status, mental or physical disability, or who for other reasons are in need of public service. The department is also authorized to accept children for care from their parent or parents, guardian, custodian or relatives and to accept the custody of children committed to its care by courts. The Department of Health and Human Resources or any county office of the department is also authorized and to accept temporary custody of children for care from any law-enforcement officer in an emergency situation.

(b) The Department of Health and Human Resources is responsible for the care of the infant child of an unmarried mother who has been committed to the custody of the department while the infant is placed in the same licensed child welfare agency as his or her mother. The department may provide care for those children in family homes meeting required standards, at board or otherwise, through a licensed child welfare agency, or in a state institution providing care for dependent or neglected children. If practical, when placing any child in the care of a family or a child welfare agency the department shall select a family holding the same religious belief as the parents or relatives of the child or a child welfare agency conducted under religious auspices of the same belief as the parents or relatives.

§49-2-102. Minimum staffing complement for child protective services.

For the sole purpose of increasing the number of full time front line child protective service case workers and investigators,
the Secretary of the Department of Health and Human Resources shall have the authority to transfer funds between all general revenue accounts under the secretary’s authority and/or between personnel and nonpersonnel lines within each account under the secretary’s authority. Nothing in this section shall be construed to require the department to hire additional child protective service workers at any time if the department determines that funds are not available for those workers. Additionally, the secretary shall prepare a plan to allow the department to progressively reduce caseload standards in West Virginia for child protective services workers, which if adopted by the Legislature during the regular session of 1995, shall require implementation no later than July 1, 1996, with the plan to be submitted to the joint committee on government and finance by the September 30, 1994, and a final report to be submitted to the Legislature by January 1, 1995.

§49-2-103. Proceedings by the state department.

The state department shall have the authority to institute, in the name of the state, proceedings incident to the performance of its duties under the provisions of this chapter.

§49-2-104. Education of the public.

The secretary shall provide ongoing education of the public in regard to the requirements of this chapter through the use of mass media and other methods as are deemed appropriate and within fiscal limitations.

§49-2-105. Administrative and judicial review.

Any person, corporation, governmental official or child welfare agency, aggrieved by a decision of the secretary made pursuant to this chapter may contest the decision upon making a request for a hearing by the secretary within thirty days of receipt of notice of the decision. Administrative and judicial
review shall be made in accordance with article five, chapter twenty-nine-a of this code. Any decision issued by the secretary may be made effective from the date of issuance. Immediate relief therefrom may be obtained upon a showing of good cause made by verified petition to the Circuit Court of Kanawha County or the circuit court of any county where the affected facility or child welfare agency may be located. The dependency of administrative or judicial review shall not prevent the secretary from obtaining injunctive relief pursuant to section one hundred twenty, article two of this chapter.

§49-2-106. Department responsibility for foster care homes.

It is the responsibility of the Department of Health and Human Resources to provide care for neglected children who are committed to its care for custody or guardianship. The department may provide this care for children in family homes meeting required standards of certification established and enforced by the Department of Health and Human Resources.

§49-2-107. Foster-home care; minimum standards; certificate of operation; inspection.

(a) The department shall establish minimum standards for foster-home care to which all certified foster homes must conform by legislative rule. Any home that conforms to the standards of care set by the department shall receive a certificate of operation.

(b) The certificate of operation shall be in force for one year from the date of issuance and may be renewed unless revoked because of willful violation of this chapter.

(c) The certificate shall show the name of the person or persons authorized to conduct the home, its exact location and the number of children that may be received and cared for at one time and other information as set forth in legislative rule. No
certified foster home shall provide care for more children than are specified in the certificate.

(d) No unsupervised foster home shall be certified until an investigation of the home and its standards of care has been made by the department or by a licensed child welfare agency serving as a representative of the department.

§49-2-108. Visits and inspections; records.

The department or its authorized agent shall visit and inspect every certified foster home as often as is necessary to assure proper care is given to the children. Every certified foster home shall maintain a record of the children received. This record shall include information as prescribed by the department in legislative rule and shall be in a form and manner as prescribed by the department in legislative rule.

§49-2-109. Placing children from other states in private homes of state.

An institution or organization incorporated under the laws of another state shall not place a child in a private home in the state without the approval of the department, and the agency so placing the child shall arrange for supervision of the child through its own staff or through a licensed child welfare agency in this state, and shall maintain responsibility for the child until he or she is adopted or discharged from care with the approval of the department.


The department shall develop standards for the care of children. It shall cooperate with, advise and assist all child welfare agencies, including state institutions, which care for neglected, delinquent, or mentally or physically handicapped children, and shall supervise those agencies. The department, in
cooperation with child welfare agencies, shall formulate and
make available standards of child care and services for children,
to which all child welfare agencies must conform.

§49-2-111. Supervision of child welfare agencies by the
department; records and reports.

(a) In order to improve standards of child care, the
department shall cooperate with the governing boards of child
welfare agencies, assist the staffs of those agencies through
advice on progressive methods and procedures of child care and
improvement of the service rendered, and assist in the
development of community plans of child care. The department,
or its duly authorized agent, may visit any child welfare agency
to advise the agency on matters affecting the health of children
and to inspect the sanitation of the buildings used for their care.

(b) Each child welfare agency shall keep records of each
child under its control and care as the department may prescribe,
and shall report to the department, whenever requested, facts as
may be required with reference to the children, upon forms
furnished by the department. All records regarding children and
all facts learned about children and their parents or relatives shall
be regarded as confidential and shall be properly safeguarded by
the agency and the department.

§49-2-112. Family homes; approval of incorporation by Secretary
of State; approval of articles of incorporation.

(a) Before issuing a charter for the incorporation of any
organization having as its purpose the receipt of children for care
or for placement in family homes, the Secretary of State shall
provide a copy of the petition, together with any other
information in his or her possession pertaining to the proposed
corporation, to the secretary, and no charter for a corporation
may be issued unless the secretary shall first certify to the
Secretary of State that it has investigated the need for the services proposed and the merits of the proposed charitable corporation and recommends the issuance thereof; applications for amendments of any existing charter shall be similarly referred and shall be granted only upon similar approval.

(b) A child welfare agency may not be incorporated in this state unless the articles of incorporation have first been examined and approved by the secretary, or his or her designee. Proposed amendments to articles of incorporation shall be subject to the examination and approval of the secretary, or his or her designee.

§49-2-113. Residential child care centers; licensure, certification, approval and registration; requirements.

(a) Any person, corporation or child welfare agency, other than a state agency, which operates a residential child care center shall obtain a license from the department.

(b) Any residential child care facility, day care center or any child-placing agency operated by the state shall obtain approval of its operations from the secretary.

(c) Any family day care facility which operates in this state, including family day care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

(d) Every family day care home which operates in this state, including family day care homes approved by the department for receipt of funding, shall obtain a certificate of registration from the department. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(e) This section does not apply to:
(1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state Department of Education, or any other kindergarten, preschool or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding thirty days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing;

(5) Persons providing family day care solely for children related to them;

(6) 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;

(7) Any out-of-school time program that has been awarded a grant by the West Virginia Department of Education to provide out-of-school time programs to kindergarten through twelfth grade students when the program is monitored by the West Virginia Department of Education; or

(8) Any out-of-school time program serving children six years of age or older and meets all of the following requirements, or is an out-of-school time program that is affiliated and in good standing with a national Congressionally
chartered organization and meets all of the following requirements:

(A) The program is located in a facility that meets all fire and health codes;

(B) The program performs background checks on all volunteers and staff;

(C) The program’s primary source of funding is not from fees for service; and

(D) The program has a formalized monitoring system in place.

(f) The secretary is authorized to issue an emergency rule relating to conducting a survey of existing facilities in this state in which children reside on a temporary basis in order to ascertain whether they should be subject to licensing under this article or applicable licensing provisions relating to behavioral health treatment providers.

(g) Any informal family child care home or relative family child care home may voluntarily register and obtain a certificate of registration from the department.

(h) All facilities or programs that provide out-of-school time care shall register with the department upon commencement of operations and on an annual basis thereafter. The department shall obtain information, such as the name of the facility or program, the description of the services provided and any other information relevant to the determination by the department as to whether the facility or program meets the criteria for exemption under this section.

(i) Any child care service that is licensed or receives a certificate of registration shall have a written plan for evacuation
in the event of fire, natural disaster or other threatening situation
that may pose a health or safety hazard to the children in the
child care service.

(1) The plan shall include, but not be limited to:

(A) A designated relocation site and evacuation;

(B) Procedures for notifying parents of the relocation and
ensuring family reunification;

(C) Procedures to address the needs of individual children
including children with special needs;

(D) Instructions relating to the training of staff or the
reassignment of staff duties, as appropriate;

(E) Coordination with local emergency management
officials; and

(F) A program to ensure that appropriate staff are familiar
with the components of the plan.

(2) A child care service shall update the evacuation plan by
December 31, of each year. If a child care service fails to update
the plan, no action shall be taken against the child care service’s
license or registration until notice is provided and the child care
service is given thirty days after the receipt of notice to provide
an updated plan.

(3) A child care service shall retain an updated copy of the
plan for evacuation and shall provide notice of the plan and
notification that a copy of the plan will be provided upon request
to any parent, custodian or guardian of each child at the time of
the child’s enrollment in the child care service and when the plan
is updated.
(4) All child care centers and family child care facilities shall provide the plan and each updated copy of the plan to the Director of the Office of Emergency Services in the county where the center or facility is located.

§49-2-114. Application for license or approval.

(a) Any person or corporation or any governmental agency intending to act as a child welfare agency shall apply for a license, approval or registration certificate to operate child care facilities regulated by this chapter. Applications for licensure, approval or registration shall be made separately for each child care facility to be licensed, approved, certified or registered.

(b) The secretary shall prescribe by legislative rule forms and reasonable application procedures including, but not limited to, fingerprinting of applicants and other persons responsible for the care of children for submission to the State Police and, if necessary, to the Federal Bureau of Investigation for criminal history record checks.

(c) Before issuing a license, or approval, the secretary shall investigate the facility, program and persons responsible for the care of children. The investigation shall include, but not be limited to, review of resource need, reputation, character and purposes of applicants, a check of personnel criminal records, if any, and personnel medical records, the financial records of applicants, review of the facilities emergency evacuation plan and consideration of the proposed plan for child care from intake to discharge.

(d) Before a home registration is granted, the secretary shall make inquiry as to the facility, program and persons responsible for the care of children. The inquiry shall include self-certification by the prospective home of compliance with standards including, but not limited to:
(1) Physical and mental health of persons present in the home while children are in care;

(2) Criminal and child abuse or neglect history of persons present in the home while children are in care;

(3) Discipline;

(4) Fire and environmental safety;

(5) Equipment and program for the children in care; and

(6) Health, sanitation and nutrition.

(e) Further inquiry and investigation may be made as the secretary may direct and sees as necessary.

(f) The secretary shall make a decision on each application within sixty days of its receipt and shall provide to unsuccessful applicants written reasons for the decision.

§49-2-115. Conditions of licensure, approval and registration.

(a) A license or approval is effective for a period up to two years from the date of issuance, unless revoked or modified to provisional status based on evidence of a failure to comply with this chapter or any legislative rules promulgated by the secretary. The license or approval shall be reinstated upon application to the secretary and a determination of compliance.

(b) An initial six-month license or approval shall be issued to an applicant establishing a new service found to be in compliance on initial review with regard to policy, procedure, organization, risk management, human resources, service environment and record keeping regulations.

(c) A provisional license or approval may be issued when a licensee is not in compliance with the legislative rules
promulgated by the secretary but does not pose a significant risk to the rights, well-being, health and safety of a consumer. It shall expire not more than six months from date of issuance, and not be consecutively reissued unless the provisional recommendation is that of the State Fire Marshal.

(d) A renewal license or approval may be issued of any duration up to two years at the discretion of the secretary. In the event a renewal license is not issued, the facility must make discharge plans for residents and cease operation within thirty days of the expiration of the license.

(e) A certificate of registration is effective for a period up to two years from the date of issuance, unless revoked based on evidence of a failure to comply with this article or any rules promulgated pursuant to this article. The certificate of registration shall be reinstated upon application to the secretary, including a statement of assurance of continued compliance with the legislative rules promulgated pursuant to this article.

(f) The license, approval or registration issued under this article is not transferable and applies only to the facility and its location stated in the application. The license, registration or approval shall be publicly displayed. The foster and adoptive family homes, informal family child care homes and relative family child care homes shall be required to display registration certificates of registration or approval upon request rather than by posting.

(g) Provisional certificates of registration may be issued to family child care homes.

(h) The secretary, as a condition of issuing a license, registration or approval, may:

(1) Limit the age, sex or type of problems of children allowed admission to a particular facility;
(2) Prohibit intake of any children; or

(3) Reduce the number of children which the agency, facility or home operated by the agency is licensed, approved, certified or registered to receive.

§49-2-116. Investigative authority; evaluation; complaint.

(a) The secretary shall enforce this article.

(b) An on-site evaluation of every facility regulated pursuant to this chapter, except registered family child care homes, informal family child care and relative family child care homes shall be conducted no less than once per year by announced or unannounced visits.

(c) A random sample of not less than five percent of the total number of registered family child care homes, informal family child care homes and relative family child care homes shall be monitored annually through on-site evaluations.

(d) The secretary shall have access to the premises, personnel, children in care and records of each facility subject to inspection, including at a minimum, case records, corporate and financial records and board minutes. Applicants for licenses, approvals, and certificates of registration shall consent to reasonable on-site administrative inspections, made with or without prior notice, as a condition of licensing, approval, or registration.

(e) When a complaint is received by the secretary alleging violations of licensure, approval, or registration requirements, the secretary shall investigate the allegations. The secretary may notify the facility’s director before or after a complaint is investigated and shall cause a written report of the results of the investigation to be made.
(f) The secretary may enter any unlicensed, unregistered or unapproved child care facility or personal residence for which there is probable cause to believe that the facility or residence is operating in violation of this article. Those entries shall be made with a law-enforcement officer present. The secretary may enter upon the premises of any unregistered residence only after two attempts by the secretary to bring this facility into compliance.

§49-2-117. Revocation; provisional licensure and approval.

(a) The secretary may revoke or make provisional the licensure registration of any home facility or child welfare agency regulated pursuant to this chapter if a facility materially violates this article, or any terms or conditions of the license, registration or approval issued, or fails to maintain established requirements of child care. This section does not apply to family child care homes.

(b) The secretary may revoke the certificate of registration of any family child care home if a facility materially violates this article, or any terms or conditions of the registration certificate issued, or fails to maintain established requirements of child care.

§49-2-118. Closing of facilities by the secretary; placement of children.

When the secretary finds that the operation of a facility constitutes an immediate danger of serious harm to children served by the facility, the secretary shall issue an order of closure terminating operation of the facility. When necessary, the secretary shall place or direct the placement of the children in a residential facility which has been closed into appropriate facilities. A facility closed by the secretary may not operate pending administrative or judicial review without court order.
§49-2-119. Supervision; consultation; State Fire Marshall to cooperate.

(a) The secretary shall provide supervision to ascertain compliance with the rules promulgated pursuant to this chapter through regular monitoring, visits to facilities, documentation, evaluation and reporting. The secretary is responsible for training and education, within fiscal limitations, specifically for the improvement of care in family child care homes and facilities. The secretary shall consult with applicants, the personnel of child welfare agencies, and children under care to assure the highest quality child care possible.

(b) The State Fire Marshal shall cooperate with the secretary in the administration of this article by providing reports and assistance as may be requested by the secretary.

§49-2-120. Penalties; injunctions; venue.

(a) Any individual or corporation which operates a child welfare agency, residential facility or child care center without a license when a license is required is guilty of a misdemeanor and, upon conviction, shall be confined in jail not exceeding one year, or fined not more than $500, or both fined and confined.

(b) Any family child care facility which operates without a license when a license is required is guilty of a misdemeanor and, upon conviction, shall be fined not more than $500.

(c) Where a violation of this article or a legislative rule promulgated by the secretary may result in serious harm to children under care, the secretary may seek injunctive relief against any person, corporation, child welfare agency, child placing agency, child care center, family child care facility, family child care home or governmental official through proceedings instituted by the Attorney General, or the appropriate county prosecuting attorney, in the Circuit Court of
§49-2-121. Rule-making.

(a) The secretary shall promulgate legislative rules in accordance with chapter twenty-nine-a of this code regarding the licensure, approval, certification and registration of child care facilities and the implementation of this article. The rules shall provide at a minimum the requirement that every residential child care facility shall be subject to an annual time study regarding the quantification of staff supervision time at each facility. Every residential child care facility shall participate in the time study at the request of the department.

(b) The secretary shall review the rules promulgated pursuant to this article at least once every five years, making revisions when necessary or convenient.

(c) The rules shall incorporate by reference the requirements of the Integrated Pest Management Program established by legislative rule by the Department of Agriculture under section four, article sixteen-a, chapter nineteen of this code.

§49-2-122. Waivers and variances to rules.

Waivers or variances of rules may be granted by the secretary if the health, safety or well-being of a child would not be endangered thereby. The secretary shall promulgate by legislative rule criteria and procedures for the granting of waivers or variances so that uniform practices may be maintained throughout the state.

§49-2-123. Annual reports; directory; licensing reports and recommendations.

(a) The secretary shall submit on or before January 1, of each year a report to the Governor and the Legislative Oversight
Commission on Health and Human Resources Accountability, concerning the regulation of child welfare agencies, child placing agencies, child care centers, family child care facilities, family child care homes, informal family child care homes, relative family child care homes and child care facilities during the year. The report shall include at a minimum, data on the number of children and staff at each facility (except family child care, informal family child care homes and relative family child care), applications received, types of licenses, approvals and registrations granted, denied, made provisional or revoked and any injunctions obtained or facility closures ordered.

(b) The secretary also shall compile annually a directory of licensed, certified and approved child care providers including a brief description of their program and facilities, the program’s capacity and a general profile of children served. A listing of family child care homes shall also be compiled annually.

(c) Licensing reports and recommendations for licensure which are a part of the yearly review of each licensed facility shall be sent to the facility director. Copies shall be available to the public upon written request to the secretary.

§49-2-124. Certificate of need not required; conditions; review.

(a) A certificate of need, as provided in article two-d, chapter sixteen of this code, is not required by an entity proposing behavioral health care facilities or behavioral health care services for children who are placed out of their home, or who are at imminent risk of being placed out of their home, if a summary review is performed in accordance with this section.

(b) A summary review of proposed health care facilities or health care services for children who are placed out of their home, or who are at imminent risk of being placed out of their home, is initiated when the proposal is recommended to the
health care cost review authority by the Secretary of the
Department of Health and Human Resources and the secretary
has made the following findings:

(1) That the proposed facility or service is consistent with
the state health plan;

(2) That the proposed facility or service is consistent with
the department’s programmatic and fiscal plan for behavioral
health services for children with mental health and addiction
disorders;

(3) That the proposed facility or service contributes to
providing services that are child and family driven, with priority
given to keeping children in their own homes;

(4) That the proposed facility or service will contribute to
reducing the number of child placements in out-of-state facilities
by making placements available in in-state facilities;

(5) That the proposed facility or service contributes to
reducing the number of child placements in in-state or
out-of-state facilities by returning children to their families,
placing them in foster care programs or making available
school-based and out-patient services; and

(6) If applicable, that the proposed services will be
community-based, locally accessible and provided in an
appropriate setting consistent with the unique needs and
potential of each child and his or her family.

(c) The secretary’s findings required by subsection (b) of
this section shall be filed with the secretary’s recommendation
and appropriate documentation. If the secretary’s findings are
supported by the accompanying documentation, the proposal
shall not require a certificate of need.
(d) Any entity that does not qualify for summary review shall be subject to certificate of need review.

(e) Notwithstanding any other provision of law to the contrary, the provision of regular or therapeutic foster care services does not constitute a behavioral health care facility or a behavioral health care service that would subject it to the summary review procedure established in this section or to the certificate of need requirements provided in article two-d, chapter sixteen of this code.

§49-2-125. Commission to Study Residential Placement of Children; findings; requirements; reports; recommendations; termination.

(a) The Legislature finds that the state’s current system of serving children and families in need of or at risk of needing social, emotional and behavioral health services is fragmented. The existing categorical structure of government programs and their funding streams discourages collaboration, resulting in duplication of efforts and a waste of limited resources. Children are usually involved in multiple child-serving systems, including child welfare, juvenile justice and special education. More than ten percent of children presently in care are presently in out-of-state placements. Earlier efforts at reform have focused on quick fixes for individual components of the system at the expense of the whole. It is the purpose of this section to establish a mechanism to achieve systemic reform by which all of the state’s child-serving agencies involved in the residential placement of at-risk youth jointly and continually study and improve upon this system and make recommendations to their respective agencies and to the Legislature regarding funding and statutory, regulatory and policy changes. It is further the Legislature’s intent to build upon these recommendations to establish an integrated system of care for at-risk youth and families that makes prudent and cost-effective use of limited
state resources by drawing upon the experience of successful models and best practices in this and other jurisdictions, which focuses on delivering services in the least restrictive setting appropriate to the needs of the child, and which produces better outcomes for children, families and the state.

(b) There is created within the Department of Health and Human Resources the Commission to Study the Residential Placement of Children. The commission consists of the Secretary of the Department of Health and Human Resources, the Commissioner of the Bureau for Children and Families, the Commissioner for the Bureau for Behavioral Health and Health Facilities, the Commissioner for the Bureau for Medical Services, the State Superintendent of Schools, a representative of local educational agencies, the Director of the Office of Institutional Educational Programs, the Director of the Office of Special Education Programs and Assurance, the Director of the Division of Juvenile Services and the Executive Director of the Prosecuting Attorney’s Institute. At the discretion of the West Virginia Supreme Court of Appeals, circuit and family court judges and other court personnel, including the Administrator of the Supreme Court of Appeals and the Director of the Juvenile Probation Services Division, may serve on the commission. These statutory members may further designate additional persons in their respective offices who may attend the meetings of the commission if they are the administrative head of the office or division whose functions necessitate their inclusion in this process. In its deliberations, the commission shall also consult and solicit input from families and service providers.

(c) The Secretary of the Department of Health and Human Resources shall serve as chair of the commission, which shall meet on a quarterly basis at the call of the chair.

(d) At a minimum, the commission shall study:
(1) The current practices of placing children out-of-home and into in-residential placements, with special emphasis on out-of-state placements;

(2) The adequacy, capacity, availability and utilization of existing in-state facilities to serve the needs of children requiring residential placements;

(3) Strategies and methods to reduce the number of children who must be placed in out-of-state facilities and to return children from existing out-of-state placements, initially targeting older youth who have been adjudicated delinquent;

(4) Staffing, facilitation and oversight of multidisciplinary treatment planning teams;

(5) The availability of and investment in community-based, less restrictive and less costly alternatives to residential placements;

(6) Ways in which up-to-date information about in-state placement availability may be made readily accessible to state agency and court personnel, including an interactive secure web site;

(7) Strategies and methods to promote and sustain cooperation and collaboration between the courts, state and local agencies, families and service providers, including the use of inter-agency memoranda of understanding, pooled funding arrangements and sharing of information and staff resources;

(8) The advisability of including “no-refusal” clauses in contracts with in-state providers for placement of children whose treatment needs match the level of licensure held by the provider;

(9) Identification of in-state service gaps and the feasibility of developing services to fill those gaps, including funding;
(10) Identification of fiscal, statutory and regulatory barriers to developing needed services in-state in a timely and responsive way;

(11) Ways to promote and protect the rights and participation of parents, foster parents and children involved in out-of-home care;

(12) Ways to certify out-of-state providers to ensure that children who must be placed out-of-state receive high quality services consistent with this state’s standards of licensure and rules of operation; and

(13) Any other ancillary issue relative to foster care placement.

(e) The commission shall report annually to the Legislative Oversight Commission on Health and Human Resources Accountability its conclusions and recommendations, including an implementation plan whereby:

(1) Out-of-state placements shall be reduced by at least ten percent per year and by at least fifty percent within three years;

(2) Child-serving agencies shall develop joint operating and funding proposals to serve the needs of children and families that cross their jurisdictional boundaries in a more seamless way;

(3) Steps shall be taken to obtain all necessary federal plan waivers or amendments in order for agencies to work collaboratively while maximizing the availability of federal funds;

(4) Agencies shall enter into memoranda of understanding to assume joint responsibilities;

(5) System of care components and cooperative relationships shall be incrementally established at the local, state and regional
levels, with links to existing resources, such as family resource networks and regional summits, wherever possible; and

(6) Recommendations for changes in fiscal, statutory and regulatory provisions are included for legislative action.

(f) The commission shall terminate on December 31, 2015, unless continued by act of the Legislature.

PART II. HOME-BASED FAMILY PRESERVATION ACT

§49-2-201. Findings and purpose.

The Legislature finds that there exists a need in this state to assist dysfunctional families by providing nurture and care to those families’ children as an alternative to removing children from the families.

The Legislature also finds that the family is the primary social institution responsible for meeting the needs of children and that the state has an obligation to assist families in this regard.

The Legislature further finds that children have significant emotional and social ties to the natural or surrogate family beyond basic care and nurture for which the family is responsible.

The purpose of this article is to establish a pilot program to evaluate the utility of providing intensive intervention with the families of children that are at risk of being removed from the home. For these limited purposes, the department is authorized to use available appropriate funds for that intervention service, but only to the extent that moneys would normally be available for the removal and placement of the particular child at risk.
§49-2-202. When family preservation services required.

Home-based family preservation services are required in all cases where the removal of a child or children is seriously being considered, whether from a natural home or a surrogate home, wherein a child or children have lived for a substantial period of time. However, those services are not required when the child appears in imminent danger of serious bodily or serious emotional injury.

§49-2-203. Caseload limits for home-based preservation services.

For purposes of this article, no contractor employee of the department may exceed three families during any period of time when that contractor employee is engaged in providing intensive, short term home-based family preservation intervention. In addition, no caseload may exceed six families during any period of time when home-based aftercare is provided pursuant to this article. When providing either type of home-based family preservation services to any family, the department or contractor shall provide trained personnel who shall be available during nonworking hours to assist families on an emergency basis.

§49-2-204. Situational criteria requiring service.

The services required by this article shall be made available to any dysfunctional family in which there exists an imminent risk of placement of at least one child outside the home as the result of abuse, neglect, dependency or delinquency or any emotional and behavioral problems. Payment for contractual services shall be on a cost-per-family basis. Any renewal of a contract shall be based on performance.

§49-2-205. Service delivery through service contracts; accountability.

The services required by this article which are not practically deliverable directly from the department may be subcontracted
to professionally qualified private individuals, associations, agencies, corporations, partnerships or groups. The service provider shall be required to submit monthly activity reports as to any services rendered to the department of human services. The activity reports shall include project evaluation in relation to individual families being served as well as statistical data concerning families that are referred for services which are not served due to unavailability of resources. The costs of program evaluation are an allowable cost consideration in any service contract negotiated in accordance with this article. The department shall conduct a thorough investigation of the contractors utilized by the department pursuant to this article.

§49-2-206. Special services to be provided.

The costs of providing special services to families receiving regular services in accordance with this article are allowable to the extent those goods and services are justified pursuant to carrying out the purposes of this article. Those special services may include, but are not limited to, homemaker assistance, food, clothing, educational materials, respite care and recreational or social activities.

§49-2-207. Development of home-based family preservation services.

The department is authorized to use appropriate state, federal, and/or private funds within its budget for the provision of family preservation and reunification services. Appropriated state funding made available through capture of additional federal funds shall be utilized to provide family preservation and reunification services as described in this article. Costs of providing home-based services described in this article shall not exceed the costs of out-of-home care which would be incurred otherwise.
§49-2-301. Findings and intent; advisory council.

(a) The Legislature finds that:

(1) High quality early childhood development substantially improves the intellectual and social potential of children and reduces societal costs;

(2) A child care program quality rating and improvement system provides incentives and resources to improve the quality child care programs; and

(3) A child care program quality rating and improvement system provides information about the quality of child care programs to parents so they may make more informed decisions about the placement of their children.

(b) It is the intent of the Legislature to require the Secretary of the Department of Health and Human Resources promulgate a legislative rule and establish a plan for the phased implementation of a child care program quality rating and improvement system not inconsistent with the provisions of this article.

(c) The Secretary of the Department of Health and Human Resources shall create a Quality Rating and Improvement System Advisory Council to provide advice on the development of the rule and plan for the phased implementation of a child care program quality rating and improvement system and the ongoing program review and policies for quality improvement. The secretary shall facilitate meetings of the advisory council. The advisory council shall include representatives from the provider community, advocacy groups, the Legislature, providers of professional development services for the early
28 childhood community, regulatory agencies and others who may be impacted by the creation of a quality rating and improvement system.

31 (d) Nothing in this article requires an appropriation, or any specific level of appropriation, by the Legislature.

§49-2-302. Creation of statewide quality rating system; rule-making; minimum requirements.

1 (a) The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement a quality rating and improvement system. The quality rating and improvement system shall be applicable to licensed child care centers and facilities and registered family child care homes. If other types of child care settings, such as school-age child care programs become licensed after the implementation of a statewide quality rating and improvement system, the secretary may develop quality criteria and incentives that will allow the other types of child care settings to participate in the quality rating and improvement system. The rules shall include, but are not limited to, the following:

15 (1) A four-star rating system for registered family child care homes and a four-star rating system for all licensed programs, including family child care facilities and child care centers, to easily communicate to consumers four progressively higher levels of quality child care. One star indicating meeting the minimum acceptable standard and four stars indicating meeting or exceeding the highest standard. The system shall reflect the cumulative attainment of the standards at each level and all lesser levels. However, any program accredited by the National Association for the Education of Young Children or the National
Association for Family Child Care, as applicable, shall automatically be awarded four-star status;

(2) Program standards for registered family child care homes and program standards for all licensed programs, including family child care facilities and child care centers, that are each divided into four levels of attributes that progressively improve the quality of child care beginning with basic state registration and licensing requirements at level one, through achievement of a national accreditation by the appropriate organization at level four. Participation beyond the first level is voluntary. The program standards shall be categorized using the West Virginia State Training and Registry System Core Knowledge Areas or its equivalent;

(3) Accountability measures that provide for a fair, valid, accurate and reliable assessment of compliance with quality standards, including, but not limited to:

(A) Evaluations conducted by trained evaluators with appropriate early childhood education and training on the selected assessment tool and with a demonstrated inter-rater reliability of eighty-five percent or higher. The evaluations shall include an on-site inspection conducted at least annually to determine whether programs are rated correctly and continue to meet the appropriate standards. The evaluations and observations shall be conducted on at least a statistically valid percentage of center classrooms, with a minimum of one class per age group;

(B) The use of valid and reliable observation and assessment tools, such as environmental rating scales for early childhood, infant and toddler, school-age care and family child care as appropriate for the particular setting and age group;

(C) An annual self-assessment using the proper observation and assessment tool for programs rated at two stars; and
(D) Model program improvement planning shall be designed to help programs improve their evaluation results and level of program quality.

(b) The rules required pursuant to this section shall include policies relating to the review, reduction, suspension or disqualification of child care programs from the quality rating and improvement system.

(c) The rules shall provide for implementation of the statewide quality rating system effective July 1, 2011, subject to section three hundred four of this article.

§49-2-303. Statewide quality improvement system; financial plan; staffing requirements; public awareness campaign; management information system; financial assistance for child care programs; program staff; child care consumers.

Attached to the proposed rules required in section three hundred two of this article, the Secretary of the Department of Health and Human Resources shall submit a financial plan to support the implementation of a statewide quality rating and improvement system and help promote quality improvement. The financial plan shall be considered a part of the rule and shall include specific proposals for implementation of the provisions of this section as determined by the secretary. The plan shall address, but is not limited to, the following:

(1) State agency staffing requirements may include the following:

(A) Highly trained evaluators to monitor the assessment process and ensure inter-rater reliability of eighty-five percent or higher;

(B) Technical assistance staff responsible for career advising, accreditation support services, improvement planning,
portfolio development and evaluations for improvement planning only. The goal for technical assistance staffing is to ensure that individualized technical assistance is available to participating programs;

(C) A person within the department to collaborate with other professional development providers to maximize funding for training, scholarships and professional development. The person filling this position also shall encourage community and technical colleges to provide courses through nontraditional means, such as online training, evening classes and off-campus training;

(D) Additional infant and toddler specialists to provide high level professional development for staff caring for infants and to provide on-site assistance with infant and toddler issues;

(E) At least one additional training specialist at each of the child care resource and referral agencies to support new training topics and to provide training for school-age child care programs. Training providers, such as the child care resource and referral agencies shall purchase new training programs on topics, such as business management, the Devereux Resiliency Training and Mind in the Making; and

(F) Additional staff necessary for program administration;

(2) Implementation of a broad public awareness campaign and communication strategies that may include the following:

(A) Brochures, internet sites, posters, banners, certificates, decals and pins to educate parents; and

(B) Strategies, such as earned media campaigns, paid advertising campaigns, e-mail and internet-based outreach, face-to-face communication with key civic groups and grassroots organizing techniques; and
Implementation of an internet-based management information system that meets the following requirements:

(A) The system shall allow for multiple agencies to access and input data;

(B) The system shall provide the data necessary to determine if the quality enhancements result in improved care and better outcomes for children;

(C) The system shall allow access by Department of Health and Human Resources subsidy and licensing staff, child care resource and referral agencies, the agencies that provide training and scholarships, evaluators and the child care programs;

(D) The system shall include different security levels in order to comply with the numerous confidentiality requirements;

(E) The system shall assist in informing practice; determining training needs; and tracking changes in availability of care, cost of care, changes in wages and education levels; and

(F) The system shall provide accountability for child care programs and recipients and assure funds are being used effectively;

Financial assistance for child care programs needed to improve learning environments, attain high ratings and sustain long-term quality without passing additional costs on to families that may include, but are not limited to:

(A) Assistance to programs in assessment and individual program improvement planning and providing the necessary information, coaching and resources to assist programs to increase their level of quality;
(B) Subsidizing participating programs for providing child care services to children of low-income families in accordance with the following:

(i) Base payment rates shall be established at the seventy-fifth percentile of market rate; and

(ii) A system of tiered reimbursement shall be established which increases the payment rates by a certain amount above the base payment rates in accordance with the rating tier of the child care program;

(C) Two types of grants shall be awarded to child care programs in accordance with the following:

(i) An incentive grant shall be awarded based on the type of child care program and the level at which the child care program is rated with the types of child care programs having more children and child care programs rated at higher tiers being awarded a larger grant than the types of child care programs having less children and child care programs rated at lower tiers; and

(ii) Grants for helping with the cost of national accreditation shall be awarded on an equitable basis.

(5) Support for increased salaries and benefits for program staff to increase educational levels essential to improving the quality of care that may include, but are not limited to:

(A) Wage supports and benefits provided as an incentive to increase child care programs ratings and as an incentive to increase staff qualifications in accordance with the following:

(i) The cost of salary supplements shall be phased in over a five-year period;
(ii) The Secretary of the Department of Health and Human Resources shall establish a salary scale for each of the top three rating tiers that varies the salary support based on the education of the care giver and the rating tier of the program; and

(iii) Any center with at least a tier two rating that employs at least one staff person participating in the scholarship program required pursuant to paragraph (B) of this subdivision or employs degree staff may apply to the Secretary of the Department of Health and Human Resources for funding to provide health care benefits based on the Teacher Education and Compensation Helps model in which insurance costs are shared among the employees, the employer and the state; and

(B) The provision of scholarships and establishment of professional development plans for center staff that would promote increasing the credentials of center staff over a five-year period; and

(6) Financial assistance to the child care consumers whose income is at two hundred percent of the federal poverty level or under to help them afford the increased market price of child care resulting from increased quality.

§49-2-304. Quality rating and improvement system pilot projects; independent third-party evaluation; modification of proposed rule and financial plan; report to Legislature; limitations on implementation.

The secretary shall report annually to the Legislature on the progress on development and implementation of a child care quality rating and improvement system and its impact on improving the quality of child care in the state. The secretary may propose amendments to the rules and financial plan necessary to promote implementation of the quality rating and improvement system and improve the quality of child care and
may recommend needed legislation. Nothing in this article
requires the implementation of a quality rating and improvement
system unless funds are appropriated therefore. The secretary
may prioritize the components of the financial plan for
implementation and quality improvement for funding purposes.
If insufficient funds are appropriated for full implementation of
the quality rating and improvement system, the rules shall
provide for gradual implementation over a period of several
years.

PART IV. CHILDREN’S TRUST FUND.

§49-2-401. Continuation, transfer and renaming of trust fund;
funding.

(a) The Children’s Fund, created for the sole purpose of
awarding grants, loans and loan guarantees for child abuse and
neglect prevention activities by enactment of chapter
twenty-seven, Acts of the Legislature, 1984, as last amended and
reenacted by chapter one hundred fifty-nine, Acts of the
Legislature, 1999, is hereby continued and renamed the West
Virginia Children’s Trust Fund. The fund shall be administered
by the Commissioner of the Bureau for Children and Families.
Gifts, bequests or donations for this purpose, in addition to
appropriations to the fund, shall be deposited in the State
Treasury in a special revenue account under the control of the
Secretary of the Department of Health and Human Resources or
his or her designee.

(b) Each state taxpayer may voluntarily contribute a portion
of the taxpayer’s state income tax refund to the Children’s Trust
Fund by designating the contribution on the state personal
income tax return form. The bureau shall approve the wording of
the designation on the income tax return form. The State Tax
Commissioner shall determine by July 1, of each year the total
amount designated pursuant to this subsection and shall report
that amount to the State Treasurer, who shall credit that amount to the Children’s Trust Fund.

(c) All interest accruing from investment of moneys in the Children’s Trust Fund shall be credited to the fund. The Legislative Auditor shall conduct an audit of the fund at least every five fiscal years.

(d) Grants, loans and loan guarantees may be awarded from the Children’s Trust Fund by the Commissioner of the Bureau for Children and Families for child abuse and neglect prevention activities.

(e) Upon the effective date of the enactment of this section, all employees, records, responsibilities, obligations, assets and property, of whatever kind and character, of the Governor’s Cabinet on Children and Families are hereby transferred to the Bureau for Children and Families within the Department of Health and Human Resources, including, but not limited to, all rights and obligations held by the Governor’s Cabinet on Children and Families under any grants, loans or loan guarantees previously awarded from the Children’s Trust Fund.

(f) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective by the Governor, by any state department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which have been transferred to the Bureau for Children and Families within the Department of Health and Human Resources, and were in effect on the date the transfer occurred continue in effect, for the benefit of the department, according to their terms until modified, terminated, superseded, set aside or revoked in accordance with the law by the Governor, the Secretary of the
PART V. CHILDREN WITH SPECIAL NEEDS.

§49-2-501. Children to whom article applies; intent.

It is the intention of this article that services for children with special health care needs shall be extended only to those children for whom adequate care, treatment and rehabilitation are not available from other than public sources.


In the care and treatment of children with special health care needs the Secretary of the Department of Health and Human Resources shall, so far as funds are available for the following purposes:

(1) Locate children with special health care needs requiring medical, surgical or other corrective treatment and provide competent diagnosis to determine the treatment required.

(2) Supply to children with special health care needs treatment, including hospitalization and aftercare leading to correction and rehabilitation.

(3) Guide and supervise children with special health care needs to assure adequate care and treatment.


Within thirty days after the birth of a child with a congenital deformity, the physician, midwife or other person attending the birth shall report to the Department of Health and Human Resources, on forms prescribed by them, the birth of the child.
5 The report shall be solely for the use of the Department of Health and Human Resources and shall not be open for public inspection.

§49-2-504. Assistance by other agencies.

1 So far as practicable, the services and facilities of the State Department of Education, The Division of Vocational Rehabilitation Services and Division of Corrections or their successor organizations shall be available to the Department of Health and Human Resources for the purposes of this article.


1 All payments from any corporation, association, program or fund providing insurance coverage or other payment for medicine, medical, surgical and hospital treatment, crutches, artificial limbs and those other and additional approved mechanical appliances and devices as may be reasonably required for a child with special health care needs, shall be applied toward the total cost of treatment.

PART VI. WEST VIRGINIA FAMILY SUPPORT PROGRAM.

§49-2-601. Findings; intent.

1 (a) The West Virginia Legislature finds that families are the greatest resource available to individuals with developmental disabilities, and they must be supported in their role as primary caregivers. It further finds that supporting families in their effort to care for their family members at home is more efficient, cost effective and humane than placing the developmentally disabled person in an institutional setting.

8 (b) The Legislature accepts the following as basic principles for providing services to support families of people with developmental disabilities:
(1) The quality of life of children with developmental disabilities, their families and communities is enhanced by caring for the children within their own homes. Children with disabilities benefit by growing up in their own families, families benefit by staying together and communities benefit from the inclusion of people with diverse abilities.

(2) Adults with developmental disabilities should be afforded the opportunity to make decisions for themselves, live in typical homes and communities and exercise their full rights as citizens. Developmentally disabled adults should have the option of living separately from their families but when this is not the case, families of disabled adults should be provided the support services they need.

(3) Services and support for families should be individualized and flexible, should focus on the entire family and should promote the inclusion of people with developmental disabilities in all aspects of school and community life.

(4) Families are the best experts about what they need. The service system can best assist families by supporting families as decision makers as opposed to making decisions for them.

(c) The Legislature finds that there are at least ten thousand West Virginians with developmental disabilities who live with and are supported by their families, and that the state’s policy is to prevent the institutionalization of people with developmental disabilities.

(d) To maximize the number of families supported by this program, each family will contribute to the cost of goods and services based on their ability to pay, taking into account their needs and resources.

(e) Therefore, it is the intent of the Legislature to initiate, within the resources available, a program of services to support
families who are caring for family members with developmental disabilities in their homes.

§49-2-602. Family support services; responsibilities; funds; case management; outreach; differential fees.

(a) The regional family support agency, designated under article two of this chapter, shall direct and be responsible for the individual assessment of each developmentally disabled person which it has designated and shall prepare a service plan with the developmentally disabled person’s family. The needs and preferences of the family will be the basis for determining what goods and services will be made available within the resources available.

(b) The family support program may provide funds to families to purchase goods and services included in the family service plan. Those goods and services related to the care of the developmentally disabled person may include, but are not limited to:

(1) Respite care;
(2) Personal and attendant care;
(3) Child care;
(4) Architectural and vehicular modifications;
(5) Health-related costs not otherwise covered;
(6) Equipment and supplies;
(7) Specialized nutrition and clothing;
(8) Homemaker services;
(9) Transportation;
(10) Utility costs;

(11) Integrated community activities; and

(12) Training and technical assistance.

(c) As part of the family support program, the regional family support agency, designated under section six hundred two of this article, shall provide case management for each family to provide information, service coordination and other assistance as needed by the family.

(d) The family support program shall assist families of developmentally disabled adults in planning and obtaining community living arrangements, employment services and other resources needed to achieve, to the greatest extent possible, independence, productivity and integration of the developmentally disabled adult into the community.

(e) The family support program shall conduct outreach to identify families in need of assistance and shall maintain a waiting list of individuals and families in the event that there are insufficient resources to provide services to all those who request them.

(f) The family support program may provide for differential fees for services under the program or for appropriate cost participation by the recipient families consistent with the goals of the program and the overall financial condition of the family.

(g) Funds, goods or services provided to eligible families by the family support program under this article shall not be considered as income to those families for any purpose under this code or under the rules and regulations of any agency of state government.
§49-2-603. Eligibility; primary focus.

(a) To be eligible for the family support program, a family must have at least one family member who has a developmental disability, as defined in this article, living with the family.

(b) The primary focus of the family support program is supporting: (1) Developmentally disabled children, school age and younger, within their families; (2) adults with developmental disabilities who choose to live with their families; and (3) adults with developmental disabilities for whom other community living arrangements are not available and who are living with their families.

§49-2-604. Program administration; implementation; procedures; annual evaluation; coordination; plans; grievances; reports.

(a) The administering agency for the family support program is the Department of Health and Human Resources.

(b) The Department of Health and Human Resources shall initially implement the family support program through contracts with an agency within four of the state’s behavioral health regions, with the four regions to be determined by the Department of Health and Human Resources in consultation with the state family support council. These regional family support agencies of the family support program will be responsible for implementing this article and subsequent policies for the families of persons with developmental disabilities residing within their respective regions.

(c) The Department of Health and Human Resources, in conjunction with the state family support council, shall adopt policies and procedures regarding:

(1) Development of annual budgets;
(2) Program specifications;

(3) Criteria for awarding contracts for operation of regional family support programs and the role of regional family support councils;

(4) Annual evaluation of services provided by each regional family support agency, including consumer satisfaction;

(5) Coordination of the family support program and the use of its funds, throughout the state and within each region, with other publicly funded programs, including Medicaid;

(6) Performance of family needs assessments and development of family service plans;

(7) Methodology for allocating resources to families within the funds available; and

(8) Resolution of grievances filed by families pertaining to actions of the family support program.

(d) The Department of Health and Human Resources shall submit a report to the Governor and the Legislature on the family support program by September 15, of every year so long as the program is funded.

§49-2-605. Regional and state family support councils; membership; meetings; reimbursement of expenses.

(a) Each regional family support agency shall establish a regional family support council comprised of at least seven members, of whom at least a majority shall be persons with developmental disabilities or their parents or primary caregivers. Each regional family support council shall meet at least quarterly to advise the regional family support agency on matters related to local implementation of the family support program and to
communicate information and recommendations regarding the family support program to the State Family Support Council.

(b) The Secretary of the Department of Health and Human Resources shall appoint a State Family Support Council comprised of at least twenty-two members, of whom at least a majority shall be persons with developmental disabilities or their parents or primary caregivers. A representative elected by each regional council shall serve on the state council. The state council shall also include a representative from each of the following agencies: The State Developmental Disabilities Council, the State Protection and Advocacy Agency, the Center for Excellence in Disabilities, the Office of Special Education, the Behavioral Health Care Providers Association and the Early Intervention Interagency Coordinating Council.

(c) The state council shall meet at least quarterly. The state council will participate in the development of program policies and procedures, annual contracts and perform other duties as are necessary for statewide implementation of the family support program.

(d) Members of the state and regional councils who are a member of the family or the primary caregiver of a developmentally disabled person shall be reimbursed for travel and lodging expenses incurred in attending official meetings of their councils. Child care expenses related to the developmentally disabled person shall also be reimbursed. Members of regional councils who are eligible for expense reimbursement shall be reimbursed by their respective regional family support agencies.

PART VII. CAREGIVERS CONSENT ACT.


(a) Except for minor children placed under the custody of the Department of Health and Human Resources pursuant to
proceedings established by this chapter, a caregiver who possesses and presents a notarized affidavit pursuant to section seven hundred three of this article may consent on behalf of a minor to health care and treatment.

(b) Examination and treatment shall be prescribed by or under the supervision of a physician, advanced practice nurse, dentist or mental health professional licensed to practice in the state.

§49-2-702. Duty of health care facility or practitioner.

The decision of a caregiver who possesses and presents a notarized affidavit of caregiver consent for a minor’s health care pursuant to section seven hundred three of this article shall be honored by a health care facility or practitioner unless the health care facility or practitioner has actual knowledge that a parent, legal custodian or guardian of a minor has made a contravening decision to consent to or to refuse medical treatment for the minor.

§49-2-703. Affidavit of caregiver consent; requirements.

An affidavit of caregiver consent for a minor’s health care shall include the following:

(1) The caregiver’s name and current home address;

(2) The caregiver’s birth date;

(3) The relationship of the caregiver to the minor;

(4) The minor’s name;

(5) The minor’s birth date;

(6) The length of time the minor has resided with the caregiver;
(7) The caregiver’s signature under oath affirming the truth of the matter asserted in the affidavit;

(8) The signature of the minor’s parent, guardian or legal custodian consenting to the caregiver’s authority over the minor’s health care. The signature of the minor’s parent, guardian or legal custodian is not necessary if the affidavit includes the following:

(A) A statement that the caregiver has attempted, but has been unable to obtain, the signature of the minor’s parent, guardian or legal custodian;

(B) A statement that the minor’s parent, guardian or legal custodian has not refused to give consent for health care and treatment of the minor child; and

(C) A description, in detail, of the attempts the caregiver made to obtain the signature of the minor’s parent, guardian or legal custodian; and

(9) A statement, as follows:

“General Notices:

This declaration does not affect the rights of the minor’s parent, guardian or legal custodian regarding the care, custody and control of the minor, other than with respect to health care, and does not give the caregiver legal custody of the minor.

This affidavit is valid for one year unless the minor no longer resides in the caregiver’s home. Furthermore, the minor’s parent, guardian or legal custodian may at any time rescind this affidavit of caregiver consent for a minor’s health care by providing written notification of the rescission to the appropriate health care professional.
A person who relies in good faith on this affidavit of caregiver consent for a minor’s health care has no obligation to conduct any further inquiry or investigation and is not subject to civil or criminal liability or to professional disciplinary action because of that reliance.”

§49-2-704. Revocation and termination of consent; written notice; validity.

(a) The affidavit of caregiver consent for a minor’s health care is superseded by written notification from the minor’s parent, guardian or legal custodian to the health care professionals providing services to the minor that the affidavit has been rescinded.

(b) The affidavit of caregiver consent for a minor’s health care is valid for one year unless the minor no longer resides in the caregiver’s home or a parent, guardian or legal custodian revokes his or her approval by written notification to the health care professionals providing services to the minor that the affidavit has been rescinded. If a parent, guardian or legal custodian revokes approval, the caregiver shall notify any health care provider or health service plans with which the minor has been involved through the caregiver.

§49-2-705. Good faith reliance on affidavit; applicability.

(a) Any person who relies in good faith on the affidavit of caregiver consent for a minor’s health care:

(1) Has no obligation to conduct any further inquiry or investigation; and

(2) Is not subject to civil or criminal liability or to professional disciplinary action because of the reliance.

(b) Subsection (a) of this section applies even if medical treatment is provided to a minor in contravention of a decision
of a parent, legal custodian or guardian of the minor who signed the affidavit if the person providing care has no actual knowledge of the decision of the parent, legal custodian or guardian.

§49-2-706. Exceptions to applicability.


§49-2-707. Penalty for false statement.

1 A person who knowingly makes a false statement in an affidavit under this article is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000.

§49-2-708. Rule-making authority.

1 The Secretary of the Department of Health and Human Resources is authorized to propose rules necessary to implement this article for legislative approval in accordance with article three, chapter twenty-nine-a of this code.

PART VIII. REPORTS OF CHILDREN SUSPECTED OF ABUSE.

§49-2-801. Purpose.

1 It is the purpose of this article through the complete reporting of child abuse and neglect:

3 (1) To protect the best interests of the child;

4 (2) To offer protective services in order to prevent any further harm to the child or any other children living in the home;
(3) To stabilize the home environment, to preserve family life whenever possible;

(4) To promote adult responsibility for protecting children; and

(5) To encourage cooperation among the states to prevent future incidents of child abuse and neglect and in dealing with the problems of child abuse and neglect.

§49-2-802. Establishment of child protective services; general duties and powers; administrative procedure; immunity from civil liability; cooperation of other state agencies.

(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 twenty-four 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;

(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 fourteen 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) 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 seventy-two 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

(5) 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.
§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.

(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 or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than forty-eight hours after suspecting this abuse or neglect, report the circumstances or cause a report to be made 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, or cause a report to be made, 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.

*NOTE: This section was also amended by Com. Sub. For H. B. 2939 (Chapter 47) which passed subsequent to this Act.*
(b) Any person over the age of eighteen who receives a disclosure from a credible witness or observes any sexual abuse or sexual assault of a child, shall immediately, and not more than forty-eight hours after receiving that disclosure or observing the sexual abuse or sexual assault, report the circumstances or cause a report to be made to the Department of Health and Human Resources or the State Police or other law-enforcement agency having jurisdiction to investigate the report. In the event that the individual receiving the disclosure or observing the sexual abuse or sexual assault has a good faith belief that the reporting of the event to the police would expose either the reporter, the subject child, the reporter’s children or other children in the subject child’s household to an increased threat of serious bodily injury, the individual may delay making the report while he or she undertakes measures to remove themselves or the affected children from the perceived threat of additional harm and the individual makes the report as soon as practicable after the threat of harm has been reduced. The law-enforcement agency that receives a report under this subsection shall report the allegations to the Department of Health and Human Resources and coordinate with any other law-enforcement agency, as necessary to investigate the report.

(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.

§49-2-804. Notification of disposition of reports.

The Department of Health and Human Resources shall continue to develop, update and implement a procedure to notify
any person mandated to report suspected child abuse and neglect pursuant to section eight hundred three of this article, of whether an investigation into the reported suspected abuse or neglect has been initiated and when the investigation is completed.

§49-2-805. Educational programs; requirements.

Subject to appropriation in the budget, the department shall conduct educational and training programs for persons required to report suspected abuse or neglect, and the general public, as well as implement evidence-based programs that reduce incidents of child maltreatment including sexual abuse. Training for persons require to report and the general public shall include:

(1) Indicators of child abuse and neglect;

(2) Tactics used by sexual abusers;

(3) How and when to make a report; and

(4) Protective factors that prevent abuse and neglect in order to promote adult responsibility for protecting children, encourage maximum reporting of child abuse and neglect, and to improve communication, cooperation and coordination among all agencies involved in the identification, prevention and treatment of the abuse and neglect of children.

§49-2-806. Mandatory reporting of suspected animal cruelty by child protective service workers.

In the event a child protective service worker, in response to a report mandated by section eight hundred two and eight hundred three of this article, forms a reasonable suspicion that an animal is the victim of cruel or inhumane treatment, he or she shall report the suspicion and the basis therefor to the county humane officer provided under section one, article ten, chapter seven of this code within twenty-four hours of the response to the report.
§49-2-807. Mandatory reporting to medical examiner or coroner; postmortem investigation.

Any person or official who is required pursuant to section eight hundred three of this article to report cases of suspected child abuse or neglect and who has reasonable cause to suspect that a child has died as a result of child abuse or neglect, shall report that fact to the appropriate medical examiner or coroner. Upon the receipt of that report, the medical examiner or coroner shall cause an investigation to be made and report his or her findings to the police, the appropriate prosecuting attorney, the local child protective service agency and, if the institution making a report is a hospital, to the hospital.

§49-2-808. Photographs and X rays.

Any person required to report cases of children suspected of being abused and neglected may take or cause to be taken, at public expense, photographs of the areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child. Any photographs or X rays taken shall be sent to the appropriate child protective service as soon as possible.

§49-2-809. Reporting procedures.

(a) Reports of child abuse and neglect pursuant to this article shall be made immediately by telephone to the local department child protective service agency and shall be followed by a written report within forty-eight hours if so requested by the receiving agency. The state department shall establish and maintain a twenty-four hour, seven-day-a-week telephone number to receive those calls reporting suspected or known child abuse or neglect.

(b) A copy of any report of serious physical abuse, sexual abuse or assault shall be forwarded by the department to the
appropriate law-enforcement agency, the prosecuting attorney or the coroner or medical examiner’s office. All reports under this article are confidential. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.

§49-2-810. Immunity from liability.

Any person, official or institution participating in good faith in any act permitted or required by this article are immune from any civil or criminal liability that otherwise might result by reason of those actions.

§49-2-811. Abrogation of privileged communications; exception.

The privileged quality of communications between husband and wife and between any professional person and his or her patient or his or her client, except that between attorney and client, is hereby abrogated in situations involving suspected or known child abuse or neglect.

*§49-2-812. Failure to report; penalty.

Any person, official or institution required by this article to report a case involving a child known or suspected to be abused or neglected, or required by section eight hundred nine of this article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction, shall be confined in jail not more than thirty days or fined not more than $1,000, or both fined and confined.

§49-2-813. Statistical index; reports.

The Department of Health and Human Resources shall maintain a statewide child abuse and neglect statistical index of

*Note: This section was also amended by Com. Sub. For H. B. 2939 (Chapter 47) which passed subsequent to this Act.
all substantiated allegations of child abuse or neglect cases to include information contained in the reports required under this article and any other information considered appropriate by the Secretary of the Department of Health and Human Resources. Nothing in the statistical data index maintained by the Department of Health and Human Resources may contain information of a specific nature that would identify individual cases or persons. Notwithstanding section two hundred one, article four of this chapter, the Department of Health and Human Resources shall provide copies of the statistical data maintained pursuant to this subsection to the State Police child abuse and neglect investigations unit to carry out its responsibilities to protect children from abuse and neglect.

PART IX. GENERAL AUTHORITY AND DUTIES OF THE DIVISION OF JUVENILE SERVICES.

§49-2-901. Policy; cooperation.

(a) It is the policy of the state to:

(1) Provide a coordinated continuum of care for its children who have been charged with an offense which would be a crime if committed by an adult, whether they are taken into custody and securely detained or released pending adjudication by the court; and

(2) Ensure the safe and efficient custody of a securely detained child through the entire juvenile justice process, and this can best be accomplished by the state by providing for cooperation and coordination between the agencies of government which are charged with responsibilities for the children of the state.

(b) When any juvenile is ordered by the court to be transferred from the custody of one of these agencies into the custody of the other, the Department of Health and Human
Resources and the Division of Juvenile Services shall cooperate with each other to the maximum extent necessary in order to ease the child’s transition and to reduce unnecessary cost, duplication and delay.

§49-2-902. Division of Juvenile Services; transfer of functions; juvenile placement.

(a) The Division of Juvenile Services is created within the Department of Military Affairs and Public Safety. The director shall be appointed by the Governor with the advice and consent of the Senate and shall be responsible for the control and supervision of each of its offices. The director may appoint deputy directors and assign them duties as may be necessary for the efficient management and operation of the division.

(b) The Division of Juvenile Services consists, at a minimum, of three subdivisions:

(1) The Office of Juvenile Detention, which is responsible for operating and maintaining centers for the predispositional detention of juveniles, including juveniles who have been transferred to adult criminal jurisdiction pursuant to part eight, article four of this chapter and juveniles who are awaiting transfer to a juvenile corrections facility;

(2) The Office of Juvenile Corrections, which is also responsible for operating and maintaining juvenile corrections facilities; and

(3) The Office of Community-Based Services, shall provide at a minimum, masters level therapy services; family, individual and group counseling; community service activities; transportation; and aftercare programs.

(c) Notwithstanding any provisions of this code to the contrary, whenever a juvenile is ordered into the custody of the
Division of Juvenile Services, the director may place the juvenile while he or she is in the division’s custody at whichever facility operated by the division is deemed by the director to be most appropriate considering the juvenile’s well-being and any recommendations of the court placing the juvenile in the division’s custody.

§49-2-903. Powers and duties; comprehensive strategy; cooperation.

The Division of Juvenile Services has the following duties as to juveniles in detention facilities or juvenile corrections facilities:

(1) Cooperating with the United States Department of Justice in operating, maintaining and improving juvenile correction facilities and predispositional detention centers, complying with regulations thereof, and receiving and expending federal funds for the services;

(2) Providing care for children needing secure detention pending disposition by a court having juvenile jurisdiction or temporary care following a court action;

(3) Assigning the necessary personnel and providing adequate space for the support and operation of any facility providing for the secure detention of children committed to the care of the Division of Juvenile Services;

(4) Proposing rules which outline policies and procedures governing the operation of correctional, detention and other facilities in its division wherein juveniles may be securely housed;

(5) Assigning the necessary personnel and providing adequate space for the support and operation of its facilities;
(6) Developing a comprehensive plan to maintain and improve a unified state system of regional predispositional detention centers for juveniles;

(7) Working in cooperation with the Department of Health and Human Resources in establishing, maintaining, and continuously refining and developing a balanced and comprehensive state program for children who have been adjudicated delinquent;

(8) In cooperation with the Department of Health and Human Resources establishing programs and services within available funds, designed to:

(A) Prevent juvenile delinquency;

(B) To divert juveniles from the juvenile justice system;

(C) To provide community-based alternatives to juvenile detention and correctional facilities; and

(D) To encourage a diversity of alternatives within the juvenile justice system;

Working in collaboration with the Department of Health and Human Resources, the Division of Juvenile Services shall employ a comprehensive strategy for the social and rehabilitative programming and treatment of juveniles, consistent with the principles adopted by the Office of Juvenile Justice and Delinquency Prevention of the Office of Justice Programs of the United States Department of Justice.

§49-2-904. Rules for specialized training for juvenile corrections officers and detention center employees.

The Division of Juvenile Services shall propose rules for Legislative approval pursuant to chapter twenty-nine-a of this
§49-2-905. Juvenile detention and corrections facility personnel.

(a) All persons employed at a juvenile detention or corrections facility shall be employed at a salary and with benefits consistent with the approved plan of compensation of the Division of Personnel, created under section five, article six, chapter twenty-nine of this code; all employees will also be covered by the policies and procedures of the West Virginia Public Employees Grievance Board, created under article two, chapter six-c of this code and the classified service protection policies of the Division of Personnel.

(b) The Division of Juvenile Services of the Department of Military Affairs and Public Safety is authorized to assign the necessary personnel and provide adequate space for the support and operation of any facility operated by the Division of Juvenile Services of the Department of Military Affairs and Public Safety providing for the detention of children as provided in this article, subject to and not inconsistent with the appropriation and availability of funds.

§49-2-906. Medical and other treatment of juveniles in custody of the division; consent; service providers; medical care; pregnant inmates; claims processing and administration by the department; authorization of cooperative agreements.

(a) Notwithstanding any other provision of law to the contrary, the director, or his or her designee, is hereby authorized
to consent to the medical or other treatment of any juvenile in
the legal or physical custody of the director or the division.

(b) In providing or arranging for the necessary medical and
other care and treatment of juveniles committed to the division’s
custody, the director shall use service providers who provide the
same or similar services to juveniles under existing contracts
with the Department of Health and Human Resources. In order
to obtain the most advantageous reimbursement rates, to
capitalize on an economy of scale and to avoid duplicative
systems and procedures, the department shall administer and
process all claims for medical or other treatment of juveniles
committed to the division’s custody.

(c) In providing or arranging for the necessary medical and
other care and treatment of juveniles committed to the division’s
custody, the director shall assure that pregnant inmates will not
be restrained after reaching the second trimester of pregnancy
until the end of the pregnancy. However, if the inmate, based
upon her classification, discipline history or other factors
deemed relevant by the director poses a threat of escape, or to
the safety of herself, the public, staff, or the unborn child, the
inmate may be restrained in a manner reasonably necessary.
Additionally, 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 director 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.

(d) For purposes of implementing the mandates of this
section, the director is hereby authorized and directed to enter
into any necessary agreements with the Department of Health
and Human Resources. An agreement will include, at a
minimum, for the direct and incidental costs associated with that
care and treatment to be paid by the Division of Juvenile
Services.
§49-2-907. Examination, diagnosis, classification and treatment; period of custody.

(a) As a part of the dispositional proceeding for a juvenile who has been adjudicated delinquent, the court may, upon its own motion or upon request of counsel, order the juvenile to be delivered into the custody of the Director of the Division of Juvenile Services, who shall cause the juvenile to be transferred to a juvenile diagnostic center for a period not to exceed sixty days. During this period, the juvenile will undergo examination, diagnosis, classification and a complete medical examination and shall at all times be kept apart from the general juvenile population in the director’s custody.

(b) During the examination period established by subsection (a) of this section, the director, or his or her designee, shall convene and direct a multidisciplinary treatment team for the juvenile which team will include the juvenile, if appropriate, the juvenile’s probation officer, the juvenile’s social worker, if any, the juvenile’s custodial parent or parents, the juvenile’s guardian, attorneys representing the juvenile or the parents, the guardian ad litem, if any, the prosecuting attorney and an appropriate school official or representative. The team may also include, where appropriate, a court-appointed special advocate, a member of a child advocacy center and any other person who may assist in providing recommendations for the particular needs of the juvenile and the family.

(c) Not later than sixty days after commitment pursuant to this section the juvenile shall be remanded and delivered to the custody of the director, an appropriate agency or any other person that the court by its order directs. Within ten days after the end of the examination, diagnosis and classification, the

* NOTE: This section was also amended by S. B. 393 (Chapter 150) which passed subsequent to this Act.
Director of the Division of Juvenile Services shall make or cause to be made a report to the court containing the results, findings, conclusions and recommendations of the multidisciplinary team with respect to that juvenile.

§49-2-908. Educational services for juveniles placed in predispositional and postdispositional facilities; authorization; cooperation; rule making.

(a) The State Board of Education is authorized to provide for adequate and appropriate education opportunities for juveniles placed in secure predispositional or post dispositional centers operated by or under contract with the Division of Juvenile Services.

(b) Subject to appropriations by the Legislature, the state board is authorized:

(1) To provide education programs and services for juveniles on the grounds of secure predispositional or postdispositional centers;

(2) To hire classroom teachers and other school personnel necessary to provide adequate and appropriate education opportunities to these juveniles; and

(3) To provide education services for the detained juveniles on a twelve-month basis.

(c) The Division of Juvenile Services shall cooperate with the state board and the state superintendent in the establishment and maintenance of education programs authorized under this section. Subject to appropriations by the Legislature, the Division of Juvenile Services shall provide, or cause to be provided, adequate space and facilities for the education programs. The state board may not be required to construct, improve or maintain any building, other improvement to real
§49-2-909. Arrest authority of juvenile correctional and detention officers.

(a) Persons employed by the Division of Juvenile Services as juvenile correctional officers are authorized and empowered to arrest persons already in the custody of the Division of Juvenile Services for violations of law that occur in the officer’s presence, including escape.

(b) Nothing in this section may be construed as to make a juvenile correctional officer employed by the Division of Juvenile Services a law-enforcement officer as defined in section one, article twenty-nine, chapter thirty of this code.

§49-2-910. Juvenile trustee accounts and funds, earnings and personal property of juveniles; return of property; reports.

(a) The Director of Juvenile Services may establish at each facility under his or her jurisdiction a “Juvenile Trustee Fund”. The administrator or designee of each facility may receive and take charge of the money and personal property, as defined by policy, of all juveniles in his or her facility and all money or personal property, as defined by policy, sent to the juveniles or earned by the juveniles as compensation for work performed while they are domiciled there. The administrator or designee shall credit the money and earnings to the juveniles 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 Director of Juvenile Services and the Assistant Director of
Budget and Finance of the Division of Juvenile Services. The
administrator or designee shall deposit the moneys in one or
more responsible banks in accounts to be designated a “Juvenile
Trustee Fund”.

(b) The administrator or designee shall keep in an account
for all juveniles at least ten percent of all money earned during
the juveniles commitment and pay the money to the juvenile at
the time of the juvenile’s release. The administrator or designee
may authorize the juvenile to withdraw money from his or her
mandatory savings for the purpose of preparing the juvenile for
reentry into society.

(c) The administrator or designee shall deliver to the juvenile
at the time he or she leaves the facility, or as soon as practicable
after departure, all personal property, moneys and earnings then
credited to the juvenile, or in case of the death of the juvenile
before authorized release from the facility, the administrator or
designee shall deliver the property to the juvenile’s personal
representative. If a conservator is appointed for the juvenile
while he or she is domiciled at the facility, the administrator or
designee shall deliver to the conservator, upon proper demand,
all moneys and personal property belonging to the juvenile that
are in the custody of the administrator.

(d) If any money is credited to a former juvenile resident
after remittance of the sum of money as provided in subsection
(c) of this section, the administrator or designee shall mail the
funds to the former juvenile resident’s last known address. If the
funds are returned to the facility, the administrator or designee
will forward those funds to the Division of Juvenile Service’s
Assistant Director of Budget and Finance to submit the funds to
the State Treasurer’s Office-Unclaimed Property Division.
(e) The facility shall compile a monthly report that specifically documents juvenile trustee fund receipts and expenditures and submit the reconciled monthly bank statements to the Division of Juvenile Service’s Assistant Director of Budget and Finance.

§49-2-911. Juvenile benefit funds; uses; reports.

(a) There is hereby established a special revenue account in the State Treasury for each juvenile benefit fund established by the director. Moneys received by an institution for deposit in an juvenile benefit fund shall be deposited with the State Treasurer to be credited to the special revenue account created for the institution’s juvenile benefit fund. Moneys in a special revenue account established for a juvenile benefit fund may be expended by the institution for the purposes set forth in this section.

(b) Moneys in an account established for a juvenile benefit fund may be expended by the facility for the purposes set forth in this section. Moneys to be deposited into a juvenile benefit fund consist of:

(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 Juvenile Services by the vendor;

(2) All net proceeds from vending machines used for juvenile resident visitation;

(3) All proceeds from contracted juvenile resident telephone commissions;

(4) Any funds that may be assigned by juveniles or donated to the facility by the general public or a service organization on behalf of all the juveniles; and

(5) Any funds confiscated considered contraband.
(c) The juvenile benefit fund may only be used for the following purposes at juvenile facilities:

(1) Open-house visitation functions or other nonroutine campus-wide activities which will enhance programming goals of the facility;

(2) Holiday functions which may include decorations, food and gifts for residents or family of residents;

(3) Rental of videos;

(4) Payment of video license;

(5) Supplemental supplies and equipment which will enrich the facilities’ program activities;

(6) Hardship needs for juvenile residents if approved by the Division of Juvenile Services Director; and

(7) Any special activities or rewards for residents.

(d) The facility shall compile a monthly report that specifically documents juvenile benefit fund receipts and expenditures and submit the reconciled monthly bank statements to the Division of Juvenile Services Assistant Director of Budget and Finance.

PART X. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.

§49-2-1001. Purpose; intent.

It is the intent of the Legislature to provide for the creation of all reasonable means and methods that can be established by a humane and enlightened state, solicitous of the welfare of its children, for the prevention of delinquency and for the care and rehabilitation of juvenile delinquents and status offenders. It is
further the intent of the Legislature that this state, through the
Department of Health and Human Resources and the Division of
Juvenile Services, establish, maintain, and continuously refine
and develop, a balanced and comprehensive state program for
juveniles who are potentially delinquent or are status offenders
or juvenile delinquents in the care or custody of the department.

§49-2-1002. Responsibilities of the Department of Health and
Human Resources and Division of Juvenile
Services of the Department of Military Affairs
and Public Safety; programs and services;
rehabilitation; cooperative agreements.

(a) The Department of Health and Human Resources and the
Division of Juvenile Services of the Department of Military
Affairs and Public Safety shall establish programs and services
designed to prevent juvenile delinquency, to divert juveniles
from the juvenile justice system, to provide community-based
alternatives to juvenile detention and correctional facilities and
to encourage a diversity of alternatives within the child welfare
and juvenile justice system. The development, maintenance and
expansion of programs and services may include, but not be
limited to, the following:

(1) Community-based programs and services for the
prevention and treatment of juvenile delinquency through the
development of foster-care and shelter-care homes, group
homes, halfway houses, homemaker and home health services,
twenty-four hour intake screening, volunteer and crisis home
programs, day treatment and any other designated
community-based diagnostic, treatment or rehabilitative service;

(2) Community-based programs and services to work with
parents and other family members to maintain and strengthen the

*NOTE: This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.
(3) Youth service bureaus and other community-based programs to divert youth from the juvenile court or to support, counsel, or provide work and recreational opportunities for status offenders, juvenile delinquents and other youth to help prevent delinquency;

(4) Projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting rights of youth affected by the juvenile justice system;

(5) Educational programs or supportive services designed to encourage status offenders, juvenile delinquents, and other youth to remain in elementary and secondary schools or in alternative learning situations;

(6) Expanded use of professional and paraprofessional personnel and volunteers to work effectively with youth;

(7) Youth initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;

(8) A statewide program designed to reduce the number of commitments of juveniles to any form of juvenile facility as a percentage of the state juvenile population; to increase the use of nonsecure community-based facilities as a percentage of total commitments to juvenile facilities; and to discourage the use of secure incarceration and detention; and

(9) Transitional programs designed to assist youth who are in the custody of the state upon reaching the age of eighteen years.

(b)(1) The Department of Health and Human Resources shall establish an individualized program of rehabilitation for each status offender referred to the department and to each alleged
juvenile delinquent referred to the department after being
allowed a preadjudicatory community supervision period by the
juvenile court, and for each adjudicated juvenile delinquent who,
after adjudication, is referred to the department for investigation
or treatment or whose custody is vested in the department.

(2) Individualized program of rehabilitation shall take into
account the programs and services to be provided by other public
or private agencies or personnel which are available in the
community to deal with the circumstances of the particular
juvenile.

(3) For alleged juvenile delinquents and status offenders,
those individualized program of rehabilitation shall be furnished
to the juvenile court and made available to counsel for the
juvenile; it may be modified from time to time at the direction of
the department or by order of the juvenile court.

(4) The department may develop an individualized program
of rehabilitation for any juvenile referred for noncustodial
counseling pursuant to section seven hundred two, article four of
this chapter, or for any other juvenile upon the request of a
public or private agency.

(c) The Department of Health and Human Resources and the
Division of Juvenile Services are directed to enter into
cooperative arrangements and agreements with each other and
with private agencies or with agencies of the state and its
political subdivisions to fulfill their respective duties under this
article and chapter.

§49-2-1003. Rehabilitative facilities for status offenders;
requirements; educational instruction.

(a) The Department of Health and Human Resources shall
establish and maintain one or more rehabilitative facilities to be

*NOTE: This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.
used exclusively for the lawful custody of status offenders. Each
facility will be a nonsecure facility having as its purpose the
rehabilitation of status offenders. The facility will have a bed
capacity for not more than twenty juveniles, and shall minimize
the institutional atmosphere and prepare the juvenile for
reintegration into the community.

(b) Rehabilitative programs and services shall be provided
by or through each facility and may include, but not be limited
to, medical, educational, vocational, social and psychological
guidance, training, counseling, alcoholism treatment, drug
treatment and other rehabilitative services. The Department of
Health and Human Resources shall provide to each status
offender committed to the facility a program of treatment and
services consistent with the individualized program of
rehabilitation developed for the juvenile. In the case of any other
juvenile residing at the facility, the department shall provide
those programs and services as may be proper in the
circumstances including, but not limited to, any programs or
services directed to be provided by the court.

(c) The board of education of the county in which the facility
is located shall provide instruction for juveniles residing at the
facility. Residents who can be permitted to do so shall attend
local schools, and instruction shall otherwise take place at the
facility.

(d) Facilities established pursuant to this section will be
structured as community-based facilities.

§49-2-1004. The Juvenile Services Reimbursement Offender Fund;
use; expenditures.

There is created within the State Treasury a special revenue
account designated “The Juvenile Services Reimbursement
Offender Fund” within and for the benefit of the Division of
Juvenile Services for expenses incurred in servicing juvenile status offenders in need of stabilization and specialized supervision. Moneys shall be paid into the account by the Department of Health and Human Resources, based upon an established per diem rate, or other funding sources. The Department of Health and Human Resources and the Division of Juvenile Services shall jointly establish the per diem rate to be paid into the fund by the Department of Health and Human Resources for each juvenile status offender in need of stabilization and specialized supervision by the Division of Juvenile Services pursuant to this article and by cooperative agreement. The Director of Juvenile Services is authorized to make expenditures from the fund in accordance with article three, chapter twelve of this code to offset expenses incurred by the Division of Juvenile Services in housing, treatment and caring for juvenile offenders.

§49-2-1005. Legal custody; law-enforcement agencies.

The Department of Health and Human Resources may require any juvenile committed to its legal custody to remain at and to return to the residence to which the juvenile is assigned by the department or by the juvenile court. In aid of that authority, and upon request of a designated employee of the department, any police officer, sheriff, deputy sheriff, or juvenile court probation officer is authorized to take the juvenile into custody and return the juvenile to his or her place of residence or into the custody of a designated employee of the department.

§49-2-1006. Reporting requirements; cataloguing of services.

(a) The Department of Health and Human Resources and the Division of Juvenile Services shall annually review its programs and services and submit a report by December 31, of each year to the Governor, the Legislature and the Supreme Court of Appeals. This report shall analyze and evaluate the effectiveness
of the programs and services being carried out by the
Department of Health and Human Resources or the Division of
Juvenile Services. That report shall include, but is not limited to:

(1) An analysis and evaluation of programs and services
continued, established and discontinued during the period
covered by the report;

(2) A description of programs and services which should be
implemented to further the purposes of this article;

(3) Relevant information concerning the number of juveniles
comprising the population of any rehabilitative facility during
the period covered by the report;

(4) The length of residence, the nature of the problems of
each juvenile, the juvenile’s response to programs and services;
and

(5) Any other information as will enable a user of the report
to ascertain the effectiveness of the facility as a rehabilitative
facility.

(b) The Department of Health and Human Resources and the
Division of Juvenile Services shall prepare a descriptive
catalogue of its juvenile programs and services available in local
communities throughout this state and shall distribute copies of
the same to every juvenile court in the state and, at the direction
of the juvenile court, the catalogue shall be distributed to
attorneys practicing before the court. The catalogue shall:

(1) Be made available to members of the general public upon
request;

(2) Contain sufficient information as to particular programs
and services so as to enable a user of the catalogue to make
inquiries and referrals; and
(3) Be constructed so as to meaningfully identify and describe programs and services.

(c) The requirements of this section are not satisfied by a simple listing of specific agencies or the individuals in charge of programs at a given time. The catalogue shall be updated and republished or supplemented from time to time as may be required to maintain its usefulness as a resource manual.

ARTICLE 3. SPECIALIZED ADVOCACY PROGRAMS.

§49-3-101. Child advocacy centers; services; requirements.

Child advocacy centers provide the following services to children in the child welfare program in West Virginia:

(1) Operation of a child-appropriate or child-friendly facility that provides a comfortable, private setting that is both physically and psychologically safe for clients.

(2) Participation in a multidisciplinary team for response to child abuse allegations.

(3) Operate a legal entity responsible for program and fiscal operations that has established and implemented basic sound administrative practices.

(4) Promote policies, practices and procedures that are culturally competent and diverse. Cultural competency is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community.

(5) Conduct forensic interviews in a manner which is of a neutral, fact-finding nature and coordinated to avoid duplicative interviewing.

(6) Provide specialized medical evaluation and treatment made available to clients as part of the team response, either at
the CAC or through coordination and referral with other
specialized medical providers.

(7) Offer therapeutic intervention through specialized mental
health services made available as part of the team response,
either at the child advocacy center or through coordination and
referral with other appropriate treatment providers.

(8) Victim support and advocacy as part of the team
response, either at the child advocacy center or through
coordination with other providers, throughout the investigation
and subsequent legal proceedings.

(9) Conducting team discussions and providing information
sharing regarding the investigation, case status and services
needed by the child and family are to occur on a routine basis.

(10) Developing and implementing a system for monitoring
case progress and tracking case outcomes for team components.

(11) May establish a safe exchange location for children and
families who have a parenting agreement or an order providing
for visitation or custody of the children that require a safe
exchange location.

§49-3-102. Court appointed special advocate; operations.

A court appointed special advocate (CASA) shall operate as
follows:

(1) Standards: CASA programs shall be members in good
standing with the West Virginia Court Appointed Special
Advocate Association, Inc., and the National Court Appointed
Special Advocates Association and adhere to all standards set
forth by these entities.

(2) Organizational capacity: A designated legal entity is
responsible for program and fiscal operations has been
established and implements basic sound administrative practice.
(3) Cultural competency and diversity: CASA programs shall promote policies, practices and procedures that are culturally competent. “Cultural competency” is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community.

(4) Case management: CASA programs must utilize a uniform case management system to monitor case progress and track outcomes.

(5) Case review: CASA volunteers shall meet with CASA staff on a routine basis to discuss case status and outcomes.

(6) Training: Court appointed special advocates shall serve as volunteers without compensation and shall receive training consistent with state and nationally developed standards.

ARTICLE 4. COURT ACTIONS.

PART I. GENERAL PROVISIONS.

§49-4-101. Exercise of powers and jurisdiction by judge in vacation.

The powers and jurisdiction of the court, under the provisions of this chapter, may be exercised by the judge in vacation.

§49-4-102. Procedure for appealing decisions.

Cases under this chapter, if tried in any inferior court, may be reviewed by writ of error or appeal to the circuit court, and if tried or reviewed in a circuit court, by writ of error or appeal to the Supreme Court of Appeals.
§49-4-103. Proceedings may not be evidence against child, or be published; adjudication is not a conviction and not a bar to civil service eligibility.

Any evidence given in any cause or proceeding under this chapter, or any order, judgment or finding therein, or any adjudication upon the status of juvenile delinquent heretofore made or rendered, may not in any civil, criminal or other cause or proceeding whatever in any court, be lawful or proper evidence against the child for any purpose whatsoever except in subsequent cases under this chapter involving the same child; nor may the name of any child, in connection with any proceedings under this chapter, be published in any newspaper without a written order of the court; nor may any adjudication upon the status of any child by a juvenile court operate to impose any of the civil disabilities ordinarily imposed by conviction, nor may any child be deemed a criminal by reason of the adjudication, nor may the adjudication be deemed a conviction, nor may any adjudication operate to disqualify a child in any future civil service examination, appointment, or application.

§49-4-104. General provisions relating to court orders regarding custody; rules.

(a) The Supreme Court of Appeals, in consultation with the Department of Health and Human Resources and the Division of Juvenile Services in order to eliminate unnecessary state funding of out-of-home placements where federal funding is available, shall develop and disseminate form court orders to effectuate chapter forty-nine of this code which authorize disclosure and transfer of juvenile records between agencies while requiring maintenance of confidentiality, Child Welfare Services, 42 U.S.C. §620, et seq., and 42 U.S.C. §670, et seq., relating to the promulgation of uniform court orders for placement of minor children and the rules promulgated thereunder, for use in the courts of the state.
(b) Judges and magistrates, upon being supplied the form orders required by subsection (a) of this section, shall act to ensure the proper form order is entered in the case so as to allow federal funding of eligible out-of-home placements.

§49-4-105. Hearing required to determine “reasonable efforts.”

A hearing by a circuit court of competent jurisdiction is required to determine whether or not “reasonable efforts” have been made to stabilize and maintain the family situation before any child may be placed outside the home, except that in the event any child appears in imminent danger of serious bodily or emotional injury or death in any home, a post-removal hearing shall be substituted for the pre-removal hearing.

§49-4-106. Limitation on out-of-home placements.

Before any child may be directed for placement in a particular facility or for services of a child welfare agency licensed by the department, a court shall make inquiry into the bed space of the facility available to accommodate additional children and the ability of the child welfare agency to meet the particular needs of the child. A court may not order the placement of a child in a particular facility, including status offender facilities operated by the Division of Juvenile Services, if it has reached its licensed capacity or order conditions on the placement of the child which conflict with licensure regulations applicable to the facility promulgated pursuant to article two of this chapter and articles one-a, nine and seventeen, chapter twenty-seven of this code. Further, a child welfare agency is not required to accept placement of a child at a particular facility if the facility remains at licensed capacity or is unable to meet the particular needs of the child. A child welfare agency is not required to make special dispensation or accommodation, reorganize existing child placement, or initiate early release of children in placement to reduce actual occupancy at the facility.
§49-4-107. Penalties.

A person who violates an order, rule, or regulation made under the authority of this chapter, or who violates this chapter for which punishment has not been specifically provided, is guilty of a misdemeanor and, upon conviction shall be fined not less than $10 nor more than $100, or confined in jail not less than five days nor more than six months, or both fined and confined.

§49-4-108. Payment of services.

At any time during any proceedings brought pursuant to this article, the court may upon its own motion, or upon a motion of any party, order the Department of Health and Human Resources to pay for professional services rendered by a psychologist, psychiatrist, physician, therapist or other health care professional to a child or other party to the proceedings. Professional services include, but are not limited to, treatment, therapy, counseling, evaluation, report preparation, consultation and preparation of expert testimony. The Department of Health and Human Resources shall set the fee schedule for the services in accordance with the Medicaid rate, if any, or the customary rate and adjust the schedule as appropriate. Every psychologist, psychiatrist, physician, therapist or other health care professional shall be paid by the Department of Health and Human Resources upon completion of services and submission of a final report or other information and documentation as required by the policies and procedures implemented by the Department of Health and Human Resources.

§49-4-109. Guardianship of estate of child unaffected.

This chapter may not be construed to give the guardian appointed hereunder the guardianship of the estate of the child, or to change the age of minority for any other purpose except the custody of the child.
The guardian of the estate of a child committed to guardianship hereunder shall furnish, when and in the form as may be required, full information concerning the property of the child to the state department or to the court or judge before whom the case of the child is heard.

§49-4-110. Foster care; quarterly status review; transitioning adults; annual permanency hearings.

(a) For each child who remains in foster care as a result of a juvenile proceeding or as a result of a child abuse and neglect proceeding, the circuit court with the assistance of the multidisciplinary treatment team shall conduct quarterly status reviews in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safety maintained in the home or placed for adoption or legal guardianship. Quarterly status reviews shall commence three months after the entry of the placement order. The permanency hearing provided in subsection (c) of this section may be considered a quarterly status review.

(b) For each transitioning adult as that term is defined in section two hundred two, article one of this chapter who remains in foster care, the circuit court shall conduct status review hearings as described in subsection (a) of this section once every three months until permanency is achieved.

(c) For each child or transitioning adult who continues to remain in foster care, the circuit court shall conduct a permanency hearing no later that twelve months after the date the child or transitioning adult is considered to have entered foster care, and at least once every twelve months thereafter until
permanency is achieved. For purposes of permanency planning for transitioning adults, the circuit court shall make factual findings and conclusions of law as to whether the department made reasonable efforts to finalize a permanency plan to prepare a transitioning adult for emancipation or independence or another approved permanency option such as, but not limited to, adoption or legal guardianship pursuant to the West Virginia Guardianship and Conservatorship Act.

(d) Nothing in this section may be construed to abrogate the responsibilities of the circuit court from conducting required hearings as provided in other provisions of this code, procedural court rules, or setting required hearings at the same time.

§49-4-111. Criteria and procedure for temporary removal of child from foster home; foster care arrangement termination; notice of child’s availability for placement; adoption; sibling placements; limitations.

(a) The department may temporarily remove a child from a foster home based on an allegation of abuse or neglect, including sexual abuse, that occurred while the child resided in the home. If the department determines that reasonable cause exists to support the allegation, the department shall remove all foster children from the arrangement, preclude contact between the children and the foster parents, provide written notice to the multidisciplinary treatment team members and schedule an emergency team meeting to address placement options. If, after investigation, the allegation is determined to be true by the department or after a judicial proceeding a court finds the allegation to be true or if the foster parents fail to contest the allegation in writing within twenty calendar days of receiving written notice of the allegations, the department shall permanently terminate all foster care arrangements with the foster parents. If the department determines that the abuse occurred due to no act or failure to act on the part of the foster
parents and that continuation of the foster care arrangement is in
the best interests of the child, the department may, in its
discretion, elect not to terminate the foster care arrangement or
arrangements.

(b) When a child has been placed in a foster care
arrangement for a period in excess of eighteen consecutive
months, and the department determines that the placement is a
fit and proper place for the child to reside, the foster care
arrangement may not be terminated unless the termination is in
the best interest of the child and:

(1) The foster care arrangement is terminated pursuant to
subsection (a) of this section;

(2) The foster care arrangement is terminated due to the
child being returned to his or her parent or parents;

(3) The foster care arrangement is terminated due to the
child being united or reunited with a sibling or siblings;

(4) The foster parent or parents agree to the termination in
writing;

(5) The foster care arrangement is terminated at the written
request of a foster child who has attained the age of fourteen; or

(6) A court orders the termination upon a finding that the
department has developed a more suitable long-term placement
for the child upon hearing evidence in a proceeding brought by
the department seeking removal and transfer.

(c) When a child has been residing in a foster home for a
period in excess of six consecutive months in total and for a
period in excess of thirty days after the parental rights of the
child’s biological parents have been terminated and the foster
parents have not made an application to the department to
establish an intent to adopt the child within thirty days of parental rights being terminated, the department may terminate the foster care arrangement if another, more beneficial, long-term placement of the child is developed. If the child is twelve years of age or older, the child shall be provided the option of remaining in the existing foster care arrangement if the child so desires and if continuation of the existing arrangement is in the best interest of the child.

(d)(1) When a child is placed into foster care or becomes eligible for adoption and a sibling or siblings have previously been placed in foster care or have been adopted, the department shall notify the foster parents or adoptive parents of the previously placed or adopted sibling or siblings of the child’s availability for foster care placement or adoption to determine if the foster parents or adoptive parents are desirous of seeking a foster care arrangement or adoption of the child.

(2) Where a sibling or siblings have previously been adopted, the department shall also notify the adoptive parents of a sibling of the child’s availability for foster care placement in that home and a foster care arrangement entered into to place the child in the home if the adoptive parents of the sibling are otherwise qualified or can become qualified to enter into a foster care arrangement with the department and if the arrangement is in the best interests of the child.

(3) The department may petition the court to waive notification to the foster parents or adoptive parents of the child’s siblings. This waiver may be granted, ex parte, upon a showing of compelling circumstances.

(e)(1) When a child is in a foster care arrangement and is residing separately from a sibling or siblings who are in another foster home or who have been adopted by another family and the parents with whom the placed or adopted sibling or siblings
reside have made application to the department to establish an intent to adopt or to enter into a foster care arrangement regarding a child so that the child may be united or reunited with a sibling or siblings, the department shall, upon a determination of the fitness of the persons and household seeking to enter into a foster care arrangement or seek an adoption which would unite or reunite siblings, and if termination and new placement are in the best interests of the children, terminate the foster care arrangement and place the child in the household with the sibling or siblings.

(2) If the department is of the opinion based upon available evidence that residing in the same home would have a harmful physical, mental or psychological effect on one or more of the sibling children or if the child has a physical or mental disability which the existing foster home can better accommodate, or if the department can document that the reunification of the siblings would not be in the best interest of one or all of the children, the department may petition the circuit court for an order allowing the separation of the siblings to continue.

(3) If the child is twelve years of age or older, the department shall provide the child the option of remaining in the existing foster care arrangement if remaining is in the best interests of the child. In any proceeding brought by the department to maintain separation of siblings, the separation may be ordered only if the court determines that clear and convincing evidence supports the department’s determination.

(4) In any proceeding brought by the department seeking to maintain separation of siblings, notice afforded, in addition to any other persons required by any provision of this code to receive notice, to the persons seeking to adopt a sibling or siblings of a previously placed or adopted child and the persons may be parties to the action.
Where two or more siblings have been placed in separate foster care arrangements and the foster parents of the siblings have made application to the department to enter into a foster care arrangement regarding the sibling or siblings not in their home or where two or more adoptive parents seek to adopt a sibling or siblings of a child they have previously adopted, the department’s determination as to placing the child in a foster care arrangement or in an adoptive home shall be based solely upon the best interests of the siblings.

§49-4-112. Subsidized adoption and legal guardianship; conditions.

(a) From funds appropriated to the Department of Health and Human Resources, the secretary shall establish a system of assistance for facilitating the adoption or legal guardianship of children. An adoption subsidy shall be available for children who are legally free for adoption and who are dependents of the department or a child welfare agency licensed to place children for adoption. A legal guardianship subsidy may not require the surrender or termination of parental rights. For either subsidy, the children must be in special circumstances because one or more of the following conditions inhibit their adoption or legal guardianship placement:

(1) They have a physical or mental disability;
(2) They are emotionally disturbed;
(3) They are older children;
(4) They are a part of a sibling group; or
(5) They are a member of a racial or ethnic minority.

(b) (1) The department shall provide assistance in the form of subsidies or other services to parents who are found and approved for adoption or legal guardianship of a child certified
as eligible for subsidy by the department, but before the final
decree of adoption or order of legal guardianship is entered,
there must be a written agreement between the family entering
into the subsidized adoption or legal guardianship and the
department.

(2) Adoption or legal guardianship subsidies in individual
cases may commence with the adoption or legal guardianship
placement, and will vary with the needs of the child as well as
the availability of other resources to meet the child’s needs. The
subsidy may be for special services only, or for money
payments, and either for a limited period, or for a long term, or
for any combination of the foregoing.

(3) The specific financial terms of the subsidy shall be
included in the agreement between the department and the
adoptive parents or legal guardians. The agreement may
recognize and provide for direct payment by the department of
attorney’s fees to an attorney representing the adoptive parent.

(4) The amount of the time-limited or long-term subsidy
may in no case exceed that which would be allowable from time
to time for the child under foster family care or, in the case of a
special service, the reasonable fee for the service rendered.

(5) In addition, the department shall provide either Medicaid
or other health insurance coverage for any special needs child for
whom there is an adoption or legal guardianship assistance
agreement between the department and the adoptive parent or
legal guardian and who the department determines cannot be
placed with an adoptive parent or legal guardian without medical
assistance because the child has special needs for medical,
mental health or rehabilitative care.

(c) After reasonable efforts have been made without the use
of subsidy and no appropriate adoptive family or legal guardian
has been found for the child, the department shall certify the
child as eligible for a subsidy in the event of adoption or a legal
guardianship. Reasonable efforts to place a child without a
subsidy shall not be required if it is in the best interest of the
child because of the factors as the existence of significant
emotional ties developed between the child and the prospective
parent or guardian while in care as a foster child.

(d) If the child is the dependent of a voluntary licensed
child-placing agency, that agency shall present to the department
evidence of the inability to place the child for adoption or legal
guardianship without the use of subsidy or evidence that the
efforts would not be in the best interests of the child. In no event
may the value of the services and assistance provided by the
department under an agreement pursuant to this section exceed
the value of assistance available to foster families in similar
circumstances. All records regarding subsidized adoptions or
legal guardianships are to be held in confidence; however,
records regarding the payment of public funds for subsidized
adoptions or legal guardianships shall be available for public
inspection provided they do not directly or indirectly identify
any child or persons receiving funds for the child.

§49-4-113. Duration of custody or guardianship of children
committed to department.

1 (a) A child committed to the department for guardianship,
after termination of parental rights, shall remain in the care of
the department until he or she attains the age of eighteen years,
or is married, or is adopted, or guardianship is relinquished
through the court.

(b) A child committed to the department for custody shall
remain in the care of the department until he or she attains the
age of eighteen years, or until he or she is discharged because he
or she is no longer in need of care.
§49-4-114. Consent by agency or department to adoption of child; statement of relinquishment by parent; counseling services; petition to terminate parental rights; notice; hearing; court orders.

(a)(1) Whenever a child welfare agency licensed to place children for adoption or the Department of Health and Human Resources has been given the permanent legal and physical custody of any child and the rights of the mother and the rights of the legal, determined, putative, outside or unknown father of the child have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or the department may consent to the adoption of the child pursuant to article twenty-two, chapter forty-eight of this code.

(2) Relinquishment for an adoption to an agency or to the department is required of the same persons whose consent or relinquishment is required under section three hundred one, article twenty-two, chapter forty-eight of this code. The form of any relinquishment so required shall conform as nearly as practicable to the requirements established in section three hundred three, article twenty-two, chapter forty-eight, and all other provisions of that article providing for relinquishment for adoption shall govern the proceedings herein.

(3) For purposes of any placement of a child for adoption by the department, the department shall first consider the suitability and willingness of any known grandparent or grandparents to adopt the child. Once grandparents who are interested in adopting the child have been identified, the department shall conduct a home study evaluation, including home visits and individual interviews by a licensed social worker. If the department determines, based on the home study evaluation, that the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered the placement of the
(4) The department shall make available, upon request, for purposes of any private or agency adoption proceeding, preplacement and post-placement counseling services by persons experienced in adoption counseling, at no cost, to any person whose consent or relinquishment is required pursuant to article twenty-two, chapter forty-eight of this code.

(b)(1) Whenever the mother has executed a relinquishment pursuant to this section, and the legal, determined, putative, outsider or unknown father, as those terms are defined pursuant to part one, article twenty-two, chapter forty-eight of this code, has not executed a relinquishment, the child welfare agency or the department may, by verified petition, seek to have the father’s rights terminated based upon the grounds of abandonment or neglect of the child. Abandonment may be established in accordance with section three hundred six, article twenty-two, chapter forty-eight of this code.

(2) Unless waived by a writing acknowledged as in the case of deeds or by other proper means, notice of the petition shall be served on any person entitled to parental rights of a child prior to its adoption who has not signed a relinquishment of custody of the child.

(3) In addition, notice shall be given to any putative, outsider or unknown father who has asserted or exercised parental rights and duties to and with the child and who has not relinquished any parental rights and the rights have not otherwise been terminated, or who has not had reasonable opportunity before or after the birth of the child to assert or exercise those rights, except that if the child is more than six months old at the time the notice would be required and the father has not asserted or exercised his or her parental rights and he or she knew the
whereabouts of the child, then the father shall be presumed to have had reasonable opportunity to assert or exercise any rights.

(c)(1) Upon the filing of the verified petition seeking to have the parental rights terminated, the court shall set a hearing on the petition. A copy of the petition and notice of the date, time and place of the hearing on the petition shall be personally served on any respondent at least twenty days prior to the date set for the hearing.

(2) The notice shall inform the person that his or her parental rights, if any, may be terminated in the proceeding and that the person may appear and defend any rights within twenty days of the service. In the case of a person who is a nonresident or whose whereabouts are unknown, service shall be achieved: (1) By personal service; (2) by registered or certified mail, return receipt requested, postage prepaid, to the person’s last known address, with instructions to forward; or (3) by publication. If personal service is not acquired, then if the person giving notice has any knowledge of the whereabouts of the person to be served, including a last known address, service by mail shall be first attempted as herein provided. Service achieved by mail shall be complete upon mailing and is sufficient service without the need for notice by publication. In the event that no return receipt is received giving adequate evidence of receipt of the notice by the addressee or of receipt of the notice at the address to which the notice was mailed or forwarded, or if the whereabouts of the person are unknown, then the person required to give notice shall file with the court an affidavit setting forth the circumstances of any attempt to serve the notice by mail, and the diligent efforts to ascertain the whereabouts of the person to be served. If the court determines that the whereabouts of the person to be served cannot be ascertained and that due diligence has been exercised to ascertain the person’s whereabouts, then the court shall order service of the notice by publication as a Class II publication in compliance with article three, chapter
fifty-nine of this code, and the publication area shall be the county where the proceedings are had, and in the county where the person to be served was last known to reside. In the case of a person under disability, service shall be made on the person and his or her personal representative, or if there be none, on a guardian ad litem.

(3) In the case of service by publication or mail or service on a personal representative or a guardian ad litem, the person is allowed thirty days from the date of the first publication or mailing of the service on a personal representative or guardian ad litem in which to appear and defend the parental rights.

(d) A petition under this section may be instituted in the county where the child resides or where the child is living.

(e) If the court finds that the person certified to parental rights is guilty of the allegations set forth in the petition, the court shall enter an order terminating his or her parental rights and shall award the legal and physical custody and control of the child to the petitioner.

§49-4-115. Emancipation.

(a) A child over the age of sixteen may petition a court to be declared emancipated. The parents or custodians shall be made respondents and, in addition to personal service thereon, there shall be publication as a Class II legal advertisement in compliance with article three, chapter fifty-nine of this code.

(b) Upon a showing that the child can provide for his or her physical and financial well-being and has the ability to make decisions for himself or herself, the court may for good cause shown declare the child emancipated. The child shall thereafter have full capacity to contract in his or her own right and the parents or custodians have no right to the custody and control of
the child or duty to provide the child with care and financial support.

(c) A child over the age of sixteen years who marries is emancipated by operation of law. An emancipated child has all of the privileges, rights and duties of an adult, including the right of contract, except that the child remains a child as defined for the purposes of part ten, article two, or part seven, article four of this chapter.

§49-4-116. Voluntary placement; petition; requirements; attorney appointed; court hearing; orders.

(a) Within ninety days of the date of the signatures to a voluntary placement agreement, after receipt of physical custody, the department shall file with the court a petition for review of the placement. The petition shall include:

(1) A statement regarding the child’s situation; and,

(2) The circumstance that gives rise to the voluntary placement.

(b) If the department intends to extend the voluntary placement agreement, the department shall file with the court a copy of the child’s case plan.

(c) The court shall appoint an attorney for the child, who shall receive a copy of the case plan as provided in subsection (b) of this section.

(d) The court shall schedule a hearing and give notice of the time and place and right to be present at the hearing to:

(1) The child’s attorney;

(2) The child, if twelve years of age or older;
(3) The child’s parents or guardians;

(4) The child’s foster parents;

(5) Any preadoptive parent or relative providing care for the child; and

(6) Any other persons as the court may in its discretion direct.

The child’s presence at the hearing may be waived by the child’s attorney at the request of the child or if the child would suffer emotional harm.

(e) At the conclusion of the proceedings, but no later than ninety days after the date of the signatures to the voluntary placement agreement, the court shall enter an order:

(1) Determining whether or not continuation of the voluntary placement is in the best interests of the child;

(2) Specifying under what conditions the child’s placement will continue;

(3) Specifying whether or not the department is required to and has made reasonable efforts to preserve and to reunify the family; and

(4) Providing a plan for the permanent placement of the child.

PART II. EMERGENCY POSSESSION OF CERTAIN RELINQUISHED CHILDREN.

§49-4-201. Accepting possession of certain relinquished children.

(a) A hospital or health care facility operating in this state, shall, without a court order, take possession of a child if the child
(b) A hospital or health care facility that takes possession of a child under this article shall perform any act necessary to protect the physical health or safety of the child. In accepting possession of the child, the hospital or health care facility may not require the person to identify himself or herself and shall otherwise respect the person’s desire to remain anonymous.

§49-4-202. Notification of possession of relinquished child; department responsibilities.

(a) Not later than the close of the first business day after the date on which a hospital or health care facility takes possession of a child pursuant to section two hundred one of this article, the hospital or health care facility shall notify the Child Protective Services division of the Department of Health and Human Resources that it has taken possession of the child and shall provide the division any information provided by the parent delivering the child. The hospital or health care facility shall refer any inquiries about the child to the Child Protective Services division.

(b) The Department of Health and Human Resources shall assume the care, control and custody of the child as of the time of delivery of the child to the hospital or health care facility, and may contract with private child care agency for the care and placement of the child after the child leaves the hospital or health care facility.

§49-4-203. Filing petition after accepting possession of relinquished child.

A child of whom the Department of Health and Human Resources assumes care, control and custody under this article
is a relinquished child and to be treated in all respects as a child
taken into custody pursuant to section three hundred three,
article four of this chapter. Upon taking custody of a child under
this article, the department, with the cooperation of the county
prosecuting attorney, shall cause a petition to be presented
pursuant to section six hundred two, article four of this chapter.
The department and county prosecuting attorney may not
identify in the petition the parent(s) who utilized this article to
relinquish his or her child. Thereafter, the department shall
proceed in compliance with part six, of this article.

§49-4-204. Immunity from certain prosecutions.

A parent who relinquishes his or her child in good faith
within thirty days of the child’s birth under this article is
immune from prosecution under subsection (a), section four,
article eight-d, chapter sixty-one of this code.

§49-4-205. Adoption eligibility.

The child is eligible for adoption as an abandoned child
under chapter forty-eight of the code.

PART III. EMERGENCY CUSTODY OF CHILDREN
PRIOR TO PETITION.

§49-4-301. Custody of a neglected child by law enforcement in
emergency situations; protective custody;
requirements; notices; petition for appointment of
special guardian; discharge; immunity.

(a) A child believed to be a neglected child or an abused
child may be taken into custody without the court order
otherwise required by section six hundred two of this article by
a law-enforcement officer if:

(1) The child is without supervision or shelter for an
unreasonable period of time in light of the child’s age and the
ability to care for himself or herself in circumstances presenting
an immediate threat of serious harm to that child; or

(2) That officer determines that the child is in a condition
requiring emergency medical treatment by a physician and the
child’s parents, parent, guardian or custodian refuses to permit
the treatment, or is unavailable for consent. A child who suffers
from a condition requiring emergency medical treatment, whose
parents, parent, guardian or custodian refuses to permit the
providing of the emergency medical treatment, may be retained
in a hospital by a physician against the will of the parents,
parent, guardian or custodian, as provided in subsection (c) of
this section.

(b) A child taken into protective custody pursuant to
subsection (a) of this section may be housed by the department
or in any authorized child shelter facility. The authority to hold
the child in protective custody, absent a petition and proper order
granting temporary custody pursuant to section six hundred two
of this article, terminates by operation of law upon the happening
of either of the following events, whichever occurs first:

(1) The expiration of ninety-six hours from the time the child
is initially taken into protective custody; or

(2) The expiration of the circumstances which initially
warranted the determination of an emergency situation.

No child may be considered in an emergency situation and
custody withheld from the child’s parents, parent, guardian or
custodian presenting themselves, himself or herself in a fit and
proper condition and requesting physical custody of the child.
No child may be removed from a place of residence as in an
emergency under this section until after:

(1) All reasonable efforts to make inquiries and
arrangements with neighbors, relatives and friends have been
exhausted; or if no arrangements can be made; and
(2) The state department may place in the residence a home services worker with the child for a period of not less than twelve hours to await the return of the child’s parents, parent, guardian or custodian.

Prior to taking a child into protective custody as abandoned at a place at or near the residence of the child, the law-enforcement officer shall post a typed or legibly handwritten notice at the place the child is found, informing the parents, parent, guardian or custodian that the child was taken by a law-enforcement officer, the name, address and office telephone number of the officer, the place and telephone number where information can continuously be obtained as to the child’s whereabouts, and if known, the worker for the state department having responsibility for the child.

(c) A child taken into protective custody pursuant to this section for emergency medical treatment may be held in a hospital under the care of a physician against the will of the child’s parents, parent, guardian or custodian for a period not to exceed ninety-six hours. The parents, parent, guardian or custodian may not be denied the right to see or visit with the child in a hospital. The authority to retain a child in protective custody in a hospital as requiring emergency medical treatment terminates by operation of law upon the happening of either of the following events, whichever occurs first:

(1) When the condition, in the opinion of the physician, no longer required emergency hospitalization, or;

(2) Upon the expiration of ninety-six hours from the initiation of custody, unless within that time, a petition is presented and a proper order obtained from the circuit court.

(d) Prior to assuming custody of a child from a law-enforcement officer, pursuant to this section, a physician or
worker from the department shall require a typed or legibly
handwritten statement from the officer identifying the officer’s
name, address and office telephone number and specifying all
the facts upon which the decision to take the child into protective
custody was based, and the date, time and place of the taking.

(e) Any worker for the department assuming custody of a
child pursuant to this section shall immediately notify the
parents, parent, guardian or custodian of the child of the taking
of the custody and the reasons therefor, if the whereabouts of the
parents, parent, guardian or custodian are known or can be
discovered with due diligence; and if not, notice and explanation
shall be given to the child’s closest relative, if his or her
whereabouts are known or can be discovered with due diligence
within a reasonable time. An inquiry shall be made of relatives
and neighbors, and if a relative or appropriate neighbor is willing
to assume custody of the child, the child will temporarily be
placed in custody.

(f) No child may be taken into custody under circumstances
not justified by this section or pursuant to section six hundred
two of this article without appropriate process. Any retention of
a child or order for retention of a child not complying with the
time limits and other requirements specified in this article shall
be void by operation of law.

(g) Petition for appointment of special guardian. — Upon
the verified petition of any person showing:

(1) That any person under the age of eighteen years is
threatened with or there is a substantial possibility that the
person will suffer death, serious or permanent physical or
emotional disability, disfigurement or suffering; and

(2) That disability, disfigurement or suffering is the result of
the failure or refusal of any parent, guardian or custodian to
procure, consent to or authorize necessary medical treatment, the
circuit court of the county in which the person is located may
direct the appointment of a special guardian for the purposes of
procuring, consenting to and giving authorization for the
administration of necessary medical treatment. The circuit court
may not consider any petition filed in accordance with this
section unless it is accompanied by a supporting affidavit of a
licensed physician.

(h) Notice of petition. — So far as practicable, the parents,
guardian or custodian of any person for whose benefit medical
treatment is sought shall be given notice of the petition for the
appointment of a special guardian under this section. Notice is
not necessary if it would cause a delay that would result in the
death or irreparable harm to the person for whose benefit
medical treatment is sought. Notice may be given in a form and
manner as may be necessary under the circumstances.

(i) Discharge of special guardian. — Upon the termination of
necessary medical treatment to any person under this section, the
circuit court order the discharge of the special guardian from any
further authority, responsibility or duty.

(j) Immunity from civil liability. — No person appointed
special guardian in accordance with this article is civilly liable
for any act done by virtue of the authority vested in him or her
by order of the circuit court.

§49-4-302. Authorizing a family court judge to order custody of a
child in emergency situations; requirements; orders; investigative reports; notification required.

(a) Notwithstanding the jurisdictional limitations contained
in section two, article two-a, chapter fifty-one of this code,
family court judges are authorized to order the department to
take emergency custody of a child who is in the physical custody
of a party to an action or proceeding before the family court, if
the family court judge finds that there is clear and convincing
evidence that:

(1) There exists an imminent danger to the physical
well-being of the child as defined in section two hundred one,
article one of this chapter;

(2) The child is not the subject of a pending action before the
circuit court alleging abuse and neglect of the child; and

(3) There are no reasonable available alternatives to the
emergency custody order.

(b) An order entered pursuant to subsection (a) of this
section must include specific written findings.

(c) A copy of the order issued pursuant to subsection (a) of
this section shall be transmitted forthwith to the department, the
circuit court and the prosecuting attorney.

(d) Upon receipt of an order issued pursuant to subsection
(a) of this section, the department shall immediately respond and
assist the family court judge in emergency placement of the
child.

(e)(1) Upon receipt of an order issued pursuant to subsection
(a) of this section, the circuit court shall cause to be entered and
served, an administrative order in the name of and regarding the
affected child, directing the department to submit, within
ninety-six hours from the time the child was taken into custody,
an investigative report to both the circuit and family court.

(2) The investigative report shall include a statement of
whether the department intends to file a petition pursuant to
section six hundred two of this article.

(f)(1) An order issued pursuant to subsection (a) of this
section terminates by operation of law upon expiration of
ninetysix hours from the time the child is initially taken into protective custody unless a petition is filed with the circuit court under section six hundred two of this article within ninety-six hours from the time the child is initially taken into protective custody.

(2) The filing of a petition within ninety-six hours from the time the child is initially taken into protective custody extends the emergency custody order issued pursuant to subsection (a) of this section until a preliminary hearing is held before the circuit court, unless the circuit court orders otherwise.

(g)(1) Any worker for the department assuming custody of a child pursuant to this section shall immediately notify the parents, parent, grandparents, grandparent, guardian or custodian of the child of the taking of the custody and the reasons therefor if the whereabouts of the parents, parent, grandparents, grandparent, guardian or custodian are known or can be discovered with due diligence and, if not, a notice and explanation shall be given to the child’s closest relative if his or her whereabouts are known or can be discovered with due diligence within a reasonable time. An inquiry shall be made of relatives and neighbors and, if an appropriate relative or neighbor is willing to assume custody of the child, the child will temporarily be placed in that person’s custody.

(2) In the event no other reasonable alternative is available for temporary placement of a child pursuant to subdivision (1) of this subsection, the child may be housed by the department in an authorized child shelter facility.

§49-4-303. Emergency removal by department before filing of petition; conditions; referee; application for emergency custody; order.

Prior to the filing of a petition, a child protective service worker may take the child or children into his or her custody (also known as removing the child) without a court order when:
(1) In the presence of a child protective service worker a child or children are in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children, as that phrase is defined in section two hundred one, article one of this chapter; and

(2) The worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered.

After taking custody of the child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or referee of the county where custody was taken and immediately apply for an order. If no judge or referee is available, the worker shall appear before a circuit judge or referee of an adjoining county, and immediately apply for an order. This order shall ratify the emergency custody of the child pending the filing of a petition.

The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a referee. He or she serves at the will and pleasure of the appointing court, and shall perform the functions prescribed for the position by this subsection.

The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody. If at the time the child or children are taken into custody by the worker he or she knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians.

The application for emergency custody may be on forms prescribed by the Supreme Court of Appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts
from which it may be determined that the probable cause described above in this subsection exists. Upon the sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee may order the emergency taking by the worker to be ratified. If appropriate under the circumstances, the order may include authorization for an examination as provided in subsection (b), section six hundred three of this article.

If a referee issues an order, the referee shall by telephonic communication have that order orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall, on the next judicial day, enter an order of confirmation. If the emergency taking is ratified by the judge or referee, emergency custody of the child or children is vested in the department until the expiration of the next two judicial days, at which time any child taken into emergency custody shall be returned to the custody of his or her parent or guardian or custodian unless a petition has been filed and custody of the child has been transferred under section six hundred two of this article.

PART IV. MULTIDISCIPLINARY TEAMS, CASE PLANS, TRANSITION PLANS AND AFTERCARE PLANS.

§49-4-401. Purpose; system to be a complement to existing programs.

1 (a) This article:

2 (1) Provides a system for evaluation of and coordinated service delivery for children who may be victims of abuse or neglect and children undergoing certain status offense and delinquency proceedings;

3 (2) Establishes, as a complement to other programs of the Department of Health and Human Resources, a multidisciplinary screening, advisory and planning system to assist courts in
facilitating permanency planning, following the initiation of judicial proceedings, to recommend alternatives and to coordinate evaluations and in-community services; and

(3) Ensures that children are safe from abuse and neglect and to coordinate investigation of alleged child abuse offenses and competent criminal prosecution of offenders to ensure that safety, as determined appropriate by the prosecuting attorney.

(b) Nothing in this article precludes any multidisciplinary team from considering any case upon the consent of the members of the team.

§49-4-402. Multidisciplinary investigative teams; establishment; membership; procedures; coordination among agencies; confidentiality.

(a) The prosecuting attorney of each county shall establish a multidisciplinary investigative team in that county. The multidisciplinary team shall be headed and directed by the prosecuting attorney, or his or her designee, and includes as permanent members:

(1) The prosecuting attorney, or his or her designee;

(2) A local child protective services caseworker from the Department of Health and Human Resources;

(3) A local law-enforcement officer employed by a law-enforcement agency in the county;

(4) A child advocacy center representative, where available;

(5) A health care provider with pediatric and child abuse expertise, where available;

(6) A mental health professional with pediatric and child abuse expertise, where available;
(7) An educator; and

(8) A representative from a licensed domestic violence program serving the county.

The Department of Health and Human Resources and any local law-enforcement agency or agencies selected by the prosecuting attorney shall appoint their representatives to the team by submitting a written designation of the team to the prosecuting attorney of each county within thirty days of the prosecutor’s request that the appointment be made. Within fifteen days of the appointment, the prosecuting attorney shall notify the chief judge of each circuit within which the county is situated of the names of the representatives so appointed. Any other person or any other appointee of an agency who may contribute to the team’s efforts to assist a minor child as may be determined by the permanent members of the team may also be appointed as a member of the team by the prosecutor with notification to the chief judge.

(b) Any permanent member of the multidisciplinary investigative team shall refer all cases of accidental death of any child reported to their agency and all cases when a child dies while in the custody of the state for investigation and review by the team. The multidisciplinary investigative team shall meet at regular intervals at least once every calendar month.

(c) The investigative team shall be responsible for coordinating or cooperating in the initial and ongoing investigation of all civil and criminal allegations pertinent to cases involving child sexual assault, child sexual abuse, child abuse and neglect and shall make a recommendation to the county prosecuting attorney as to the initiation or commencement of a civil petition and/or criminal prosecution.

(d) State, county and local agencies shall provide the multidisciplinary investigative team with any information
requested in writing by the team as allowable by law or upon
receipt of a certified copy of the circuit court’s order directing
the agencies to release information in its possession relating to
the child. The team shall assure that all information received and
developed in connection with this article remains confidential.
For purposes of this section, the term “confidential” shall be
construed in accordance with article five of this chapter.

§49-4-403. Multidisciplinary treatment planning process;
coordination; access to information.

(a)(1) A multidisciplinary treatment planning process for
cases initiated pursuant to part six and part seven of article four,
shall be established within each county of the state, either
separately or in conjunction with a contiguous county, by the
secretary of the department with advice and assistance from the
prosecutor’s advisory council as set forth in section four, article
four, chapter seven of this code. The Division of Juvenile
Services shall establish a similar treatment planning process for
delinquency cases in which the juvenile has been committed to
its custody, including those cases in which the juvenile has been
committed for examination and diagnosis.

(2) This section does not require a multidisciplinary team
meeting to be held prior to temporarily placing a child or
juvenile out-of-home under exigent circumstances or upon a
court order placing a juvenile in a facility operated by the
Division of Juvenile Services.

(b) The case manager in the Department of Health and
Human Resources for the child, family or juvenile or the case
manager in the Division of Juvenile Services for a juvenile shall
convene a treatment team in each case when it is required
pursuant to this article.

*NOTE: This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.
(1) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(2) Any person authorized by this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting the meeting and directing attendance. Members of the multidisciplinary team may participate in team meetings by telephone or video conferencing. This subsection does not prevent the respective agencies from designating a person other than the case manager as a facilitator for treatment team meetings. Written notice shall be provided to all team members of the availability to participate by videoconferencing.

(c) The treatment team shall coordinate its activities and membership with local family resource networks and coordinate with other local and regional child and family service planning committees to assure the efficient planning and delivery of child and family services on a local and regional level.

(d) The multidisciplinary treatment team shall be afforded access to information in the possession of the Department of Health and Human Resources, Division of Juvenile Services, law-enforcement agencies and other state, county and local agencies. Those agencies shall cooperate in the sharing of information, as may be provided in article five or this chapter or
any other relevant provision of law. Any multidisciplinary team member who acquires confidential information may not disclose the information except as permitted by this code or court rules.

§49-4-404. Court review of service plan; hearing; required findings; order; team member’s objections.

(a) In any case in which a multidisciplinary treatment team develops an individualized service plan for a child or family pursuant to this article, the court shall review the proposed service plan to determine if implementation of the plan is in the child’s best interests. If the multidisciplinary team cannot agree on a plan or if the court determines not to adopt the team’s recommendations, it shall, upon motion or sua sponte, schedule and hold within ten days of the determination, and prior to the entry of an order placing the child in the custody of the department or in an out-of-home setting, a hearing to consider evidence from the team as to its rationale for the proposed service plan. If, after a hearing held pursuant to this section, the court does not adopt the teams’s recommended service plan, it shall make specific written findings as to why the team’s recommended service plan was not adopted.

(b) In any case in which the court decides to order the child placed in an out-of-state facility or program it shall set forth in the order directing the placement the reasons why the child was not placed in an in-state facility or program.

(c) Any member of the multidisciplinary treatment team who disagrees with recommendations of the team may inform the court of his or her own recommendations and objections to the team’s recommendations. The recommendations and objections of the dissenting team member may be made in a hearing on the record, made in writing and served upon each team member and filed with the court and indicated in the case plan, or both made in writing and indicated in the case plan. Upon receiving
§49-4-405. Multidisciplinary treatment planning process involving child abuse and neglect; team membership; duties; reports; admissions.

(a) Within thirty days of the initiation of a judicial proceeding pursuant to part six, of this article, the Department of Health and Human Services shall convene a multidisciplinary treatment team to assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families. The multidisciplinary team shall obtain and utilize any assessments for the children or the adult respondents that it deems necessary to assist in the development of that plan.

(b) In a case initiated pursuant to part six of this article, the treatment team consists of:

(1) The child or family’s case manager in the Department of Health and Human Resources;

(2) The adult respondent or respondents;

(3) The child’s parent or parents, guardians, any copetitioners, custodial relatives of the child, foster or preadoptive parents;

(4) Any attorney representing an adult respondent or other member of the treatment team;

(5) The child’s counsel or the guardian ad litem;

(6) The prosecuting attorney or his or her designee;

(7) A member of a child advocacy center when the child has been processed through the child advocacy center program or
programs or it is otherwise appropriate that a member of the
child advocacy center participate;

(8) Any court-appointed special advocate assigned to a case;

(9) Any other person entitled to notice and the right to be
heard;

(10) An appropriate school official; and

(11) Any other person or agency representative who may
assist in providing recommendations for the particular needs of
the child and family, including domestic violence service
providers.

The child may participate in multidisciplinary treatment
meetings if the child’s participation is deemed appropriate
by the multidisciplinary treatment team. Unless otherwise
ordered by the court, a party whose parental rights have been
terminated and his or her attorney may not be given notice of a
multidisciplinary treatment team meeting and does not have the
right to participate in any treatment team meeting.

(c) Prior to disposition in each case which a treatment
planning team has been convened, the team shall advise the court
as to the types of services the team has determined are needed
and the type of placement, if any, which will best serve the needs
of the child. If the team determines that an out-of-home
placement will best serve the needs of the child, the team shall
first consider placement with appropriate relatives then with
foster care homes, facilities or programs located within the state.
The team may only recommend placement in an out-of-state
facility if it concludes, after considering the best interests and
overall needs of the child, that there are no available and suitable
in-state facilities which can satisfactorily meet the specific needs
of the child.
(d) The multidisciplinary treatment team shall submit written reports to the court as required by the rules governing this type of proceeding or by the court, and shall meet as often as deemed necessary but at least every three months until the case is dismissed from the docket of the court. The multidisciplinary treatment team shall be available for status conferences and hearings as required by the court.

(e) If a respondent or copetitioner admits the underlying allegations of child abuse or neglect, or both abuse and neglect, in the multidisciplinary treatment planning process, his or her statements may not be used in any subsequent criminal proceeding against him or her, except for perjury or false swearing.

*§49-4-406. Multidisciplinary treatment process for juvenile status offenders and delinquents; requirements; custody; procedure; reports; cooperation; inadmissability of certain statements.*

(a) When a juvenile is adjudicated as a status offender pursuant to section seven hundred eleven, of this article, the Department of Health and Human Resources shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile’s mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(b) When a juvenile is adjudicated as a delinquent or has been granted a preadjudicatory community supervision period

*NOTE: This section was also amended by S. B. 393 (Chapter 150) which passed subsequent to this Act.*
pursuant to section seven hundred eight of this article, the court, either upon its own motion or motion of a party, may require the Department of Health and Human Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile’s mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. A referral to the Department of Health and Human Resources to convene a multidisciplinary treatment team and to conduct an assessment shall be made when the court is considering placing the juvenile in the department’s custody or placing the juvenile out-of-home at the department’s expense pursuant to section seven hundred fourteen, of this article. In any delinquency proceeding in which the court requires the Department of Health and Human Resources to convene a multidisciplinary treatment team, the probation officer shall notify the department at least fifteen working days before the court proceeding in order to allow the department sufficient time to convene and develop an individualized service plan for the juvenile.

(c) When a juvenile has been adjudicated and committed to the custody of the Director of the Division of Juvenile Services, including those cases in which the juvenile has been committed for examination and diagnosis, the Division of Juvenile Services shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile’s mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile, which will be provided in writing to the court and team
members. In cases where the juvenile is committed as a post-sentence disposition to the custody of the Division of Juvenile Services, the plan shall be reviewed quarterly by the multidisciplinary treatment team. Where a juvenile has been detained in a facility operated by the Division of Juvenile Services without an active service plan for more than sixty days, the director of the facility may call a multidisciplinary team meeting to review the case and discuss the status of the service plan.

(d)(1) The rules of juvenile procedure govern the procedure for obtaining an assessment of a juvenile, preparing an individualized service plan and submitting the plan and assessment to the court.

(2) In juvenile proceedings conducted pursuant to part seven of this article, the treatment team consists of:

(A) The juvenile;

(B) The juvenile’s case manager in the Department of Health and Human Resources or the Division of Juvenile Services;

(C) The juvenile’s parent or parents, guardian or guardians or custodial relatives;

(D) The juvenile’s attorney;

(E) Any attorney representing a member of the treatment team;

(F) The prosecuting attorney or his or her designee;

(G) An appropriate school official; and

(H) Any other person or agency representative who may assist in providing recommendations for the particular needs of the juvenile and family, including domestic violence service
providers. In delinquency proceedings, the probation officer
shall be a member of a treatment team. When appropriate, the
juvenile case manager in the Department of Health and Human
Resources and the Division of Juvenile Services shall cooperate
in conducting multidisciplinary treatment team meetings when
it is in the juvenile’s best interest.

(3) Prior to disposition, in each case in which a treatment
planning team has been convened, the team shall advise the court
as to the types of services the team has determined are needed
and type of placement, if any, which will best serve the needs of
the child. If the team determines that an out-of-home placement
will best serve the needs of the child, the team shall first
consider placement at facilities or programs located within the
state. The team may only recommend placement in an
out-of-state facility if it concludes, after considering the best
interests and overall needs of the child, that there are no
available and suitable in-state facilities which can satisfactorily
meet the specific needs of the child.

(4) The multidisciplinary treatment team shall submit written
reports to the court as required by applicable law or by the court,
shall meet with the court at least every three months, as long as
the juvenile remains in the legal or physical custody of the state,
and shall be available for status conferences and hearings as
required by the court.

(5) In any case in which a juvenile has been placed out of his
or her home except for a temporary placement in a shelter or
detention center, the multidisciplinary treatment team shall
cooperate with the state agency in whose custody the juvenile is
placed to develop an after-care plan. The rules of juvenile
procedure and section four hundred nine of this article govern
the development of an after-care plan for a juvenile, the
submission of the plan to the court and any objection to the
after-care plan.
(6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant to part VII of this article, in the multidisciplinary treatment planning process, his or her statements may not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or false swearing.

§49-4-407. Team directors; records; case logs.

All persons directing any team created pursuant to this article shall maintain records of each meeting indicating the name and position of persons attending each meeting and the number of cases discussed at the meeting, including a designation of whether or not that case was previously discussed by any multidisciplinary team. Further, all investigative teams shall maintain a log of all cases to indicate the number of referrals to that team, whether or not a police report was filed with the prosecuting attorney’s office, whether or not a petition was sought pursuant to part six of this article or whether or not a criminal complaint was issued and a case was criminally prosecuted. All treatment teams shall maintain a log of all cases to indicate the basis for failure to review a case for a period in excess of six months.

§49-4-408. Unified child and family case plans; treatment teams; programs; agency requirements.

(a) The Department of Health and Human Resources shall develop a unified child and family case plan for every family wherein a person has been referred to the department after being allowed an improvement period or where the child is placed in foster care. The case plan must be filed within sixty days of the child coming into foster care or within thirty days of the inception of the improvement period, whichever occurs first. The department may also prepare a case plan for any person who voluntarily seeks child abuse and neglect services from the
department, or who is referred to the department by another public agency or private organization. The case plan provisions shall comply with federal law and the rules of procedure for child abuse and neglect proceedings.

(b) The department shall convene a multidisciplinary treatment team, which shall develop the case plan. Parents, guardians or custodians shall participate fully in the development of the case plan, and the child shall also fully participate if sufficiently mature and the child’s participation is otherwise appropriate. The case plan may be modified from time to time to allow for flexibility in goal development, and in each case the modifications shall be submitted to the court in writing. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time as reasonable efforts are being made to prevent removal or to make it possible for a child to return safely home. The court shall examine the proposed case plan or any modification thereof, and upon a finding by the court that the plan or modified plan can be easily communicated, explained and discussed so as to make the participants accountable and able to understand the reasons for any success or failure under the plan, the court shall inform the participants of the probable action of the court if goals are met or not met.

(c) In furtherance of the provisions of this article, the department shall, within the limits of available funds, establish programs and services for the following purposes:

(1) For the development and establishment of training programs for professional and paraprofessional personnel in the fields of medicine, law, education, social work and other relevant fields who are engaged in, or intend to work in, the field of the prevention, identification and treatment of child abuse and neglect; and training programs for children, and for persons responsible for the welfare of children, in methods of protecting children from child abuse and neglect;
(2) For the establishment and maintenance of centers, serving defined geographic areas, staffed by multidisciplinary teams and community teams of personnel trained in the prevention, identification and treatment of child abuse and neglect cases, to provide a broad range of services related to child abuse and neglect, including direct support as well as providing advice and consultation to individuals, agencies and organizations which request the services;

(3) For furnishing services of multidisciplinary teams and community teams, trained in the prevention, identification and treatment of child abuse and neglect cases, on a consulting basis to small communities where the services are not available;

(4) For other innovative programs and projects that show promise of successfully identifying, preventing or remedying the causes of child abuse and neglect, including, but not limited to, programs and services designed to improve and maintain parenting skills, programs and projects for parent self help, and for prevention and treatment of drug-related child abuse and neglect;

(5) Assisting public agencies or nonprofit private organizations or combinations thereof in making applications for grants from, or in entering into contracts with, the federal Secretary of the Department of Health and Human Services for demonstration programs and projects designed to identify, prevent and treat child abuse and neglect.

(d) Agencies, organizations and programs funded to carry out the purposes of this section shall be structured so as to comply with any applicable federal law, any regulation of the federal Department of Health and Human Services or its secretary, and any final comprehensive plan of the federal advisory board on child abuse and neglect. In funding organizations, the department shall, to the extent feasible, ensure
that parental organizations combating child abuse and neglect receive preferential treatment.

§49-4-409. After care plans; contents; written comments; contacts; objections; courts.

(a) Prior to the discharge of a child from any institution or facility to which the child was committed pursuant to this chapter, the superintendent of the institution or facility shall call a meeting of the multidisciplinary treatment team to which the child has been referred or, if no referral has been made, convene a multidisciplinary treatment team for any child for which a multidisciplinary treatment plan is required by this article and forward a copy of the child’s proposed after-care plan to the court which committed the child. A copy of the plan shall also be sent to: (1) The child’s parents or legal guardian; (2) the child’s lawyer; (3) the child’s probation officer or community mental health center professional; (4) the prosecuting attorney of the county in which the original commitment proceedings were held; and (5) the principal of the school which the child will attend. The plan shall have a list of the names and addresses of these persons attached to it.

(b) The after-care plan shall contain a detailed description of the education, counseling and treatment which the child received while at the institution or facility and it shall also propose a plan for education, counseling and treatment for the child upon the child’s discharge. The plan shall also contain a description of any problems the child has, including the source of those problems, and it shall propose a manner for addressing those problems upon discharge.

(c) Within twenty-one days of receiving the plan, the child’s probation officer or community mental health center professional shall contact the child and provide a copy of the plan to the child, and shall make a written record of the child’s reaction to the plan.

*NOTE: This section was also amended by S. B. 393 (Chapter 150) which passed subsequent to this Act.*
professional shall submit written comments upon the plan to the
court which committed the child. Any other person who received
a copy of the plan pursuant to subsection (a) of this section may
submit written comments upon the plan to the court which
committed the child. Any person who submits comments upon
the plan shall send a copy of those comments to every other
person who received a copy of the plan.

(d) Within twenty-one days of receiving the plan, the child’s
probation officer or community mental health center
professional shall contact all persons, organizations and agencies
which are to be involved in executing the plan to determine
whether they are capable of executing their responsibilities under
the plan and to further determine whether they are willing to
execute their responsibilities under the plan.

(e) If adverse comments or objections regarding the plan are
submitted to the circuit court, it shall, within forty-five days of
receiving the plan, hold a hearing to consider the plan and the
adverse comments or objections. Any person, organization or
agency which has responsibilities in executing the plan, or their
representatives, may be required to appear at the hearing unless
they are excused by the circuit court. Within five days of the
hearing, the circuit court shall issue an order which adopts the
plan as submitted or as modified in response to any comments or
objections.

(f) If no adverse comments or objections are submitted, a
hearing need not be held. In that case, the court shall consider
the plan as submitted and shall, within forty-five days of
receiving the plan, issue an order which adopts the plan as
submitted.

(g) Notwithstanding the provisions of subsections (e) and (f)
of this section, the plan which is adopted by the court shall be in
the best interests of the child and shall also be in conformity with
West Virginia’s interest in youths as embodied in this chapter.

(h) The court which committed the child shall appoint the
child’s probation officer or community mental health center
professional to act as supervisor of the plan. The supervisor shall
report the child’s progress under the plan to the court every sixty
days or until the court determines that no report or no further
care is necessary.

§49-4-410. Other agencies of government required to cooperate.

State, county and local agencies shall provide the
multidisciplinary teams with any information requested in
writing by the team as allowable by law or upon receipt of a
certified copy of the circuit court’s order directing the agencies
to release information in its possession relating to the child. The
team shall assure that all information received and developed in
connection with this article remain confidential. For purposes of
this section, the term “confidential” shall be construed in
accordance with article five of this chapter.

§49-4-411. Law enforcement; prosecution; interference with
performance of duties.

No multidisciplinary team may take any action which, in the
determination of the prosecuting attorney or his or her assistant,
impairs the ability of the prosecuting attorney, his or her
assistant, or any law-enforcement officer to perform his or her
statutory duties.

§49-4-412. Exemption from multidisciplinary team review before
emergency out-of-home placements.

Notwithstanding any provision of this article to the contrary,
a multidisciplinary team meeting may not be required before
temporary out-of-home placement of a child in an emergency
circumstance or for purposes of assessment as provided by this
article. As soon as practicable after the emergency circumstance, the multidisciplinary treatment team shall convene to explore placement options.

PART V. DUTIES OF THE PROSECUTING ATTORNEY.

§49-4-501. Prosecuting attorney representation of the Department of Health and Human Resources; conflict resolution.

(a) The prosecuting attorney shall render to the Department of Health and Human Resources, without additional compensation, the legal services as the department may require. This section shall not be construed to prohibit the department from developing plans for cooperation with courts, prosecuting attorneys, and other law-enforcement officials in a manner as to permit the state and its citizens to obtain maximum fiscal benefits under federal laws, rules and regulations.

(b) Nothing in this code may be construed to limit the authority of a prosecuting attorney to file an abuse or neglect petition, including the duties and responsibilities owed to its client the Department of Health and Human Resources, in his or her fulfillment of the provisions of this article.

(c) Whenever, pursuant to this chapter, a prosecuting attorney acts as counsel for the Department of Health and Human Resources, and a dispute arises between the prosecuting attorney and the department’s representative because an action proposed by the other is believed to place the child at imminent risk of abuse or serious neglect, either the prosecuting attorney or the department’s representative may contact the secretary of the department and the executive director of the West Virginia Prosecuting Attorneys Institute for prompt mediation and resolution. The secretary may designate either his or her general counsel or the director of social services to act as his or her designee and the executive director may designate an objective prosecuting attorney as his or her designee.
§49-4-502. Prosecuting attorney to represent and cooperate with persons other than the department in child abuse and neglect matters; duties.

It is the duty of every prosecuting attorney to fully and promptly cooperate with persons seeking to apply for relief, including co-petitioners with the department, under this article in all cases of suspected child abuse and neglect; to promptly prepare applications and petitions for relief requested by those persons, to investigate reported cases of suspected child abuse and neglect for possible criminal activity; and to report at least annually to the grand jury regarding the discharge of his or her duties with respect thereto.

§49-4-503. Prosecuting attorney to represent petitioner in juvenile cases.

The prosecuting attorney shall represent the petitioner in all proceedings under this article before the court judge or magistrate having juvenile jurisdiction.

§49-4-504. Prosecuting attorney duty to establish multidisciplinary investigative teams.

The prosecuting attorney of each county shall establish a multidisciplinary investigative team in that county, pursuant to section four hundred two of this article, and section five, article four of chapter seven.

PART VI. PROCEDURES IN CASES OF CHILD NEGLECT OR ABUSE.

§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

(a) Petitioner and venue. — If the department or a reputable person believes that a child is neglected or abused, the
department or the person may present a petition setting forth the
facts to the circuit court in the county in which the child resides,
or if the petition is being brought by the department, in the
county in which the custodial respondent or other named party
abuser resides, or in which the abuse or neglect occurred, or to
the judge of the court in vacation. Under no circumstance may
a party file a petition in more than one county based on the same
set of facts.

(b) Contents of Petition. — The petition shall be verified by
the oath of some credible person having knowledge of the facts.
The petition shall allege specific conduct including time and
place, how the conduct comes within the statutory definition of
neglect or abuse with references thereto, any supportive services
provided by the department to remedy the alleged circumstances
and the relief sought.

(c) Court action upon filing of petition. – Upon filing of the
petition, the court shall set a time and place for a hearing and
shall appoint counsel for the child. When there is an order for
temporary custody pursuant to this article, the preliminary
hearing shall be held within ten days of the order continuing or
transferring custody, unless a continuance for a reasonable time
is granted to a date certain, for good cause shown.

(d) Department action upon filing of the petition. — At the
time of the institution of any proceeding under this article, the
department shall provide supportive services in an effort to
remedy circumstances detrimental to a child.

(e) Notice of hearing. —

(1) The petition and notice of the hearing shall be served
upon both parents and any other custodian, giving to the parents
or custodian at least five days’ actual notice of a preliminary
hearing and at least ten days’ notice of any other hearing.
(2) Notice shall be given to the department, any foster or preadoptive parent, and any relative providing care for the child.

(3) In cases where personal service within West Virginia cannot be obtained after due diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall be mailed to the person by certified mail, addressee only, return receipt requested, to the last known address of the person. If the person signs the certificate, service shall be complete and the certificate shall be filed as proof of the service with the clerk of the circuit court.

(4) If service cannot be obtained by personal service or by certified mail, notice shall be by publication as a Class II legal advertisement in compliance with article three, chapter fifty-nine of this code.

(5) A notice of hearing shall specify the time and place of the hearing, the right to counsel of the child and parents or other custodians at every stage of the proceedings and the fact that the proceedings can result in the permanent termination of the parental rights.

(6) Failure to object to defects in the petition and notice may not be construed as a waiver.

(f) Right to counsel. —

(1) In any proceeding under this article, the child, his or her parents and his or her legally established custodian or other persons standing in loco parentis to him or her has the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed.

(2) Counsel shall be appointed in the initial order. For parents, legal guardians, and other persons standing in loco
(3) Counsel for other parties shall only be appointed upon request for appointment of counsel. If the requesting parties have not retained counsel and cannot pay for the services of counsel, the court shall, by order entered of record, appoint an attorney or attorneys to represent the other party or parties and so inform the parties.

(4) Under no circumstances may the same attorney represent both the child and the other party or parties, nor may the same attorney represent both parents or custodians. However, one attorney may represent both parents or custodians where both parents or guardians consent to this representation after the attorney fully discloses to the client the possible conflict and where the attorney assures the court that she or he is able to represent each client without impairing her or his professional judgment; however, if more than one child from a family is involved in the proceeding, one attorney may represent all the children.

(5) A parent who is a copetitioner is entitled to his or her own attorney. The court may allow to each attorney so appointed a fee in the same amount which appointed counsel can receive in felony cases.

(g) Continuing education for counsel. — Any attorney representing a party under this article shall receive a minimum of eight hours of continuing legal education training per reporting period on child abuse and neglect procedure and practice. In addition to this requirement, any attorney appointed to represent a child must first complete training on representation of children that is approved by the administrative office of the Supreme Court of Appeals. The Supreme Court of
Appeals shall develop procedures for approval and certification of training required under this section. Where no attorney has completed the training required by this subsection, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the parent or child. Any attorney appointed pursuant to this section shall perform all duties required of an attorney licensed to practice law in the State of West Virginia.

(h) Right to be heard. — In any proceeding pursuant to this article, the party or parties having custodial or other parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. Foster parents, preadoptive parents, and relative caregivers shall also have a meaningful opportunity to be heard.

(i) Findings of the court. — Where relevant, the court shall consider the efforts of the department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether the child is abused or neglected and whether the respondent is abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence.

(j) Priority of proceedings. — Any petition filed and any proceeding held under this article shall, to the extent practicable, be given priority over any other civil action before the court, except proceedings under section three hundred nine, article twenty-seven, chapter forty-eight of this code and actions in which trial is in progress. Any petition filed under this article shall be docketed immediately upon filing. Any hearing to be
held at the end of an improvement period and any other hearing
to be held during any proceedings under this article shall be held
as nearly as practicable on successive days and, with respect to
the hearing to be held at the end of an improvement period, shall
be held as close in time as possible after the end of the
improvement period and shall be held within thirty days of the
termination of the improvement period.

(k) Procedural safeguards.—The petition may not be taken
as confessed. A transcript or recording shall be made of all
proceedings unless waived by all parties to the proceeding. The
rules of evidence shall apply. Following the court’s
determination, it shall be inquired of the parents or custodians
whether or not appeal is desired and the response transcribed. A
negative response may not be construed as a waiver. The
evidence shall be transcribed and made available to the parties
or their counsel as soon as practicable, if the same is required for
purposes of further proceedings. If an indigent person intends to
pursue further proceedings, the court reporter shall furnish a
transcript of the hearing without cost to the indigent person if an
affidavit is filed stating that he or she cannot pay therefor.

§49-4-602. Petition to court when child believed neglected or
abused; temporary care, custody, and control of
child at different stages of proceeding; temporary
care; orders; emergency removal; when reasonable
efforts to preserve family are unnecessary.

(a) (1) Temporary care, custody, and control upon filing of
the petition. — Upon the filing of a petition, the court may order
that the child alleged to be an abused or neglected child be
delivered for not more than ten days into the care, custody, and
control of the department or a responsible person who is not the
custodial parent or guardian of the child, if it finds that:
(A) There exists imminent danger to the physical well-being of the child; and

(B) There are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child’s present custody.

(2) Where the alleged abusing person, if known, is a member of a household, the court shall not allow placement pursuant to this section of the child or children in the home unless the alleged abusing person is or has been precluded from visiting or residing in the home by judicial order.

(3) In a case where there is more than one child in the home, or in the temporary care, custody or control of the alleged offending parent, the petition shall so state. Notwithstanding the fact that the allegations of abuse or neglect may pertain to less than all of those children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were not directed against a specific child who is named in the petition, the court shall order the removal of the child, pending final disposition, if it finds that there exists imminent danger to the physical well-being of the child and a lack of reasonable available alternatives to removal.

(4) The initial order directing custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of care, custody, and control of the child or children to the department or a responsible relative, which may include any parent, guardian, or other custodian. The court order shall state:

(A) That continuation in the home is contrary to the best interests of the child and why; and
(B) Whether or not the department made reasonable efforts to preserve the family and prevent the placement or that the emergency situation made those efforts unreasonable or impossible. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.

(b) Temporary care, custody and control at preliminary hearing. — Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days’ actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary care, custody, and control of the department or a responsible person or agency found by the court to be a fit and proper person for the temporary care of the child for a period not exceeding sixty days. The court order shall state:

(1) That continuation in the home is contrary to the best interests of the child and set forth the reasons therefor;

(2) Whether or not the department made reasonable efforts to preserve the family and to prevent the child’s removal from his or her home;

(3) Whether or not the department made reasonable efforts to preserve the family and to prevent the placement or that the emergency situation made those efforts unreasonable or impossible;

(4) Whether or not the department made reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq., to parents
with disabilities in order to allow them meaningful access to
reunification and family preservation services; and

(5) What efforts should be made by the department, if any,
to facilitate the child’s return home. If the court grants an
improvement period as provided in section six hundred ten of
this article, the sixty-day limit upon temporary custody is
waived.

(c) Emergency removal by department during pendency of
case. — Regardless of whether the court has previously granted
the department care and custody of a child, if the department
takes physical custody of a child during the pendency of a child
abuse and neglect case (also known as removing the child) due
to a change in circumstances and without a court order issued at
the time of the removal, the department must immediately notify
the court and a hearing shall take place within ten days to
determine if there is imminent danger to the physical well-being
of the child, and there is no reasonably available alternative to
removal of the child. The court findings and order shall be
consistent with subsections (a) and (b) of this section.

(d) Situations when reasonable efforts to preserve the family
are not required. — For purposes of the court’s consideration of
temporary custody pursuant to subsection (a), (b), or (c) of this
section, the department is not required to make reasonable
efforts to preserve the family if the court determines:

(1) The parent has subjected the child, another child of the
parent or any other child residing in the same household or under
the temporary or permanent custody of the parent to aggravated
circumstances which include, but are not limited to,
abandonment, torture, chronic abuse and sexual abuse;

(2) The parent has:

(A) Committed murder of 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;

(B) Committed voluntary manslaughter of 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;

(C) Attempted or conspired to commit murder or voluntary manslaughter or been an accessory before or after the fact to either crime;

(D) Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child’s other parent, guardian or custodian, to another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(E) 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

(F) Has been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature and circumstances surrounding the prior charges against that parent, that the child’s interests would not be promoted by a preservation of the family; or

(3) The parental rights of the parent to another child have been terminated involuntarily.

§49-4-603. Medical and mental examinations; limitation of evidence; probable cause; testimony; judge or referee.

(a)(1) At any time during proceedings under this article the court may, upon its own motion or upon motion of the child or other parties, order the child or other parties to be examined by
a physician, psychologist or psychiatrist, and may require
testimony from the expert, subject to cross-examination and the
rules of evidence.

(2) The court may not terminate parental or custodial rights
of a party solely because the party refuses to submit to the
examination, nor may the court hold a party in contempt for
refusing to submit to an examination.

(3) The physician, psychologist or psychiatrist shall be
allowed to testify as to the conclusions reached from hospital,
medical, psychological or laboratory records provided the same
are produced at the hearing.

(4) If the child, parent or custodian is indigent, the witnesses
shall be compensated out of the Treasury of the State, upon
certificate of the court wherein the case is pending.

(5) No evidence acquired as a result of an examination of the
parent or any other person having custody of the child may be
used against the person in any subsequent criminal proceedings
against the person.

(b) (1) If a person with authority to file a petition under this
article shall have probable cause to believe that evidence exists
that a child has been abused or neglected and that the evidence
may be found by a medical examination, the person may apply
to a judge or juvenile referee for an order to take the child into
custody for delivery to a physician or hospital for examination.

(2) The application may be on forms prescribed by the
Supreme Court of Appeals or prepared by the prosecuting
attorney or the applicant, and shall set forth facts from which it
may be determined that probable cause exists for the belief.

(3) Upon sworn testimony or other evidence as the judge or
referee deems sufficient, the judge or referee may order any
law-enforcement officer to take the child into custody and
deliver the child to a physician or hospital for examination.

(4) If a referee issues an order the referee shall by telephonic
communication have such order orally confirmed by a circuit
judge of the circuit or an adjoining circuit who shall, on the next
judicial day, enter an order of confirmation.

(5) Any child protection worker and the child’s parents,
guardians or custodians may accompany the officer for
examination.

(6) After the examination the officer may return the child to
the custody of his or her parent, guardian or custodian, retain
custody of the child or deliver custody to the state department
until the end of the next judicial day, at which time the child
shall be returned to the custody of his or her parent, guardian or
custodian unless a petition has been filed and custody of the
child has been transferred to the department under section six
hundred two of this article.

§49-4-604. Disposition of neglected or abused children; case plans;
dispositions; factors to be considered; reunification;
orders; alternative dispositions.

(a) Child and family case plans. — Following a
determination pursuant to section six hundred two of this article
wherein the court finds a child to be abused or neglected, the
department shall file with the court a copy of the child’s case
plan, including the permanency plan for the child. The term
“case plan” means a written document that includes, where
applicable, the requirements of the family case plan as provided
in section four hundred eight of this article and that also
includes, at a minimum, the following:

(1) A description of the type of home or institution in which
the child is to be placed, including a discussion of the
appropriate placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions that made the child unsafe in the care of his or her parent(s), including any reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(2) A plan to facilitate the return of the child to his or her own home or the concurrent permanent placement of the child; and address the needs of the child while in relative or foster care, including a discussion of the appropriateness of the services that have been provided to the child.

The term “permanency plan” refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian should be made at the same time, or concurrent with, reasonable efforts to prevent removal or to make it possible for a child to return to the care of his or her parent(s) safely. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative, concurrent permanent placement plans for the child to include approximate time lines for when the placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child’s case plan shall be sent to the child’s attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard.
(b) Disposition decisions. — The court shall give precedence to dispositions in the following sequence:

1. Dismiss the petition;
2. Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;
3. Return the child to his or her own home under supervision of the department;
4. Order terms of supervision calculated to assist the child and any abusing parent or battered parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;
5. Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child’s needs, commit the child temporarily to the care, custody, and control of the state department, a licensed private child welfare agency, or a suitable person who may be appointed guardian by the court. The court order shall state:
   A. That continuation in the home is contrary to the best interests of the child and why;
   B. Whether or not the department has made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent or eliminate the need for removing the child from the child’s home and to make it possible for the child to safely return home;
   C. Whether the department has made reasonable accommodations in accordance with the Americans with
Disabilities Act of 1990, 42 U.S.C. §12101 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(D) What efforts were made or that the emergency situation made those efforts unreasonable or impossible; and

(E) The specific circumstances of the situation which made those efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child’s commitment to the department are to continue. Considerations pertinent to the determination include whether the child should:

(i) Be considered for legal guardianship;

(ii) Be considered for permanent placement with a fit and willing relative; or

(iii) Be placed in another planned permanent living arrangement, but only in cases where the child has attained 16 years of age and the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with part eight of this article; and

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the
department or a licensed child welfare agency. The court may award sole custody of the child to a nonabusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors:

(A) The child’s need for continuity of care and caretakers;

(B) The amount of time required for the child to be integrated into a stable and permanent home environment; and

(C) Other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state:

(i) That continuation in the home is not in the best interest of the child and why;

(ii) Why reunification is not in the best interests of the child;

(iii) Whether or not the department made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child’s home and to make it possible for the child to safely return home, or that the emergency situation made those efforts unreasonable or impossible; and

(iv) Whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof,
including a description of what efforts were made or that those efforts were unreasonable due to specific circumstances.

(7) For purposes of the court’s consideration of the disposition custody of a child pursuant to this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(B) The parent has:

(i) Committed murder of 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;

(ii) Committed voluntary manslaughter of 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;

(iii) Attempted or conspired to commit murder or voluntary manslaughter or been an accessory before or after the fact to either crime;

(iv) Committed a felonious assault that results in serious bodily injury to the child, the child’s other parent, guardian or custodian, to 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

(v) 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;

(C) The parental rights of the parent to another child have
been terminated involuntarily;

(D) A parent has been required by state or federal law to
register with a sex offender registry, and the court has
determined in consideration of the nature and circumstances
surrounding the prior charges against that parent, that the child’s
interests would not be promoted by a preservation of the family.

(c) As used in this section, “no reasonable likelihood that
conditions of neglect or abuse can be substantially corrected”
means that, based upon the evidence before the court, the
abusing adult or adults have demonstrated an inadequate
capacity to solve the problems of abuse or neglect on their own
or with help. Those conditions exist in the following
circumstances, which are not exclusive:

(1) The abusing parent or parents have habitually abused or
are addicted to alcohol, controlled substances or drugs, to the
extent that proper parenting skills have been seriously impaired
and the person or persons have not responded to or followed
through the recommended and appropriate treatment which
could have improved the capacity for adequate parental
functioning;

(2) The abusing parent or parents have willfully refused or
are presently unwilling to cooperate in the development of a
reasonable family case plan designed to lead to the child’s return
to their care, custody and control;

(3) The abusing parent or parents have not responded to or
followed through with a reasonable family case plan or other
rehabilitative efforts of social, medical, mental health or other
rehabilitative agencies designed to reduce or prevent the abuse
or neglect of the child, as evidenced by the continuation or
insubstantial diminution of conditions which threatened the
health, welfare or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or
seriously injured the child physically or emotionally, or have
sexually abused or sexually exploited the child, and the degree
of family stress and the potential for further abuse and neglect
are so great as to preclude the use of resources to mitigate or
resolve family problems or assist the abusing parent or parents
in fulfilling their responsibilities to the child;

(6) The battered parent’s parenting skills have been seriously
impaired and the person has willfully refused or is presently
unwilling or unable to cooperate in the development of a
reasonable treatment plan or has not adequately responded to or
followed through with the recommended and appropriate
treatment plan.

(d) The court may, as an alternative disposition, allow the
parents or custodians an improvement period not to exceed six
months. During this period the court shall require the parent to
rectify the conditions upon which the determination was based.
The court may order the child to be placed with the parents, or
any person found to be a fit and proper person, for the temporary
care of the child during the period. At the end of the period, the
court shall hold a hearing to determine whether the conditions
have been adequately improved and at the conclusion of the
hearing shall make a further dispositional order in accordance
with this section.

§49-4-605. When department efforts to terminate parental rights
are required.

(a) Except as provided in subsection (b) of this section, 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 fifteen of the most recent twenty-two 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 sixty 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; or

(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; or the parental rights of the parent to another child have been terminated involuntarily.

(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.

§49-4-606. Modification of dispositional orders; hearings;
treatment team; unadopted children.

(a) Upon motion of a child, a child’s parent or custodian or
the department alleging a change of circumstances requiring a
different disposition, the court shall conduct a hearing pursuant
to section six hundred four of this article and may modify a
dispositional order if the court finds by clear and convincing
evidence a material change of circumstances and that the
modification is in the child’s best interests. A dispositional order
may not be modified after the child has been adopted, except as
provided in subsections (b) and (c) of this section. Adequate and
timely notice of any motion for modification shall be given to
the child’s counsel, counsel for the child’s parent or custodian,
the department and any person entitled to notice and the right to
be heard. The circuit court of origin has exclusive jurisdiction
over placement of the child, and the placement may not be
disrupted or delayed by any administrative process of the
department.

(b) If the child is removed or relinquished from an adoptive
home or other permanent placement after the case has been
dismissed, any party with notice thereof and the receiving
agency shall promptly report the matter to the circuit court of
origin, the department and the child’s counsel, and the court
shall schedule a permanency hearing within sixty days of the
report to the circuit court, with notice given to any appropriate
parties and persons entitled to notice and the right to be heard.
The department shall convene a multidisciplinary treatment team
meeting within thirty days of the receipt of notice of permanent
placement disruption.

(c) If a child has not been adopted, the child or department
may move the court to place the child with a parent or custodian
whose rights have been terminated and/or restore the parent’s or
guardian’s rights. Under these circumstances, the court may
order the placement and/or restoration of a parent’s or guardian’s
rights if it finds by clear and convincing evidence a material
change of circumstances and that the placement and/or
restoration is in the child’s best interests.

§49-4-607. Consensual termination of parental rights.

An agreement of a natural parent in termination of parental
rights are valid if made by a duly acknowledged writing, and
entered into under circumstances free from duress and fraud.
Where during the pendency of an abuse and neglect proceeding,
a parent offers voluntarily relinquish of his or her parental rights,
and the relinquishment is accepted by the circuit court, the
relinquishment may, without further evidence, be used as the
basis of an order of adjudication of abuse and neglect by that
parent of his or her children.

§49-4-608. Permanency hearing; frequency; transitional planning;
out-of-state placements; findings; notice; permanent
placement review.

(a) Permanency hearing when reasonable efforts are not
required. — If the court finds, pursuant to this article, that the
department is not required to make reasonable efforts to preserve
the family, then, notwithstanding any other provision, a
permanency hearing must be held within thirty days following
the entry of the court order so finding, and a permanent
placement review hearing must be conducted at least once every
ninety days thereafter until a permanent placement is achieved.

(b) Permanency hearing every twelve months until
permanency is achieved. — If, twelve months after receipt by the
department or its authorized agent of physical care, custody, and
control of a child either by a court-ordered placement or by a
voluntary agreement, the department has not placed a child in an adoptive home; placed the child with a natural parent, placed the child in legal guardianship, or permanently placed the child with a fit and willing relative, the court shall hold a permanency hearing. The department shall file a progress report with the court detailing the efforts that have been made to place the child in a permanent home and copies of the child’s case plan, including the permanency plan as defined in section two hundred one, article one, and section six hundred four, article four of this chapter. Copies of the report shall be sent to the parties and all persons entitled to notice and the right to be heard. The court shall schedule a hearing, giving notice and the right to be present to the child’s attorney; the child; the child’s parents; the child’s guardians; the child’s foster parents; any preadoptive parent or any relative providing care for the child; any person entitled to notice and the right to be heard; and other persons as the court may, in its discretion, direct. The child’s presence may be waived by the child’s attorney at the request of the child or if the child is younger than twelve years and would suffer emotional harm. The purpose of the hearing is to review the child’s case, to determine whether and under what conditions the child’s commitment to the department shall continue, to determine what efforts are necessary to provide the child with a permanent home, and to determine if the department has made reasonable efforts to finalize the permanency plan. The court shall conduct another permanency hearing within twelve months thereafter for each child who remains in the care, custody, and control of the department until the child is placed in an adoptive home, returned to his or her parents, placed in legal guardianship, or permanently placed with a fit and willing relative.

(c) Transitional planning for older children. — In the case of a child who has attained sixteen years of age, the court shall determine the services needed to assist the child to make the transition from foster care to independent living. The child’s case plan should specify services aimed at transitioning the child
into adulthood. When a child turns seventeen, or as soon as a child aged seventeen comes into a case, the department must immediately provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child. The plan must include specific options on housing, health insurance, education, local opportunities for mentors, continuing support services, work force support, and employment services, and the plan should be as detailed as the child may elect. In addition to these requirements, when a child with special needs turns seventeen, or as soon as a child aged seventeen with special needs comes into a case, he or she is entitled to the appointment of a department adult services worker to the multidisciplinary treatment team and coordination between the multidisciplinary treatment team and other transition planning teams, such as special education individualized education planning (IEP) teams.

(d) Out-of-state placements. – In any case in which the court decides to order the child placed in an out-of-state facility or program it shall set forth in the order directing the placement the reasons why the child was not placed in an in-state facility or program. If the child is to be placed with a relative or other responsible person out of state, the court shall use judicial leadership to help expedite the process under the Interstate Compact for the Placement of Children provided in part one, article seven of this chapter and the Uniform Child Custody Jurisdiction and Enforcement Act provided in article twenty, chapter forty-eight of this code.

(e) Findings in order. – At the conclusion of the hearing the court shall, in accordance with the best interests of the child, enter an order containing all the appropriate findings. The court order shall state:

1. Whether or not the department made reasonable efforts to preserve the family and to prevent out-of-home placement or that the specific situation made the effort unreasonable;
(2) Whether or not the department made reasonable efforts to finalize the permanency plan and concurrent plan for the child;

(3) The appropriateness of the child’s current placement, including its distance from the child’s home and whether or not it is the least restrictive one (most family-like one) available;

(4) The appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;

(5) Services required to meet the child’s needs and achieve permanency; and

(6) In addition, in the case of any child for whom another planned permanent living arrangement is the permanency plan, the court shall (A) inquire of the child about the desired permanency outcome for the child; (B) make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child; and, (C) provide in the court order compelling reasons why it continues to not be in the best interest of the child to (i) return home, (ii) be placed for adoption, (iii) be placed with a legal guardian, or (iv) be placed with a fit and willing relative.

(f) The department shall annually report to the court the current status of the placements of children in the care, custody and control of the state department who have not been adopted.

(g) The department shall file a report with the court in any case where any child in the custody of the state receives more than three placements in one year no later than thirty days after the third placement. This report shall be provided to all parties and persons entitled to notice and the right to be heard. Upon motion by any party, the court shall review these placements and
determine what efforts are necessary to provide the child with a permanent home. No report may be provided to any parent or parent’s attorney whose parental rights have been terminated pursuant to this article.

(h) The department shall give actual notice, in writing, to the court, the child, the child’s attorney, the parents and the parents’ attorney at least forty-eight hours prior to the move if this is a planned move, or within forty-eight hours of the next business day after the move if the child is in imminent danger in the child’s current placement, except where the notification would endanger the child or the foster family. A multidisciplinary treatment team shall convene as soon as practicable after notice to explore placement options. This requirement is not waived by placement of the child in a home or other residence maintained by a private provider. No notice may be provided pursuant to this provision to any parent or parent’s attorney whose parental rights have been terminated pursuant to this article.

(i) Nothing in this article precludes any party from petitioning the court for review of the child’s case at any time. The court shall grant the petition upon a showing that there is a change in circumstance or needs of the child that warrants court review.

(j) Any foster parent, preadoptive parent or relative providing care for the child shall be given notice of and the right to be heard at the permanency hearing provided in this section.

§49-4-609. Conviction for offenses against children.

In any case where a person is convicted of an offense against a child described in section twelve, article eight, chapter sixty-one of this code or articles eight-b or eight-d of that chapter and the person has custodial, visitation or other parental rights to the child who is the victim of the offense or to 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 this chapter 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 the court shall take further steps as are required by this article.

§49-4-610. Improvement periods in cases of child neglect or abuse; findings; orders; extensions; hearings; time limits.

In any proceeding brought pursuant to this article, the court may grant any respondent an improvement period in accord with this article. During the period, the court may require temporary custody with a responsible person which has been found to be a fit and proper person for the temporary custody of the child or children or the state department or other agency during the improvement period. An order granting an improvement period shall require the department to prepare and submit to the court a family case plan in accordance with section four hundred eight, of this article. The types of improvement periods are as follows:

(1) Preadjudicatory improvement period. — A court may grant a respondent an improvement period of a period not to exceed three months prior to making a finding that a child is abused or neglected pursuant to section six hundred one of this article only when:

(A) The respondent files a written motion requesting the improvement period;

(B) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(C) In the order granting the improvement period, the court:
(i) Orders that a hearing be held to review the matter within sixty days of the granting of the improvement period; or

(ii) Orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondents progress in the improvement period within sixty days of the order granting the improvement period; and

(D) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with section four hundred eight of this article;

(2) *Post-adjudicatory improvement period.* — After finding that a child is an abused or neglected child pursuant to section six hundred one of this article, a court may grant a respondent an improvement period of a period not to exceed six months when:

(A) The respondent files a written motion requesting the improvement period;

(B) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(C) In the order granting the improvement period, the court:

(i) Orders that a hearing be held to review the matter within thirty days of the granting of the improvement period; or

(ii) Orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondent’s progress in the improvement period within sixty days of the order granting the improvement period;
(D) Since the initiation of the proceeding, the respondent has not previously been granted any improvement period or the respondent demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances. Further, the respondent shall demonstrate that due to that change in circumstances the respondent is likely to fully participate in a further improvement period; and

(E) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with section four hundred eight of this article.

(3) Post-dispositional improvement period. – The court may grant an improvement period not to exceed six months as a disposition pursuant to section six hundred four of this article when:

(A) The respondent moves in writing for the improvement period;

(B) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(C) In the order granting the improvement period, the court:

(i) Orders that a hearing be held to review the matter within sixty days of the granting of the improvement period; or

(ii) Orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondent’s progress in the improvement period within sixty days of the order granting the improvement period;
(D) Since the initiation of the proceeding, the respondent has not previously been granted any improvement period or the respondent demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances. Further, the respondent shall demonstrate that due to that change in circumstances, the respondent is likely to fully participate in the improvement period; and

(E) The order granting the improvement period shall require the department to prepare and submit to the court an individualized family case plan in accordance with section four hundred eight of this article.

(4) Responsibilities of the respondent receiving improvement period. —

(A) When any improvement period is granted to a respondent pursuant to this section, the respondent shall be responsible for the initiation and completion of all terms of the improvement period. The court may order the state department to pay expenses associated with the services provided during the improvement period when the respondent has demonstrated that he or she is unable to bear the expenses.

(B) When any improvement period is granted to a respondent pursuant to this section, the respondent shall execute a release of all medical information regarding that respondent, including, but not limited to, information provided by mental health and substance abuse professionals and facilities. The release shall be accepted by a professional or facility regardless of whether the release conforms to any standard required by that facility.

(5) Responsibilities of the department during improvement period. — When any respondent is granted an improvement period pursuant to this article, the department shall monitor the
(6) Extension of improvement period. — A court may extend any improvement period granted pursuant to subdivision (2) or (3) of this section for a period not to exceed three months when the court finds that the respondent has substantially complied with the terms of the improvement period; that the continuation of the improvement period will not substantially impair the ability of the department to permanently place the child; and that the extension is otherwise consistent with the best interest of the child.

(7) Termination of improvement period. — Upon the motion by any party, the court shall terminate any improvement period granted pursuant to this section when the court finds that respondent has failed to fully participate in the terms of the improvement period or has satisfied the terms of the improvement period to correct any behavior alleged in the petition or amended petition to make his or her child unsafe.

(8) Hearings on improvement period. —

(A) Any hearing scheduled pursuant to this section may be continued only for good cause upon a written motion properly served on all parties. When a court grants a continuance, the court shall enter an order granting the continuance specifying a future date when the hearing will be held.

(B) Any hearing to be held at the end of an improvement period shall be held as nearly as practicable on successive days and shall be held as close in time as possible after the end of the improvement period and shall be held no later than thirty days of the termination of the improvement period.
(9) Time limit for improvement periods. — Notwithstanding any other provision of this section, no combination of any improvement periods or extensions thereto may cause a child to be in foster care more than fifteen months of the most recent twenty-two months, unless the court finds compelling circumstances by clear and convincing evidence that it is in the child’s best interests to extend the time limits contained in this paragraph.

PART VII. JUVENILE PROCEEDINGS.

§49-4-701. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; requirements; hearings; right to counsel; opportunity to be heard; evidence and transcripts.

(a) The circuit court has original jurisdiction of proceedings brought under this article. A person under the age of eighteen years who appears before the circuit court in proceedings under this article is a ward of the court and protected accordingly.

(b) If during a criminal proceeding in any court it is ascertained or appears that the defendant is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases which are originally instituted in the circuit court by petition.

(c) Notwithstanding any other provision of this article, magistrate courts have concurrent juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a violation of section nine, article six, chapter sixty, section three or section four, article nine-a, chapter sixteen, or section nineteen, article sixteen, chapter eleven of this code, or for any
violation of chapter twenty of this code. Juveniles are liable for
punishment for violations of these laws in the same manner as
adults except that magistrate courts have no jurisdiction to
impose a sentence of incarceration for the violation of these
laws.

(d) Notwithstanding any other provision of this article,
municipal courts have concurrent juvenile jurisdiction with the
circuit court for a violation of any municipal ordinance
regulating traffic, for any municipal curfew ordinance which is
enforceable or for any municipal ordinance regulating or
prohibiting public intoxication, drinking or possessing alcoholic
liquor or nonintoxicating beer in public places, any other act
prohibited by section nine, article six, chapter sixty or section
nineteen, article sixteen, chapter eleven of this code or underage
possession or use of tobacco or tobacco products, as provided in
article nine-a, chapter sixteen of this code. Municipal courts may
impose the same punishment for these violations as a circuit
court exercising its juvenile jurisdiction could properly impose,
except that municipal courts have no jurisdiction to impose a
sentence of incarceration for the violation of these laws.

(e) A juvenile may be brought before the circuit court for
proceedings under this article only by the following means:

(1) By a juvenile petition requesting that the juvenile be
adjudicated as a status offender or a juvenile delinquent; or

(2) By certification or transfer to the juvenile jurisdiction of
the circuit court from the criminal jurisdiction of the circuit
court, from any foreign court, or from any magistrate court or
municipal court in West Virginia.

(f) If a juvenile commits an act which would be a crime
if committed by an adult, and the juvenile is adjudicated
delinquent for that act, the jurisdiction of the court which
adjudged the juvenile delinquent continues until the juvenile
becomes twenty-one years of age. The court has the same power
over that person that it had before he or she became an adult, and
has the power to sentence that person to a term of incarceration.
Any term of incarceration may not exceed six months. This
authority does not preclude the court from exercising criminal
jurisdiction over that person if he or she violates the law after
becoming an adult or if the proceedings have been transferred to
the court’s criminal jurisdiction pursuant to section seven
hundred four of this article.

(2) If a juvenile is adjudicated as a status offender because
he or she is habitually absent from school without good cause,
the jurisdiction of the court which adjudged the juvenile a status
offender continues until either the juvenile becomes twenty-one
years of age, completes high school, completes a high school
equivalent or other education plan approved by the court, or the
court otherwise voluntarily relinquishes jurisdiction, whichever
occurs first. If the jurisdiction of the court is extended pursuant
to this subdivision, the court has the same power over that
person that it had before he or she became an adult. No person
so adjudicated who has attained the age of nineteen may be
ordered to attend school in a regular, nonalternative setting.

(g) A juvenile is entitled to be admitted to bail or
recognizance in the same manner as an adult and be afforded the
protection guaranteed by Article III of the West Virginia
Constitution.

(h) A juvenile has the right to be effectively represented by
counsel at all stages of proceedings under this article, including
participation in multidisciplinary team meetings, until the child
is no longer under the jurisdiction of the court. If the juvenile or
the juvenile’s parent or custodian executes an affidavit showing
that the juvenile cannot afford an attorney, the court shall
appoint an attorney, who shall be paid in accordance with article
twenty-one, chapter twenty-nine of this code.
84 (i)(1) In all proceedings under this article, the juvenile will be afforded a meaningful opportunity to be heard. This includes the opportunity to testify and to present and cross-examine witnesses. The general public shall be excluded from all proceedings under this article except that persons whose presence is requested by the parties and other persons whom the circuit court determines have a legitimate interest in the proceedings may attend.

(2) In cases in which a juvenile is accused of committing what would be a felony if the juvenile were an adult, an alleged victim or his or her representative may attend any related juvenile proceedings, at the discretion of the presiding judicial officer.

(3) In any case in which the alleged victim is a juvenile, he or she may be accompanied by his or her parents or representative, at the discretion of the presiding judicial officer.

(j) At all adjudicatory hearings held under this article, all procedural rights afforded to adults in criminal proceedings shall be afforded the juvenile unless specifically provided otherwise in this chapter.

(k) At all adjudicatory hearings held under this article, the rules of evidence applicable in criminal cases apply, including the rule against written reports based upon hearsay.

(l) Except for res gestae, extrajudicial statements made by a juvenile who has not attained fourteen years of age to law-enforcement officials or while in custody are not admissible unless those statements were made in the presence of the juvenile’s counsel. Except for res gestae, extrajudicial statements made by a juvenile who has not attained sixteen years of age but who is at least fourteen years of age to law-enforcement officers or while in custody, are not admissible unless made in the presence of the juvenile’s counsel or made in the presence of,
and with the consent of, the juvenile’s parent or custodian, and
the parent or custodian has been fully informed regarding the
juvenile’s right to a prompt detention hearing, the juvenile’s
right to counsel, including appointed counsel if the juvenile
cannot afford counsel, and the juvenile’s privilege against
self-incrimination.

(m) A transcript or recording shall be made of all transfer,
adjudicatory and dispositional hearings held in circuit court. At
the conclusion of each of these hearings, the circuit court shall
make findings of fact and conclusions of law, both of which shall
appear on the record. The court reporter shall furnish a transcript
of the proceedings at no charge to any indigent juvenile who
seeks review of any proceeding under this article if an affidavit
is filed stating that neither the juvenile nor the juvenile’s parents
or custodian have the ability to pay for the transcript.

*§49-4-702. Prepetition interventions; court referrals; probation
officers; giving of counsel.

(a) Before a juvenile petition is formally filed with the court,
the court may refer the matter to a state department worker or
probation officer for preliminary inquiry to determine whether
the matter can be resolved informally without the formal filing
of a petition with the court.

(b) The court at any time, or the department or other official
upon a request from a parent, guardian or custodian, may, before
proceedings under this article are formally instituted by the filing
of a petition with the court, refer a juvenile alleged to be
delinquent or a status offender to a counselor at the department
or a community mental health center, or other professional
counselor in the community. In the event the juvenile refuses to
respond to this referral, the department may serve a notice by
first class mail or personal service of process upon the juvenile,

* NOTE: This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.
setting forth the facts and stating that a noncustodial order will be sought from the court directing the juvenile to submit to counseling. The notice shall set forth the time and place for the hearing on the matter. The court after a hearing may direct the juvenile to participate in a noncustodial period of counseling that may not exceed six months. Upon recommendation of the department or request by the juvenile’s parent, custodian or guardian, the court may allow or require the parent, custodian or guardian to participate in this noncustodial counseling. No information obtained as the result of this counseling is admissible in a subsequent proceeding under this article.

(c) Before a petition is formally filed with the court, the probation officer or other officer of the court designated by it, subject to its direction, may give counsel and advice to the parties with a view to an informal adjustment period if it appears:

(1) The admitted facts bring the case within the jurisdiction of the court;

(2) Counsel and advice without an adjudication would be in the best interest of the public and the juvenile; and

(3) The juvenile and his or her parents, guardian or other custodian consent thereto with knowledge that consent is not obligatory.

(d) The giving of counsel and advice pursuant to this section may not continue longer than six months from the day it is commenced unless extended by the court for an additional period not to exceed six months.

§49-4-703. Juvenile drug courts; hearing officers.

Juvenile drug courts shall be designed and operated consistent with the developmental and rehabilitative needs of juveniles as defined in this article. The Supreme Court shall
provide uniform referral, procedure and order forms that shall be used in juvenile drug courts. The Supreme Court is further authorized to appoint appropriate hearing officers in those jurisdictions which choose to operate a juvenile drug court. Hearing officers for juvenile drug courts shall be limited to current or senior status circuit court judges or family court judges.

§49-4-704. Institution of proceedings by petition; notice to juvenile and parents; preliminary hearings; subpoena.

(a)(1) A petition alleging that a juvenile is a status offender or a juvenile delinquent may be filed by a person who has knowledge of or information concerning the facts alleged. The petition shall be verified by the petitioner, shall set forth the name and address of the juvenile’s parents, guardians or custodians, if known to the petitioner, and shall be filed in the circuit court in the county where the alleged status offense or act of delinquency occurred. However, a proceeding under this chapter may be removed, for good cause shown, in accordance with section one, article nine, chapter fifty-six of this code. The petition shall contain specific allegations of the conduct and facts upon which the petition is based, including the approximate time and place of the alleged conduct; a statement of the right to have counsel appointed and consult with counsel at every stage of the proceedings; and the relief sought.

(2) Upon the filing of the petition, the court shall set a time and place for a preliminary hearing and may appoint counsel. A copy of the petition and summons may be served upon the respondent juvenile by first class mail or personal service of process. If a juvenile does not appear in response to a summons served by mail, no further proceeding may be held until the juvenile is served a copy of the petition and summons by personal service of process. If a juvenile fails to appear in response to a summons served in person upon him or her, an order of arrest may be issued by the court for that reason alone.
(b) The parents, guardians or custodians shall be named in the petition as respondents and shall be served with notice of the proceedings in the same manner as provided in subsection (a) of this section for service upon the juvenile and required to appear with the juvenile at the time and place set for the proceedings unless the respondent cannot be found after diligent search. If a respondent cannot be found after diligent search, the court may proceed without further requirement of notice. However, the court may order service by first class mail to the last known address of the respondent. The respondent shall be afforded fifteen days after the date of mailing to appear or answer.

(c) The court or referee may order the issuance of a subpoena against the person having custody and control of the juvenile ordering him or her to bring the juvenile before the court.

(d) When any case of a juvenile charged with the commission of a crime is certified or transferred to the circuit court, the court shall forthwith cause the juvenile and his or her parents, guardians or custodians to be served with a petition as provided in subsections (a) and (b) of this section. In the event the juvenile is in custody, the petition shall be served upon the juvenile within ninety-six hours of the time custody began and if the petition is not served within that time, the juvenile shall be released forthwith.

(e) The clerk of the court shall notify, within two judicial days, the local office of the Department of Health and Human Resources of all proceedings under this article, which is responsible for convening and directing the multidisciplinary treatment planning process in accordance with section four hundred six of this article. In status offense or delinquency cases where a case manager has not been assigned, the juvenile probation officer is responsible for notifying the local office of the Department of Health and Human Services which will assign
§ 49-4-705. Taking a juvenile into custody; requirements; existing conditions; detention centers; medical aid.

(a) In proceedings formally instituted by the filing of a juvenile petition, the circuit court or a magistrate may issue an order directing that a juvenile be taken into custody before adjudication only upon a showing of probable cause to believe that one of the following conditions exists: (1) The petition shows that grounds exist for the arrest of an adult in identical circumstances; (2) the health, safety and welfare of the juvenile demand custody; (3) the juvenile is a fugitive from a lawful custody or commitment order of a juvenile court; or (4) the juvenile is alleged to be a juvenile delinquent with a record of willful failure to appear at juvenile proceedings and custody is necessary to assure his or her presence before the court. A detention hearing pursuant to section seven hundred six of this
article shall be held by the judge or magistrate authorized to conduct the hearings without unnecessary delay and in no event may any delay exceed the next day.

(b) Absent a court order, a juvenile may be taken into custody by a law-enforcement official only if one of the following conditions exists:

(1) Grounds exist for the arrest of an adult in identical circumstances;

(2) Emergency conditions exist which, in the judgment of the officer, pose imminent danger to the health, safety and welfare of the juvenile;

(3) The official has reasonable grounds to believe that the juvenile has left the care of his or her parents, guardian or custodian without the consent of the person and the health, safety and welfare of the juvenile is endangered;

(4) The juvenile is a fugitive from a lawful custody or commitment order of a juvenile court;

(5) The official has reasonable grounds to believe the juvenile to have been driving a motor vehicle with any amount of alcohol in his or her blood; or

(6) The juvenile is the named respondent in an emergency domestic violence protective order issued pursuant to section four hundred three, article twenty-seven, chapter forty-eight of this code and the individual filing the petition for the emergency protective order is the juvenile’s parent, guardian or custodian or other person with whom the juvenile resides.

(c) Upon taking a juvenile into custody, with or without a court order, the official shall:
(1) Immediately notify the juvenile’s parent, guardian, custodian or, if the parent, guardian or custodian cannot be located, a close relative;

(2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

(A) Circumstances present an immediate threat of serious bodily harm to the juvenile if released;

(B) No responsible adult can be found into whose custody the juvenile can be delivered. Each day the juvenile is detained, a written record must be made of all attempts to locate a responsible adult; or

(C) The juvenile has been taken into custody for an alleged act of delinquency for which secure detention is permissible.

(3) If the juvenile is an alleged status offender or has been taken into custody pursuant to subdivision (6), subsection (b) of this section, immediately notify the Department of Health and Human Resources and, if the circumstances of either paragraph (A) or (B), subdivision (2) of this subsection exist and the requirements therein are met, the official may detain the juvenile, but only in a nonsecure or staff-secure facility;

(4) Take the juvenile without unnecessary delay before a judge of the circuit court for a detention hearing pursuant to section seven hundred six of this article. If a circuit court judge is not available in the county, the official shall take the juvenile without unnecessary delay before any magistrate available in the county for the sole purpose of conducting the detention hearing. In no event may any delay in presenting the juvenile for a detention hearing exceed the next day after he or she is taken into custody.

(d) In the event that a juvenile is delivered into the custody of a sheriff or director of a detention facility, the sheriff or
director shall immediately notify the sheriff or director shall
immediately provide to every juvenile who is delivered into his
or her custody a written statement explaining the juvenile’s right
to a prompt detention hearing, his or her right to counsel,
including appointed counsel if he or she cannot afford counsel,
and his or her privilege against self-incrimination. In all cases
when a juvenile is delivered into a sheriff’s or detention center
director’s custody, that official shall release the juvenile to his or
her parent, guardian or custodian by the end of the next day
unless the juvenile has been placed in detention after a hearing
carried out pursuant to section seven hundred six of this article.

(e) The law-enforcement agency that takes a juvenile into
custody or places a juvenile under arrest is responsible for the
juvenile’s initial transportation to a juvenile detention center or
other Division of Juvenile Services’ residential facility.

(f) Notwithstanding any other provision of this code, a
juvenile detention center, or other Division of Juvenile Services’
residential facility, is not required to accept a juvenile if the
juvenile appears to be in need of medical attention of a degree
necessitating treatment by a physician. If a juvenile is refused
pursuant to this subsection, the juvenile detention center, or other
Division of Juvenile Services’ residential facility, may not
subsequently accept the juvenile for detention until the arresting
or transporting officer provides the juvenile detention center, or
other Division of Juvenile Services’ residential facility, with a
written clearance from a licensed physician reflecting that the
juvenile has been examined and, if necessary, treated and which
states that in the physician’s medical opinion the juvenile can be
safely confined in the juvenile detention center or other Division
of Juvenile Services’ residential facility.

§49-4-706. Detention hearing; rights of juvenile; notification;
counsel; hearings.

(a) The circuit court judge or magistrate shall inform the
juvenile of his or her right to remain silent, that any statement
may be used against him or her and of his or her right to counsel, and no interrogation may be made without the presence of a parent or counsel. If the juvenile or his or her parent, guardian or custodian has not retained counsel, counsel shall be appointed as soon as practicable. The circuit court judge or magistrate shall hear testimony concerning the circumstances for taking the juvenile into custody and the possible need for detention. The sole mandatory issue at the detention hearing is whether the juvenile should be detained pending further court proceedings. The court shall, if the health, safety and welfare of the juvenile will not be endangered thereby, release the juvenile on recognizance to his or her parents, custodians or an appropriate agency; however, if warranted, the court may require bail, except that bail may be denied in any case where bail could be denied if the accused were an adult. The court shall:

(1) Immediately notify the juvenile’s parent, guardian or custodian or, if the parent, guardian or custodian cannot be located, a close relative;

(2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

(A) Circumstances present an immediate threat of serious bodily harm to the juvenile if released;

(B) No responsible adult can be found into whose custody the juvenile can be delivered. However, each day the juvenile is detained, a written record must be made of all attempts to locate a responsible adult; or

(C) The juvenile is charged with an act of delinquency for which secure detention is permissible; and

(3) If the juvenile is an alleged status offender, immediately notify the Department of Health and Human Resources, and, if the circumstances of either paragraph (A) or (B), subdivision (2)
of this subsection exist and the requirements therein are met, the court may order the juvenile detained, but only in a nonsecure or staff-secure facility. Any juvenile detained pursuant to this subdivision shall be placed in the legal custody of the Department of Health and Human Resources pending further proceedings by the court.

(b) The circuit court judge or magistrate may, in conjunction with the detention hearing, conduct a preliminary hearing pursuant to section seven hundred and four of this article if all the parties are prepared to proceed and the juvenile has counsel during the hearing.

§49-4-707. Review of order following detention hearing.

Upon the application of any person in interest or on his or her own motion, a circuit court judge may modify or vacate any order entered in his or her court after a detention hearing and enter the order as to detention, or release from detention, as he or she deems just and proper.

§49-4-708. Preliminary hearing; counsel; custody; court requirements; preadjudicatory community supervision period.

(a) Following the filing of a juvenile petition, unless a preliminary hearing has previously been held in conjunction with a detention hearing with respect to the same charge contained in the petition, the circuit court judge or magistrate shall hold a preliminary hearing. In the event that the juvenile is being detained, the hearing shall be held within ten days of the time the juvenile is placed in detention unless good cause is shown for a continuance. If no preliminary hearing is held within ten days of the time the juvenile is placed in detention, the juvenile shall be released on recognizance unless the hearing has been continued for good cause. If the judge is in another county in the circuit,
the hearing may be conducted in that other county or by video conferencing. Written notice shall be provided to all parties of the availability to participate by videoconferencing. The preliminary hearing may be waived by the juvenile, upon advice of counsel. At the hearing, the circuit court judge or magistrate shall:

(1) If the juvenile is not represented by counsel, inform the juvenile and his or her parents, guardian or custodian or any other person standing in loco parentis to him or her of the juvenile’s right to be represented at all stages of proceedings under this article and the right to have counsel appointed;

(2) Appoint counsel by order entered of record, if counsel has not already been retained, or appointed. Counsel must represent the child until he or she is no longer under the jurisdiction of the court;

(3) Determine after hearing if there is probable cause to believe that the juvenile is a status offender or a juvenile delinquent. If probable cause is not found, the juvenile, if in detention, shall be released and the proceedings dismissed. If probable cause is found, the case shall proceed to adjudication. At this hearing or as soon thereafter as is practicable, the date for the adjudicatory hearing shall be set to give the juvenile and the juvenile’s parents and attorney at least ten days’ notice unless notice is waived by all parties;

(4) In lieu of placing the juvenile in a detention facility, the court may place the juvenile in the temporary legal and/or physical custody of the department. If the juvenile is detained, the detention may not continue longer than thirty days without commencement of the adjudicatory hearing unless good cause for a continuance is shown by either party or, if a jury trial is demanded, no longer than the next regular term of the court. A juvenile who is alleged to be a status offender may not be placed in a secure detention facility; and
(5) Inform the juvenile of the right to demand a jury trial.

(b) The juvenile may move to be allowed a preadjudicatory community supervision period not to exceed one year. If the court is satisfied that the best interest of the juvenile is likely to be served by a preadjudicatory community supervision period, the court may delay the adjudicatory hearing and allow a preadjudicatory community supervision period upon terms calculated to serve the rehabilitative needs of the juvenile. At the conclusion of the preadjudicatory community supervision period, the court shall dismiss the proceeding if the terms have been fulfilled; otherwise, the court shall proceed to the adjudicatory stage. A motion for a pre-adjudicatory community supervision period, may not be construed as an admission or be used as evidence. Preadjudicatory community supervision periods authorized by this subsection may be, in the court’s discretion, either custodial or noncustodial.

§49-4-709. Right to jury trial for juveniles; inapplicability.

(a) In a proceeding under this article, the juvenile, the juvenile’s counsel or the juvenile’s parent or guardian may demand, or the judge on his or her own motion may order a jury trial on any question of fact, in which the juvenile is accused of any act or acts of delinquency which, if committed by an adult would expose the adult to incarceration.

(b) A juvenile who is charged with a status offense or other offense where incarceration is not a possibility due either to the statutory penalty or where the court rules pretrial that a sentence of incarceration will not be imposed upon adjudication is not entitled to a trial by jury.

(c) This section is inapplicable to proceedings held pursuant to section one hundred seventeen of this article.

(d) Juries consist of twelve members.
§49-4-710. Waiver and transfer of jurisdiction.

(a) Upon written motion of the prosecuting attorney filed at least eight days prior to the adjudicatory hearing and with reasonable notice to the juvenile, his or her counsel, and his or her parents, guardians or custodians, the court shall conduct a hearing to determine if juvenile jurisdiction should or must be waived and the proceeding transferred to the criminal jurisdiction of the court. Any motion filed in accordance with this section is to state, with particularity, the grounds for the requested transfer, including the grounds relied upon as set forth in subsection (d), (e), (f) or (g) of this section, and the burden is upon the state to establish the grounds by clear and convincing evidence. Any hearing held under this section is to be held within seven days of the filing of the motion for transfer unless it is continued for good cause.

(b) No inquiry relative to admission or denial of the allegations of the charge or the demand for jury trial may be made by or before the court until the court has determined whether the proceeding is to be transferred to criminal jurisdiction.

(c) The court shall transfer a juvenile proceeding to criminal jurisdiction if a juvenile who has attained the age of fourteen years makes a demand on the record to be transferred to the criminal jurisdiction of the court. The case may then be referred to magistrate or circuit court for further proceedings, subject to the court’s jurisdiction.

(d) The court shall transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that:

(1) The juvenile is at least fourteen years of age and has committed the crime of treason under section one, article one, chapter sixty-one of this code; the crime of murder under
sections one, two and three, article two of that chapter; the crime of robbery involving the use or presenting of firearms or other deadly weapons under section twelve, article two of that chapter; the crime of kidnapping under section fourteen-a of article two of that chapter; the crime of first degree arson under section one, article three of that chapter; or the crime of sexual assault in the first degree under section three, article eight-b of that chapter;

(2) The juvenile is at least fourteen years of age and has committed an offense of violence to the person which would be a felony if the juvenile was an adult. However, the juvenile has been previously adjudged delinquent for the commission of an offense of violence to the person which would be a felony if the juvenile was an adult; or

(3) The juvenile is at least fourteen years of age and has committed an offense which would be a felony if the juvenile was an adult. However, the juvenile has been twice previously adjudged delinquent for the commission of an offense which would be a felony if the juvenile was an adult.

(e) The court may transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that the juvenile would otherwise satisfy the provisions of subdivision (1), subsection (d) of this section, but who is younger than fourteen years of age.

(f) The court may, upon consideration of the juvenile’s mental and physical condition, maturity, emotional attitude, home or family environment, school experience and similar personal factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that the juvenile would otherwise satisfy the provisions of subdivision (2) or (3), subsection (d) of this section, but who is younger than fourteen years of age.
(g) The court may, upon consideration of the juvenile’s mental and physical condition, maturity, emotional attitude, home or family environment, school experience and similar personal factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that:

(1) The juvenile, who is at least fourteen years of age, has committed an offense of violence to a person which would be a felony if the juvenile was an adult;

(2) The juvenile, who is at least fourteen years of age, has committed an offense which would be a felony if the juvenile was an adult. However, the juvenile has been previously adjudged delinquent for the commission of a crime which would be a felony if the juvenile was an adult;

(3) The juvenile, who is at least fourteen years of age, used or presented a firearm or other deadly weapon during the commission of a felony; or

(4) The juvenile has committed a violation of section four hundred one, article four, chapter sixty-a of this code which would be a felony if the juvenile was an adult involving the manufacture, delivery or possession with the intent to deliver a narcotic drug. For purposes of this subdivision, the term narcotic drug has the same definition as that set forth in section one hundred one, article one of that chapter;

(5) The juvenile has committed the crime of second degree arson as defined in section two, article three, chapter sixty-one of this code involving setting fire to or burning a public building or church. For purposes of this subdivision, the term public building means a building or structure of any nature owned, leased or occupied by this state, a political subdivision of this state or a county board of education and used at the time of the alleged offense for public purposes. For purposes of this
subdivision, the term church means a building or structure of any nature owned, leased or occupied by a church, religious sect, society or denomination and used at the time of the alleged offense for religious worship or other religious or benevolent purpose, or as a residence of a minister or other member of clergy.

(h) For purposes of this section, the term offense of violence means an offense which involves the use or threatened use of physical force against a person.

(i) If, after a hearing, the court directs the transfer of any juvenile proceeding to criminal jurisdiction, it shall state on the record the findings of fact and conclusions of law upon which its decision is based or shall incorporate findings of fact and conclusions of law in its order directing transfer.

(j) A juvenile who has been transferred to criminal jurisdiction pursuant to subsection (e), (f) or (g) of this section, by an order of transfer, has the right to either directly appeal an order of transfer to the supreme court of appeals or to appeal the order of transfer following a conviction of the offense of transfer. If the juvenile exercises the right to a direct appeal from an order of transfer, the notice of intent to appeal and a request for transcript is to be filed within ten days from the date of the entry of any order of transfer, and the petition for appeal is to be presented to the Supreme Court of Appeals within forty-five days from the entry of the order of transfer. Article five, chapter fifty-eight of this code pertaining to the appeals of judgments in civil actions applies to appeals under this chapter except as modified in this section. The court may, within forty-five days of the entry of the order of transfer, by appropriate order, extend and reextend the period in which to file the petition for appeal for additional time, not to exceed a total extension of sixty days, as in the court’s opinion may be necessary for preparation of the transcript. However, the request for a transcript was made by the
party seeking appeal within ten days of entry of the order of transfer. In the event any notice of intent to appeal and request for transcript be timely filed, proceedings in criminal court are to be stayed upon motion of the defendant pending final action of the Supreme Court of Appeals.

]**§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders; court orders.**

1 At the outset of an adjudicatory hearing, the court shall inquire of the juvenile whether he or she wishes to admit or deny the allegations in the petition. The juvenile may elect to stand mute, in which event the court shall enter a general denial of all allegations in the petition.

6 (1) If the respondent juvenile admits the allegations of the petition, the court shall consider the admission to be proof of the allegations if the court finds: (1) The respondent fully understands all of his or her rights under this article; (2) the respondent voluntarily, intelligently and knowingly admits all facts requisite for an adjudication; and (3) the respondent in his or her admission has not set forth facts which constitute a defense to the allegations.

14 (2) If the respondent juvenile denies the allegations, the court shall dispose of all pretrial motions and the court or jury shall proceed to hear evidence.

17 (3) If the allegations in a petition alleging that the juvenile is delinquent are admitted or are sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition pursuant to section seven hundred four of this article.

*NOTE: This section was also amended by S. B. 393 (Chapter 150) which passed subsequent to this Act.*
(4) If the allegations in a petition alleging that the juvenile is a status offender are admitted or sustained by clear and convincing proof, the court shall refer the juvenile to the Department of Health and Human Resources for services, pursuant to section seven hundred twelve of this article and order the department to report back to the court with regard to the juvenile’s progress at least every ninety days or until the court, upon motion or sua sponte, orders further disposition under section seven hundred four of this article or dismisses the case from its docket. In a judicial circuit operating its own truancy program, a circuit judge may in lieu of referring truant juveniles to the department, order that the juveniles be supervised by his or her probation office.

(5) If the allegations in a petition are not sustained by proof as provided in subsections (3) and (4) of this section, the petition shall be dismissed and the juvenile shall be discharged if he or she is in custody.

(6) Findings of fact and conclusions of law addressed to all allegations in the petition shall be stated on the record or reduced to writing and filed with the record or incorporated into the order of the court.

§49-4-712. Intervention and services by the department pursuant to initial disposition for status offenders; service plan; enforcement; further disposition; detention; out-of-home placement; department custody; least restrictive alternative; appeal.

(a) The services provided by the department for juveniles adjudicated as status offenders shall be consistent with part ten, article two of this chapter and shall be designed to develop skills and supports within families and to resolve problems related to...
the juveniles or conflicts within their families. Services may include, but are not limited to, referral of juveniles and parents, guardians or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, educational or other social services, as appropriate to the needs of the juvenile and his or her family.

(b) If the child or family of the child fails to comply with the service plan, the department may petition the circuit court:

(1) For a valid court order, as defined in section two hundred seven, article one of this chapter, to enforce compliance with a service plan or to restrain actions that interfere with or defeat a service plan; or

(2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure setting, and/or to place a juvenile in custody of the department.

(c) In ordering any further disposition under this section, the court is not limited to the relief sought in the department’s petition and reasonable efforts made to prevent removal of the juvenile from his or her home or as an alternative to place the juvenile in community-based facilities which are the least restrictive alternatives appropriate to the needs of the juvenile and the community.

(d) The disposition of the juvenile may not be affected by the fact that the juvenile demanded a trial by jury or made a plea of denial. Any order providing disposition other than mandatory referral to the department for services is subject to appeal to the Supreme Court of Appeals.

(e) Following any further disposition by the court, the court shall inquire of the juvenile whether or not appeal is desired and the response shall be transcribed; a negative response may not be construed as a waiver. The evidence shall be transcribed as soon
as practicable and made available to the juvenile or his or her
counsel, if it is requested for purposes of further proceedings. A
judge may grant a stay of execution pending further proceedings.

§49-4-713. Graduated penalties for juvenile alcohol consumption;
fines; community service; revocation of driver’s license.

(a) Notwithstanding any provision of this article to the
contrary, in addition to any other penalty available to the court,
any child who is adjudicated to have consumed alcoholic liquor
or nonintoxicating beer as defined in section five, article one,
chapter sixty of this code, shall:

(1) Upon a first adjudication, he or she shall be ordered to
perform community service for not more than eight hours or
fined not more than $25, or both performing community service
and fined.

(2) Upon a second adjudication, he or she shall be ordered to
perform community service for not more than sixteen hours or
fined not more than $50, or both performing community service
and fined.

(3) Upon a third or subsequent adjudication, he or she shall
be ordered to perform not more than twenty-four hours of
community service or fined not more than $100, or both
performing community service and fined.

(b) In addition to the penalties set forth in subsection (a) of
this section and notwithstanding the provisions of subdivision
(4), subsection (a), section seven hundred fifteen of this article,
any child adjudicated a second time for consumption of alcoholic
liquor or nonintoxicating beer shall have his or her license to
operate a motor vehicle suspended for a definite term of not less
than five nor more than ninety days. Any child adjudicated a
third or subsequent time for consumption of an alcoholic liquor
or nonintoxicating beer shall have his or her license to operate a
motor vehicle suspended until he or she attains the age of
eighteen years.

*§49-4-714. Disposition of juvenile delinquents; investigation;
proceedings; court discretion; orders; appeal.

(a) In aid of disposition of juvenile delinquents, the juvenile
probation officer assigned to the court shall, upon request of the
court, make an investigation of the environment of the juvenile
and the alternative dispositions possible. The court, upon its own
motion, or upon request of counsel, may order a psychological
examination of the juvenile. The report of an examination and
other investigative and social reports are not to be made
available to the court until after the adjudicatory hearing. Unless
waived, copies of the report shall be provided to counsel for the
petitioner and counsel for the juvenile no later than seventy-two
hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall conduct the
dispositional proceeding, giving all parties an opportunity to be
heard. In disposition the court shall not be limited to the relief
sought in the petition and shall, in electing from the following
alternatives, consider the best interests of the juvenile and the
welfare of the public:

(1) Dismiss the petition;

(2) Refer the juvenile and the juvenile’s parent or custodian
to a community agency for needed assistance and dismiss the
petition;

(3) Upon a finding that the juvenile is in need of 
extra-parental supervision: (A) Place the juvenile under the

*NOTE: This section was also amended by S. B. 393 (Chapter 150)
which passed subsequent to this Act.
(4) Upon a finding that a parent or custodian is not willing or able to take custody of the juvenile, that a juvenile is not willing to reside in the custody of his or her parent or custodian or that a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court may place the juvenile in temporary foster care or temporarily commit the juvenile to the department or a child welfare agency. The court order shall state that continuation in the home is contrary to the best interest of the juvenile and why; and whether or not the department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with part eight, article four of this chapter and guidelines promulgated by the Supreme Court of Appeals;

(5)(A) Upon a finding that the best interests of the juvenile or the welfare of the public require it, and upon an adjudication of delinquency the court may commit the juvenile to the custody of the Director of the Division of Juvenile Services for placement in a juvenile services facility for the treatment, instruction and rehabilitation of juveniles. The court maintains discretion to consider alternative sentencing arrangements.
(B) Notwithstanding any provision of this code to the contrary, in the event that the court determines that it is in the juvenile’s best interests or required by the public welfare to place the juvenile in the custody of the Division of Juvenile Services, the court shall provide the Division of Juvenile Services with access to all relevant court orders and records involving the underlying offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and presentencing reports and evaluations, and provide the division with access to school records, psychological reports and evaluations, medical reports and evaluations or any other records as may be in the court’s possession as would enable the Division of Juvenile Services to better assess and determine the appropriate counseling, education and placement needs for the juvenile offender.

(C) Commitments may not exceed the maximum term for which an adult could have been sentenced for the same offense and any maximum allowable sentence to be served in a juvenile correctional facility may take into account any time served by the juvenile in a detention center pending adjudication, disposition or transfer. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible; or

(6) After a hearing conducted under the procedures set out in subsections (c) and (d), section four, article five, chapter twenty-seven of this code, commit the juvenile to a mental health facility in accordance with the juvenile’s treatment plan; the director of the mental health facility may release a juvenile and return him or her to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or
that the emergency situation made those efforts unreasonable or impossible.

(c) In any case in which the court decides to order the juvenile placed in an out-of-state facility or program, it shall set forth in the order directing the placement the reasons the juvenile was not placed in an in-state facility or program.

(d) The disposition of the juvenile may not be affected by the fact that the juvenile demanded a trial by jury or made a plea of denial. Any dispositional order is subject to appeal to the Supreme Court of Appeals.

(e) Following disposition, the court shall inquire whether the juvenile wishes to appeal and the response shall be transcribed; a negative response may not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(f) Notwithstanding any other provision of this code to the contrary, if a juvenile charged with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing the person as an adult.

§49-4-715. Authority of the courts to impose additional penalties; public service projects; ineligible to operate a motor vehicle; restitution.

(a) In addition to the methods of disposition provided in section seven hundred fourteen of this article, the court may enter an order imposing one or more of the following penalties, conditions and limitations:

(1) Impose a fine not to exceed $100 upon the child;
(2) Require the child to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the child was found to be delinquent, or if the child does not make full restitution, require the custodial parent or parents, as defined in section two, article seven-a, chapter fifty-five, of the child to make partial or full restitution to the victim to the extent the child fails to make full restitution;

(3) Require the child to participate in a public service project under the conditions as the court prescribes, including participation in the litter control program established pursuant to the authority of section three, article fifteen-a, chapter twenty-two of this code; and

(4) When the child is fifteen years of age or younger and has been adjudged delinquent, the court may order that the child is not eligible to be issued a junior probationary operator’s license or when the child is between the ages of sixteen and eighteen years and has been adjudged delinquent, the court may order that the child is not eligible to operate a motor vehicle in this state, and any junior or probationary operator’s license shall be surrendered to the court. The child’s driving privileges shall be suspended for a period not to exceed two years, and the clerk of the court shall notify the Commissioner of the Division of Motor Vehicles of the order.

(b) Nothing may limit the discretion of the court in disposing of a juvenile case. The juvenile may not be denied probation or any other disposition pursuant to this article because the juvenile is financially unable to pay a fine or make restitution or reparation. All penalties, conditions and limitations imposed under this section shall be based upon a consideration by the court of the seriousness of the offense, the child’s ability to pay and a program of rehabilitation consistent with the best interests of the child.
(c) Notwithstanding any other provisions of this code to the contrary, in the event a child charged with delinquency under this chapter is transferred to adult jurisdiction and there convicted, the court may nevertheless, in lieu of sentencing the person as an adult, make its disposition in accordance with this section.

§49-4-716. Teen court program; alternative; suitability; unsuccessful cooperation; requirements; fees.

(a) Notwithstanding any provision of this article to the contrary, any county or municipality may choose to institute a teen court program in accordance with this section.

(b) An juvenile may be given the option of proceeding in a teen court program as an alternative to the filing of a formal proceeding pursuant to section seven hundred four or section seven hundred fourteen of this article if:

(1) The juvenile is alleged to have committed a status offense or an act of delinquency that would be a misdemeanor if committed by an adult;

(2) The juvenile is alleged to have violated a municipal ordinance over which municipal court and state court have concurrent jurisdiction; or

(3) The juvenile is otherwise subject to the provisions of this article.

(c) If the circuit court or municipal court finds that the offender is a suitable candidate for the teen court program, it may extend the option to enter the program as an alternative procedure. A juvenile may not enter the teen court program unless he or she and his or her parent or guardian consent to participating in the program.
(d) Any juvenile who does not successfully cooperate in, and complete, the teen court program and any disposition imposed during the juvenile’s participation shall be returned to the circuit court for further disposition as provided by section seven hundred and twelve or seven hundred fourteen of this article, as the case may be or returned to the municipal court for further disposition for cases originating in municipal court consistent with any applicable ordinance.

(e) The following provisions apply to all teen court programs:

(1) The judge for each teen court proceeding shall be an acting or retired circuit court judge or an active member of the West Virginia State Bar, who serves on a voluntary basis.

(2) Any juvenile who selects the teen court program as an alternative disposition shall agree to serve thereafter on at least two occasions as a teen court juror.

(3) Volunteer students from grades seven through twelve of the schools within the county shall be selected to serve as defense attorney, prosecuting attorney, court clerk, bailiff and jurors for each proceeding.

(4) Disposition in a teen court proceeding shall consist of requiring the juvenile to perform sixteen to forty hours of community service, the duration and type of which shall be determined by the teen court jury from a standard list of available community service programs provided by the county juvenile probation system and a standard list of alternative consequences that are consistent with the purposes of this article. The performance of the juvenile shall be monitored by the county juvenile probation system for cases originating in the circuit court’s jurisdiction, or municipal teen court coordinator or other designee for cases originating in the municipal court’s
jurisdiction. The juvenile shall also perform at least two sessions
of teen court jury service and, if considered appropriate by the
circuit court judge or teen court judge, participate in an
education program. Nothing in this section may be construed so
as to deny availability of the services provided under section
seven hundred and twelve of this article to juveniles who are
otherwise eligible for the service.

(f) The rules for administration, procedure and admission of
evidence shall be determined by the chief circuit judge or teen
court judge, but in no case may the court require a juvenile to
admit the allegation against him or her as a prerequisite to
participation in the teen court program. A copy of these rules
shall be provided to every teen court participant.

(g) Each county or municipality that operates, or wishes to
operate, a teen court program as provided in this section is
hereby authorized to adopt a mandatory fee of up to $5 to be
assessed as provided in this subsection. Municipal courts may
assess a fee pursuant to this section upon authorization by the
city council of the municipality. Assessments collected by the
clerk of the court pursuant to this subsection shall be deposited
into an account specifically for the operation and administration
of a teen court program. The clerk of the court of conviction
shall collect the fees established in this subsection and shall
remit the fees to the teen court program.

(h) Any mandatory fee established by a county commission
or city council in accordance with this subsection shall be paid
by the defendant on a judgment of guilty or a plea of nolo
contendere for each violation committed in the county or
municipality of any felony, misdemeanor or any local ordinance,
including traffic violations and moving violations but excluding
municipal parking ordinances. Municipalities operating teen
courts are authorized to use fees assessed in municipal court
pursuant to this subsection for operation of a teen court in their
municipality
§49-4-717. Sexting educational diversion program; requirements.

(a) Before a juvenile petition is filed for activity proscribed by article eight-a or eight-c, chapter sixty-one of this code, or after probable cause has been found to believe a juvenile has committed a violation thereof, but before an adjudicatory hearing on the petition, the court or a prosecuting attorney may direct or allow a minor who engaged in the activity to participate in an educational diversion program which meets the requirements of subsection (b) of this section. The prosecutor or court may refer the minor to the educational diversion program, as part of a prepetition intervention pursuant to section seven hundred two of this article.

(b) The West Virginia Supreme Court of Appeals may develop an educational diversion program for minors who are accused of activity proscribed by article eight-a or eight-c, chapter sixty-one of this code. As a part of any specialized educational diversion program so developed, the following issues and topics should be included:

(1) The legal consequences of and penalties for sharing sexually suggestive or explicit materials, including applicable federal and state statutes;

(2) The nonlegal consequences of sharing sexually suggestive or explicit materials including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and being barred or removed from school programs and extracurricular activities;

(3) How the unique characteristics of cyberspace and the Internet, including searchability, replicability and an infinite audience, can produce long-term and unforeseen consequences for sharing sexually suggestive or explicit materials; and
(4) The connection between bullying and cyber-bullying and minors sharing sexually suggestive or explicit materials.

(c) Once a specialized educational diversion program is established by the West Virginia Supreme Court of Appeals consistent with this section, the minor’s successful completion of the educational diversion program shall be duly considered by the prosecutor or the court in their respective decisions to either abstain from filing the juvenile petition or to dismiss the juvenile petition, as follows:

(1) If the minor has not previously been judicially determined to be delinquent, and the minor’s activities represent a first offense for a violation of section three-b, article eight-c, chapter sixty-one of this code, the minor is not subject to the requirements of that section, as long as he or she successfully completes the educational diversion program; and

(2) If the minor commits a second or subsequent violation of article eight-a or eight-c, chapter sixty-one of this code, the minor’s successful completion of the educational diversion program may be considered as a factor to be considered by the prosecutor and court in deciding to not file a petition or to dismiss a petition, upon successful completion of an improvement plan established by the court.

§49-4-718. Modification of dispositional orders; motions; hearings.

(a) A dispositional order of the court may be modified:

(1) Upon the motion of the probation officer, a department official, the director of the division of juvenile services or prosecuting attorney; or

* NOTE: This section was also amended by S. B. 393 (Chapter 150) which passed subsequent to this Act.*
(2) Upon the request of the child or a child’s parent or custodian who alleges a change of circumstances relating to disposition of the child.

(b) Upon a motion or request, the court shall conduct a review proceeding, except that if the last dispositional order was within the previous six months the court may deny a request for review. Notice in writing of a review proceeding shall be given to the child, the child’s parent or custodian and all counsel not less than seventy-two hours prior to the proceeding. The court shall review the performance of the child, the child’s parent or custodian, the child’s social worker and other persons providing assistance to the child or child’s family. If the motion or request for review of disposition is based upon an alleged violation of a court order, the court may modify the dispositional order to a more restrictive alternative if it finds clear and convincing proof of substantial violation. In the absence of proof, the court may decline to modify the dispositional order or may modify the order to one of the less restrictive alternatives set forth in section seven hundred twelve of this article. A juvenile may not be required to seek a modification order as provided in this section in order to exercise his or her right to seek release by habeas corpus.

(c) In a hearing for modification of a dispositional order, or in any other dispositional hearing, the court shall consider the best interests of the child and the welfare of the public.

**§49-4-719. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.**

(a)(1) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with the rules of the Supreme Court of Appeals, shall appoint one or more juvenile probation officers and clerical assistants for the circuit.

*NOTE: This section was also amended by S. B. 393 (Chapter 150) which passed subsequent to this Act.*
A probation officer or clerical assistant may not be related by blood or marriage to the appointing judge.

(2) The salary for juvenile probation officers and clerical assistants shall be determined and fixed by the Supreme Court of Appeals. All expenses and costs incurred by the juvenile probation officers and their staff shall be paid by the Supreme Court of Appeals in accordance with its rules. The county commission of each county shall provide adequate office facilities for juvenile probation officers and their staff. All equipment and supplies required by juvenile probation officers and their staff shall be provided by the Supreme Court of Appeals.

(3) A juvenile probation officer may not be considered a law-enforcement official under this chapter.

(b) The clerk of a court shall notify, if practicable, the chief probation officer of the county, or his or her designee, when a juvenile is brought before the court or judge for proceedings under this article. When notified, or if the probation officer otherwise obtains knowledge of fact, he or she or one of his or her assistants shall:

(1) Make investigation of the case; and

(2) Furnish information and assistance that the court or judge may require.

§49-4-720. Prohibition on committing juveniles to adult facilities; copy provided to juvenile.

(a) No juvenile, including one who has been transferred to criminal jurisdiction of the court, shall 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 they 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) No child who has been convicted of an offense under the
adult jurisdiction of the circuit court shall be held in custody in
a correctional facility of this state. The Division of Juvenile
Services shall be responsible for notifying the sentencing court
within forty-five days of the child’s eighteenth birthday that the
child will be turning eighteen years of age. Within ten days of
the child’s eighteenth birthday, the court shall transfer the
offender to an adult correctional facility or to any other
disposition the court deems appropriate for adult offenders.
Notwithstanding any other provision of this code to the contrary,
prior to the transfer the child shall be returned to the sentencing
court for the purpose of reconsideration and modification of the
imposed sentence, which shall be based upon a review of all
records and relevant information relating to the child’s
rehabilitation since his or her conviction under the adult
jurisdiction of the court.

§49-4-721. Rules governing juvenile facilities; rights of juveniles.

(a) The Director of the Division of Juvenile Services within
the Department of Military Affairs and Public Safety shall
propose legislative rules for promulgation in accordance with
article three, chapter twenty-nine-a of this code, outlining
policies and procedures governing the operation of those
correctional, detention, predispositional detention centers and
other facilities wherein juveniles may be housed. These policies
and procedures shall include, but are not limited to, standards of
cleanliness, temperature and lighting; availability of medical and
dental care; provision of food, furnishings, clothing and toilet
articles; supervision; procedures for enforcing rules of conduct
consistent with due process of law; and visitation privileges. A
juvenile in custody or detention has, at a minimum, the
following rights, and the policies prescribed ensuring that:
(1) A juvenile may not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or imposition of solitary confinement;

(2) A juvenile shall be afforded an opportunity to participate in physical exercise each day;

(3) Except for sleeping hours, a juvenile in a state facility may not be locked alone in a room unless that juvenile is not amenable to reasonable direction and control;

(4) A juvenile shall be provided with his or her own clothing or individualized clothing which is clean and supplied by the facility, and shall also be afforded daily access to showers;

(5) A juvenile shall be afforded constant access to writing materials and may send mail without limitation, censorship or prior reading, and may receive mail without prior reading, except that mail may be opened in the juvenile’s presence, without being read, to inspect for contraband;

(6) A juvenile may make and receive regular local phone calls without charge and long distance calls to his or her family without charge at least once a week, and receive visitors daily and on a regular basis;

(7) A juvenile shall be afforded immediate access to medical care as needed;

(8) A juvenile in a juvenile detention facility or juvenile corrections facility shall be provided access to education, including teaching, educational materials and books;

(9) A juvenile shall be afforded reasonable access to an attorney upon request; and

(10) A juvenile shall be afforded a grievance procedure, including an appeal mechanism.
 Upon admission to a detention facility or juvenile corrections facility, a juvenile shall be furnished with a copy of the rights provided him or her by virtue of this section and as further prescribed by rules proposed and promulgated pursuant to 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 eighteen 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 therefor 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 until a hearing is held before the court which committed the person to the custody of the Division of Juvenile Services at which hearing the division may present any objections it may have to return the person to its custody. If the division does object and the court overrules the division’s objections, it shall make specific written findings as to its rationale for overruling the objections.

(b) No person who is eighteen years of age or older who is convicted as an adult of a felony crime of violence against the person while in the custody of the Division of Juvenile Services be returned to the custody of the Division of Juvenile Services upon completion of his or her adult sentence.

§49-4-723. Discrimination prohibited; penalties; damages.

(a) No individual, firm, corporation or other entity may discriminate against any person in any manner due to that person’s prior involvement in a proceeding under this article if that person’s records have been expunged pursuant to this article. This includes, but is not limited to, discrimination relating to employment, housing, education, obtaining credit, and contractual rights.
(b) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail for not more than six months, or both fined and confined. Additionally, a person who violates this section is liable to the person who has been discriminated against for damages in the amount of $300 or the actual amount of damages, whichever is greater.

PART VIII. SUPPORT AND SUPPORT ORDERS.

§49-4-801. Support of a child removed from home pursuant to this chapter; order requirements.

(a) It is the intent of the Legislature that to the extent practicable, this article should encourage and require a child’s parents to meet the obligation of providing that child with adequate food, shelter, clothing, education, and health and child care.

(b) This article shall be construed to be consistent with articles one, eleven, twelve, thirteen, fourteen, fifteen, sixteen, eighteen, nineteen and twenty four of chapter forty-eight of this code, and those articles apply to actions pursuant to this chapter unless expressly stated otherwise.

(c) When a child is removed from his or her home pursuant to this chapter, the court shall issue a support order payable by the child’s mother. If the child’s legal father has been determined, the court shall issue a child support order payable by the legal father. If no legal father has been determined, the court shall issue an order establishing paternity prior to or simultaneously with establishing a support order payable by the child’s legal father. Copies of the orders shall be provided to the Department of Health and Human Resources, Bureau of Child Support Enforcement.
(d) The order establishing a child support obligation must use the Guidelines for Child Support Awards that are set forth in article thirteen, chapter forty-eight of this code.

(e) In addition to the reasons for deviation listed in section seven hundred two, article thirteen, chapter forty-eight of this code, deviation from the child support guidelines is appropriate when the court finds that:

(1) It may assist the parent in successful completion of an improvement period;

(2) It may be in the best interest of the minor child to issue a zero child support order; and/or

(3) The parent temporarily or permanently has no gross income as defined in section two hundred twenty eight, article one, chapter forty-eight of this code.

§49-4-802. General provisions for support orders; contempt.

(a) Any pre-existing support order from any other court or administrative agency with authority to issue a support order shall remain in full force and effect until a superseding order is issued.

(b) If a child is returned to the physical custody of a parent, that parent is not responsible for paying child support for the duration of time that parent has physical custody of the child without the necessity of entry of another court order terminating that parent’s child support obligation.

(c) If the action is dismissed for failure to prove the allegations of abuse or neglect, any support provision issued pursuant to this chapter are void ab initio. Any adjudication of paternity shall remain in full force and effect.
The support obligation shall automatically continue beyond the termination of the payor’s parental rights, unless the support obligation is explicitly ended in an order.

§49-4-803. Enforcement of support orders.

(a) Support orders may be enforced through any manner provided in chapters thirty-eight and forty-eight of this code.

(b) An action for contempt for nonpayment of support may be brought by the Department of Health and Human Resources, Bureau for Children and Families or Bureau for Child Support Enforcement; the child’s physical custodian; the child’s guardian ad litem; or the prosecuting attorney.

PART IX. CONTRIBUTING TO THE DELINQUENCY OF A CHILD.

§49-4-901. Contributing to delinquency or neglect of a child; penalties; payment of medical costs; proof; court discretion; other payments; suspended sentence; maintenance and care; temporary custody.

(a) A person who by any act or omission contributes to, encourages or tends to cause the delinquency or neglect of any child, including, but not limited to, aiding or encouraging the child to habitually or continually refuse to respond, without just cause, to the lawful supervision of the child’s parents, guardian or custodian or to be habitually absent from school without just cause, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500, or confined in jail for a period not exceeding one year, or both fined and confined.

(b) In addition to any penalty provided under this section and any restitution which may be ordered by the court under article eleven-a, chapter sixty-one of this code, the court may order any
person convicted under this section to pay all or any portion of
the cost of medical, psychological or psychiatric treatment of the
child resulting from the act or acts for which the person is
convicted, whether or not the child is considered to have
sustained bodily injury.

(c) This section does not apply to any parent, guardian or
custodian who fails or refuses, or allows another person to fail or
refuse, to supply a child under the care, custody or control of the
parent, guardian or custodian with necessary medical care, when
medical care conflicts with the tenets and practices of a
recognized religious denomination or order of which parent,
guardian or custodian is an adherent or member.

(d) In finding a person guilty of contributing to the
delinquency of a child, it is not necessary to prove that the child
has actually become delinquent, if it appears from the evidence
that the accused is guilty of conduct or of an act of neglect or
omission of duty on his or her part toward the child which would
tend to bring about or to encourage the delinquency.

(e) A court or judge, upon convictions as are imposed in
accordance with this chapter, may:

(1) Suspend the sentence of a person found guilty of
contributing to the delinquency of a child;

(2) Stay or postpone the enforcement of execution of
sentence; or

(3) Release the person from custody.

(f) If the sentence of the person found guilty is suspended,
the court or judge may make it a condition of suspending
sentence that the person pay for whatever treatment and care
may be required for the welfare of the child, and for its support
and maintenance while in the custody of the department, person,
or institution, and any other expense that may have resulted from, or be necessary because of, the act or acts of the person found guilty.

(g) The conditions upon which the sentence of a person found guilty of contributing to the delinquency, or to the neglect of any child, may be suspended, may include the furnishing of a good and sufficient bond to the State of West Virginia in the penal sum as the court shall determine, not exceeding $1,000, conditioned upon:

1. Furnishing whatever treatment and care may be required for the welfare of the child;
2. Doing whatever may be calculated to secure obedience to the law or to remove the cause of delinquency, or neglect; and
3. Payment of the amount as the court may order, not exceeding $20 per month, for the support, care, and maintenance of the child to whose delinquency the person contributed. The sum shall be expended under the order of the court or judge for the purposes enumerated.

(h)(1) The penalty of a bond given upon suspension of sentence which becomes forfeited is recoverable without separate suit. The court or judge may cause citation or summons to issue to the principal and surety, requiring that they appear at a time named by the court or judge, not less than ten nor more than twenty days from the issuance of the summons, and show cause why judgment should not be entered for the penalty of the bond and execution issued against the property of the principal and of the surety. Upon failure to appear, or failure to show sufficient cause, the court shall enter judgment in behalf of the State of West Virginia against the principal and surety in an amount not to exceed the penalty of the bond plus costs.

2. Any money collected or paid upon an execution, or upon the bond, shall be deposited with the clerk of the court in which
the bond was given. The money shall be applied first to the
payment of all court costs and then to the treatment, care, or
maintenance of the child for whose delinquency conviction was
had. If any money so collected is not required for these purposes,
it shall be paid within one year into the State Treasury.

(i) If it appear to the satisfaction of the court or judge at any
time while a suspension of sentence or stay of execution remains
in effect, that the sentence ought to be enforced, the court or
judge may enforce the sentence. A jail sentence shall commence
from the date upon which the sentence is so ordered to be
enforced.

(j) If the conditions of suspension are complied with, the
sentence shall remain suspended, subject to enforcement upon
the violation of any of the conditions imposed. Upon a failure to
comply with any of the conditions imposed, the sentence shall be
enforced and any bond given to insure the performance of the
conditions shall be forfeited.

(k) A sentence may not be suspended, or final judgment or
execution stayed, for a period exceeding two years. At the end of
two years from the time of imposition of sentence or sooner in
the discretion of the court or judge, the defendant shall be finally
released and discharged.

(l) Where a person is found guilty of contributing to the
delinquency of a child, the court or judge may place the child in
the temporary custody of the department or of some responsible
person or approved institution.

§49-4-902. Custody of child by convicted person.

If the guilty person had custody of the child prior to
conviction, the court or judge may, on suspending sentence,
permit the child to remain in the custody of the person, and make
it a condition of suspending sentence that the person provides
whatever treatment and care may be required for the welfare of
the child, and shall do whatever may be calculated to secure
obedience to the law or to remove the cause of the delinquency.

§49-4-903. Interference with disposition of child punishable as
contempt of court.

A person who interferes with the direction of disposition of
a child in accordance with an order of the court or judge made in
pursuance of this chapter, or with the department, or a probation
or other officer of the court in carrying out the directions of the
court or judge under an order, is subject to punishment as for
contempt of court.

§49-4-904. Enticing child from custody; penalties.

A person who personally or by agent entices or forcibly
removes a child from a custody in which the child was placed
under this chapter is guilty of a misdemeanor and, upon
conviction shall be fined not more than $100, or confined in jail
not more than six months, or fined and confined.

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-101. Confidentiality of records; nonrelease of records;
exceptions; penalties.

(a) Except as otherwise provided in this chapter or by order
of the court, all records and information concerning a child or
juvenile which are maintained by the Division of Juvenile
Services, the Department of Health and Human Resources, a
child agency or facility, court or law-enforcement agency is
confidential and shall not be released or disclosed to anyone,
including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this
section or any other provision of this code to the contrary,
records concerning a child or juvenile, except adoption records
and records disclosing the identity of a person making a
complaint of child abuse or neglect may be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated;

or

(C) The attorney of the child or parent;

(3) With the written consent of the child or of someone
authorized to act on the child’s behalf; or

(4) Pursuant to an order of a court of record. However, the
court shall review the record or records for relevancy and
materiality to the issues in the proceeding and safety, and may
issue an order to limit the examination and use of the records or
any part thereof.

c) In addition to those persons or entities to whom
information may be disclosed under subsection (b) of this
section, information related to child abuse or neglect
proceedings, except information relating to the identity of the
person reporting or making a complaint of child abuse or
neglect, shall be made available, upon request, to:

(1) Federal, state or local government entities, or any agent
of those entities, including law-enforcement agencies and
prosecuting attorneys, having a need for that information in
order to carry out its responsibilities under law to protect
children from abuse and neglect;

(2) The child fatality review team;
(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

(5) A grand jury, circuit court or family court, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court or family court.

(d) In the event of a child fatality or near fatality due to child abuse and neglect, information relating to a fatality or near fatality shall be made public by the Department of Health and Human Resources and to the entities described in subsection (c) of this section, all under the circumstances described in that subsection. However, information released by the Department of Health and Human Resources pursuant to this subsection may not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, “near fatality” means any medical condition of the child which is certified by the attending physician to be life threatening.

(e) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to section one hundred three of this article.

(f) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail for not more than six months, or both fined and confined. A person convicted of violating this section is also liable for damages in the amount of $300 or actual damages, whichever is greater.
(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public;

(h)(1) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the Division of Juvenile Services may provide access to and the confidential use of a treatment plan, court records or other records of a juvenile to an agency in another state which:

(A) Performs the same functions in that state that are performed by the Division of Juvenile Services in this state;

(B) Has a reciprocal agreement with this state; and

(C) Has legal custody of the juvenile.

(2) A record which is shared under this subsection may only provide information which is relevant to the supervision, care, custody and treatment of the juvenile.

(3) The Division of Juvenile Services is authorized to enter into reciprocal agreements with other states and to propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement this subsection.

(4) Other than the authorization explicitly given in this subsection, this subsection may not be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

§49-5-102. Preservation of records.

The proceedings, records, reports, case histories, and all other papers or documents of or received by the state department in the administration of this chapter shall be filed of record and preserved.
§49-5-103. Confidentiality of juvenile records; permissible disclosures; conditions; penalties; damages.

(a) Any findings or orders of the court in a juvenile proceeding shall be known as the “juvenile record” and shall be maintained by the clerk of the court.

(b) Records of a juvenile proceeding conducted under this chapter are not public records and shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

(c) Notwithstanding the provisions of subsection (a) of this section, a copy of a juvenile’s records shall automatically be disclosed to certain school officials, subject to the following terms and conditions:

(1) Only the records of certain juveniles shall be disclosed. These include, and are limited to, cases in which:

(A) The juvenile has been charged with an offense which:

(i) Involves violence against another person;

(ii) Involves possession of a dangerous or deadly weapon; or

(iii) Involves possession or delivery of a controlled substance as that term is defined in section one hundred one, article one, chapter sixty-a of this code; and

(B) The juvenile’s case has proceeded to a point where one or more of the following has occurred:

(i) A circuit court judge or magistrate has determined that there is probable cause to believe that the juvenile committed the offense as charged;

*NOTE: This section was also amended by S. B. 393 (Chapter 150) which passed subsequent to this Act.*
(ii) A circuit court judge or magistrate has placed the juvenile on probation for the offense;

(iii) A circuit court judge or magistrate has placed the juvenile into an pre-adjudicatory community supervision period in accordance with section seven hundred eight, article four of this chapter; or

(iv) Some other type of disposition has been made of the case other than dismissal.

(2) The circuit court for each judicial circuit in West Virginia shall designate one person to supervise the disclosure of juvenile records to certain school officials;

(3) If the juvenile attends a West Virginia public school, the person designated by the circuit court shall automatically disclose all records of the juvenile’s case to the county superintendent of schools in the county in which the juvenile attends school and to the principal of the school which the juvenile attends, subject to the following:

(A) At a minimum, the records shall disclose the following information:

(i) Copies of the arrest report;

(ii) Copies of all investigations;

(iii) Copies of any psychological test results and any mental health records;

(iv) Copies of any evaluation reports for probation or facility placement; and

(v) Any other material that would alert the school to potential danger that the juvenile may pose to himself, herself or others;
(B) The disclosure of the juvenile’s psychological test results and any mental health records may only be made in accordance with subdivision (14) of this subsection;

(C) If the disclosure of any record to be automatically disclosed under this section is restricted in its disclosure by the Health Insurance Portability and Accountability Act of 1996, PL 104-191, and any amendments and regulations under the act, the person designated by the circuit court shall provide the superintendent and principal any notice of the existence of the record that is permissible under the act and, if applicable, any action that is required to obtain the record; and

(D) When multiple disclosures are required by this subsection, the person designated by the circuit court is required to disclose only material in the juvenile record that had not previously been disclosed to the county superintendent and the principal of the school which the juvenile attends.

(4) If the juvenile attends a private school in West Virginia, the person designated by the circuit court shall determine the identity of the highest ranking person at that school and shall automatically disclose all records of a juvenile’s case to that person.

(5) If the juvenile does not attend school at the time the juvenile’s case is pending, the person designated by the circuit court may not transmit the juvenile’s records to any school. However, the person designated by the circuit court shall transmit the juvenile’s records to any school in West Virginia which the juvenile subsequently attends.

(6) The person designated by the circuit court may not automatically transmit juvenile records to a school which is not located in West Virginia. Instead, the person designated by the circuit court shall contact the out-of-state school, inform it that
juvenile records exist and make an inquiry regarding whether the laws of that state permit the disclosure of juvenile records. If so, the person designated by the circuit court shall consult with the circuit judge who presided over the case to determine whether the juvenile records should be disclosed to the out-of-state school. The circuit judge has discretion in determining whether to disclose the juvenile records and shall consider whether the other state’s law regarding disclosure provides for sufficient confidentiality of juvenile records, using this section as a guide. If the circuit judge orders the juvenile records to be disclosed, they shall be disclosed in accordance with subdivision (7) of this subsection.

(7) The person designated by the circuit court shall transmit the juvenile’s records to the appropriate school official under cover of a letter emphasizing the confidentiality of those records and directing the official to consult this section of the code. A copy of this section of the code shall be transmitted with the juvenile’s records and cover letter.

(8) Juvenile records are absolutely confidential by the school official to whom they are transmitted, and nothing contained within the juvenile’s records may be noted on the juvenile’s permanent educational record. The juvenile records are to be maintained in a secure location and are not to be copied under any circumstances. However, the principal of a school to whom the records are transmitted shall have the duty to disclose the contents of those records to any teacher who teaches a class in which the subject juvenile is enrolled and to the regular driver of a school bus in which the subject juvenile is regularly transported to or from school, except that the disclosure of the juvenile’s psychological test results and any mental health records may only be made in accordance with subdivision (14) of this subsection. Furthermore, any school official to whom the juvenile’s records are transmitted may disclose the contents of those records to any adult within the school system who, in the
discretion of the school official, has the need to be aware of the contents of those records.

(9) If for any reason a juvenile ceases to attend a school which possesses that juvenile’s records, the appropriate official at that school shall seal the records and return them to the circuit court which sent them to that school. If the juvenile has changed schools for any reason, the former school shall inform the circuit court of the name and location of the new school which the juvenile attends or will be attending. If the new school is located within West Virginia, the person designated by the circuit court shall forward the juvenile’s records to the juvenile’s new school in the same manner as provided in subdivision (7) of this subsection. If the new school is not located within West Virginia, the person designated by the circuit court shall handle the juvenile records in accordance with subdivision (6) of this subsection.

If the juvenile has been found not guilty of an offense for which records were previously forwarded to the juvenile’s school on the basis of a finding of probable cause, the circuit court may not forward those records to the juvenile’s new school. However, this does not affect records related to other prior or future offenses. If the juvenile has graduated or quit school or will otherwise not be attending another school, the circuit court shall retain the juvenile’s records and handle them as otherwise provided in this article.

(10) Under no circumstances may one school transmit a juvenile’s records to another school.

(11) Under no circumstances may juvenile records be automatically transmitted to a college, university or other post-secondary school.

(12) No one may suffer any penalty, civil or criminal, for accidentally or negligently attributing certain juvenile records to
the wrong person. However, that person has the affirmative duty
to promptly correct any mistake that he or she has made in
disclosing juvenile records when the mistake is brought to his or
her attention. A person who intentionally attributes false
information to a certain person shall be subjected to both
criminal and civil penalties in accordance with subsection (e) of
this section.

(13) If a circuit court judge or magistrate has determined that
there is probable cause to believe that a juvenile has committed
an offense but there has been no final adjudication of the charge,
the records which are transmitted by the circuit court shall be
accompanied by a notice which clearly states in bold print that
there has been no determination of delinquency and that our
legal system requires a presumption of innocence.

(14) The county superintendent shall designate the school
psychologist or psychologists to receive the juvenile’s
psychological test results and any mental health records. The
psychologist designated shall review the juvenile’s
psychological test results and any mental health records and, in
the psychologist’s professional judgment, may disclose to the
principal of the school that the juvenile attends and other school
employees who would have a need to know the psychological
test results, mental health records and any behavior that may
trigger violence or other disruptive behavior by the juvenile.
Other school employees include, but are not limited to, any
teacher who teaches a class in which the subject juvenile is
enrolled and the regular driver of a school bus in which the
subject juvenile is regularly transported to or from school.

(c) Notwithstanding the provisions of subsection (a) of this
section, juvenile records may be disclosed, subject to the
following terms and conditions:

(1) If a juvenile case is transferred to the criminal
jurisdiction of the circuit court pursuant to subsection (c) or (d),
section seven hundred ten, article four of this chapter, the juvenile records are open to public inspection.

(2) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant to subsection (e), (f) or (g), section seven hundred ten, article four of this chapter, the juvenile records are open to public inspection only if the juvenile fails to file a timely appeal of the transfer order, or the Supreme Court of Appeals refuses to hear or denies an appeal which has been timely filed.

(3) If a juvenile is fourteen years of age or older and a court has determined there is a probable cause to believe the juvenile committed an offense set forth in subsection (g), section seven hundred ten of article four of this chapter, but the case is not transferred to criminal jurisdiction, the juvenile records are open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

(4) If a juvenile is younger than fourteen years of age and a court has determined there is probable cause to believe that the juvenile committed the crime of murder under section one, two or three, article two, chapter sixty-one of this code, or the crime of sexual assault in the first degree under section three, article eight-b of chapter sixty-one, but the case is not transferred to criminal jurisdiction, the juvenile records are open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

(5) Upon a written petition and pursuant to a written order, the circuit court may permit disclosure of juvenile records to:

(A) A court, in this state or another state, which has juvenile jurisdiction and has the juvenile before it in a juvenile proceeding;
(B) A court, in this state or another state, exercising criminal jurisdiction over the juvenile which requests records for the purpose of a presentence report or disposition proceeding;

(C) The juvenile, the juvenile’s parents or legal guardian, or the juvenile’s counsel;

(D) The officials of a public institution to which the juvenile is committed if they require those records for transfer, parole or discharge; or

(E) A person who is conducting research. However, juvenile records may be disclosed for research purposes only upon the condition that information which would identify the subject juvenile or the juvenile’s family may not be disclosed.

(6) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, to a probation officer upon his or her request. Any probation officer may access relevant juvenile case information contained in any electronic database maintained by or for the Supreme Court of Appeals and share it with any other probation officer.

(7) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, in response to any lawfully issued subpoena from a federal court or federal agency.

(d) Any records open to public inspection pursuant to this section are subject to the same requirements governing the disclosure of adult criminal records.

(e) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail for not more than six months, or both fined and confined. A person who violates this section is also liable for damages in the amount of $300 or actual damages, whichever is greater.
§49-5-104. Confidentiality of juvenile records for children who become of age while a ward of the state or who have been transferred to adult criminal jurisdiction; separate and secure location; penalties; damages.

(a) One year after the juvenile’s eighteenth birthday, or one year after personal or juvenile jurisdiction has terminated, whichever is later, the records of a juvenile proceeding conducted under this chapter, including, but not limited to, law-enforcement files and records, may be kept in a separate secure confidential place and the records may not be inspected except by order of the circuit court.

(b) The records of a juvenile proceeding in which a juvenile was transferred to criminal jurisdiction pursuant to section seven hundred ten, article four of this chapter shall be kept in a separate secure confidential place and the records may not be inspected except by order of the circuit court if the juvenile is subsequently acquitted or found guilty only of an offense other than an offense upon which the waiver or order of transfer was based, or if the offense upon which the waiver or order of transfer was based is subsequently dismissed.

(c) To keep the confidentiality of juvenile records, they shall be returned to the circuit court in which the case was pending and be kept in a separate confidential file. The records shall be physically marked to show that they are to remain confidential and shall be securely kept and filed in a manner so that no one can have access to determine the identity of the juvenile, except upon order of the circuit court.

(d) Marking the juvenile records to show they are to remain confidential has the legal effect of extinguishing the offense as if it never occurred.

(e) The records of a juvenile convicted under the criminal jurisdiction of the circuit court pursuant to subdivision (1),
subsection (d), section seven hundred ten, article four of this chapter may not be marked and kept as confidential.

(f) Any person who willfully violates this section 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 so fined and confined, and is liable for damages in the amount of $300 or actual damages, whichever is greater.

§49-5-105. Juvenile justice database; individual records confidential.

The West Virginia Supreme Court of Appeals is responsible for collecting, compiling and disseminating information in the juvenile justice database. Notwithstanding any other provision of this code to the contrary, the court shall grant the Division of Justice and Community Services access to confidential juvenile records for the limited purpose of the collection and analysis of statistical data. However, the division shall keep the records confidential and not publish any information that would identify any individual juvenile.

ARTICLE 6. MISSING CHILDREN INFORMATION ACT.

§49-6-101. Clearinghouse function; State Police requirements; rule-making.

(a) The Missing Children Information Clearinghouse is established under the West Virginia State Police. The State Police:

(1) Shall provide for the administration of the clearinghouse; and

(2) May promulgate rules in accordance with article three, chapter twenty-nine-a of this code to carry out the provisions of this article.
(b) The clearinghouse is a central repository of information on missing children and shall be used by all law-enforcement agencies in this state.

(c) The clearinghouse shall:

(1) Establish a system of intrastate communication of information relating to missing children;

(2) Provide a centralized file for the exchange of information on missing children and unidentified bodies of children within the state;

(3) Communicate with the National Crime Information Center for the exchange of information on missing children suspected of interstate travel;

(4) Collect, process, maintain and disseminate accurate and complete information on missing children;

(5) Provide a statewide toll-free telephone line for the reporting of missing children and for receiving information on missing children;

(6) Disseminate to custodians, law-enforcement agencies, the state Department of Education, the Bureau for Children and Families and the general public information that explains how to prevent child abduction and what to do if a child becomes missing;

(7) Compile statistics relating to the incidence of missing children within the state;

(8) Provide training materials and technical assistance to law-enforcement agencies and social services agencies pertaining to missing children; and
(9) Establish a media protocol for disseminating information pertaining to missing children.

(d) The clearinghouse shall print and distribute posters, flyers and other forms of information containing descriptions of missing children.

(e) The State Police may accept public or private grants, gifts and donations to assist in carrying out the provisions of this article.

§49-6-102. State Department of Education; missing children program; rule making.

(a) The State Department of Education shall develop and administer a program for the location of missing children who may be enrolled in the West Virginia school system, including private schools, and for the reporting of children who may be missing or who may be unlawfully removed from schools.

(b) The program shall include the use of information received from the clearinghouse and shall be coordinated with the operations of the clearinghouse.

(c) The State Board of Education may promulgate rules in accordance with article three, chapter twenty-nine-a of this code for the operation of the program and shall require the participation of all school districts and state-accredited private schools in this state.

§49-6-103. Information to clearinghouse.

Every law-enforcement agency in West Virginia shall provide to the clearinghouse any information the law-enforcement agency has that would assist in locating or identifying a missing child.
§49-6-104. Custodian request for information.  
(a) Upon written request made to a law-enforcement agency by the custodian of a missing child, the law-enforcement agency shall request from the clearinghouse information concerning the child that may aid the custodian in locating or identifying the child.

(b) A law-enforcement agency to which a request has been made pursuant to subsection (a) of this section shall report to the custodian on the results of its inquiry within fourteen calendar days after the day the written request is received by the law-enforcement agency.

§49-6-105. Missing child report forms; where filed.  
(a) The clearinghouse shall distribute missing child report forms to law-enforcement agencies in the state.

(b) A missing child report may be made to a law-enforcement agency in person or by telephone or other indirect method of communication and the person taking the report may enter the information on the form for the reporter. A missing child report form may be completed by the reporter and delivered to a law-enforcement office.

(c) A copy of the missing child report form shall be filed with the clearinghouse.

§49-6-106. Missing child reports; law-enforcement agency requirements; unidentified bodies.  
(a) A law-enforcement agency, upon receiving a missing child report, shall:

(1) Immediately start an investigation to determine the present location of the child if it determines that the child is in danger; and
(2) Enter the name of the missing child into the clearinghouse and the national crime information center missing person file if the child meets the center’s criteria, with all available identifying features, including dental records, fingerprints, other physical characteristics and a description of the clothing worn when the missing child was last seen.

(b) Information not immediately available shall be obtained as soon as possible by the law-enforcement agency and entered into the clearinghouse and the national crime information center file as a supplement to the original entry.

(c) All West Virginia law-enforcement agencies shall enter information about all unidentified bodies of children found in their jurisdiction into the clearinghouse and the national crime information center unidentified person file, including all available identifying features of the body and a description of the clothing found on the body. If an information entry into the national crime information center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.

§49-6-107. Release of dental records; cause shown; immunity.

(a) At the time a missing child report is made, the law-enforcement agency to which the missing child report is given may, when feasible and appropriate, provide a dental record release form to the parent, custodian, health care surrogate or other legal entity authorized to release the dental records of the missing child. The law-enforcement agency shall endorse the dental record release form with a notation that a missing child report has been made in compliance with this article. When the dental record release form is properly completed by the parent, custodian, health care surrogate or other legal entity authorized to release the dental records of the
missing child and contains the endorsement, the form is sufficient to permit a dentist or physician in this state to release dental records relating to the missing child to the law-enforcement agency.

(b) A circuit court judge may for good cause shown authorize the release of dental records of a missing child to a law-enforcement agency.

(c) A law-enforcement agency which receives dental records under subsection (a) or (b) of this section shall send the dental records to the clearinghouse.

(d) A dentist or physician who releases dental records to a person presenting a proper release executed or ordered pursuant to this section is immune from civil liability or criminal prosecution for the release of the dental records.

§49-6-108. Cross-checking and matching.

(a) The clearinghouse shall, in accordance with national crime information center policies and procedures, cross-check and attempt to match unidentified bodies with descriptions of missing children. When the clearinghouse discovers a possible match between an unidentified body and a missing child description, the clearinghouse shall notify the appropriate law-enforcement agencies.

(b) A law-enforcement agency that receives notice of a possible match shall make arrangements for positive identification. If a positive identification is made, the law-enforcement agency shall complete and close the investigation with notification to the clearinghouse.

§49-6-109. Interagency cooperation.

(a) State agencies and public and private schools shall cooperate with a law-enforcement agency that is investigating a
missing child report and shall furnish any information, including confidential information, that will assist the law-enforcement agency in completing the investigation.

(b) Information provided by a state agency or a public or private school may not be released to any person outside the law-enforcement agency or the clearinghouse, except as provided by rules of the West Virginia State Police.

§49-6-110. Confidentiality of records; rule making; requirements.

(a) The State Police shall promulgate rules according to article three, chapter twenty-nine-a of this code to provide for the classification of information and records as confidential that:

(1) Are otherwise confidential under state or federal law or rules promulgated pursuant to state or federal law;

(2) Are related to the investigation by a law-enforcement agency of a missing child or an unidentified body, if the State Police, in consultation with the law-enforcement agency, determines that release of the information would be deleterious to the investigation;

(3) Are records or notations that the clearinghouse maintains for internal use in matters relating to missing children and unidentified bodies and the State Police determines that release of the internal documents might interfere with an investigation by a law-enforcement agency in West Virginia or any other jurisdiction; or

(4) Are records or information that the State Police determines might interfere with an investigation or otherwise harm a child or custodian.

(b) The rules may provide for the sharing of confidential information with the custodian of the missing child.
§49-6-111. Attorney general to require compliance.

1 The Attorney General shall require each law-enforcement agency to comply with the provisions of the Missing Children Information Act and may seek writs of mandamus or other appropriate remedies to enforce this article.

§49-6-112. Agencies to receive report; law-enforcement agency requirements.

1 (a) Upon completion of the missing child report the law-enforcement agency shall immediately forward the contents of the report to the missing children information clearinghouse and the national crime information center’s missing person file. However, if an information entry into the national crime information center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.

10 (b) Within fifteen days after completion of the report, if the child is less than thirteen years of age the law-enforcement agency may, when appropriate, forward the contents of the report to the last:

14 (1) Child care center or child care home in which the child was enrolled; or

16 (2) School the child attended in West Virginia, if any.

17 (c) A law-enforcement agency involved in the investigation of a missing child shall:

19 (1) Update the initial report filed by the agency that received notification of the missing child upon the discovery of new information concerning the investigation;
(2) Forward the updated report to the appropriate agencies and organizations;

(3) Search the national crime information center’s wanted person file for reports of arrest warrants issued for persons who allegedly abducted or unlawfully retained children and compare these reports to the missing child’s national crime information center’s missing person file; and

(4) Notify all law-enforcement agencies involved in the investigation, the missing children information clearinghouse, and the national crime information center when the missing child is located.

§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses; appointment, duties and compensation of director; annual reports.

(a) The Clearinghouse Advisory Council is continued as a body corporate and politic, constituting a public corporation and government instrumentality. The council shall consist of eleven members, who are knowledgeable about and interested in issues relating to missing or exploited children, as follows:

(1) Six members to be appointed by the Governor, with the advice and consent of the Senate, with not more than four belonging to the same political party, three being from different congressional districts of the state and, as nearly as possible, providing broad state geographical distribution of members of the council, and at least one representing a nonprofit organization involved with preventing the abduction, runaway or exploitation of children or locating missing children;

(2) The Secretary of the Department of Health and Human Resources or his or her designee;

(3) The Superintendent of the West Virginia State Police or his or her designee;
(4) The State Superintendent of Schools or his or her designee;

(5) The Director of the Criminal Justice and Highway Safety Division or his or her designee; and

(6) The Commissioner of the Bureau for Children and Families or his or her designee.

(b) The Governor shall appoint the six council members for staggered terms. The terms of the members first taking office on or after the effective date of this legislation shall expire as designated by the Governor. Each subsequent appointment shall be for a full three-year term. Any appointed member whose term is expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy may serve only for the unexpired term. A member is eligible for only one successive reappointment. A vacancy shall be filled by the Governor in the same manner as the original appointment was made.

(c) Members of the council 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 in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) A majority of serving members constitutes a quorum for the purpose of conducting business. The chair of the council shall be designated by the Governor from among the appointed council members who represent nonprofit organizations involved with preventing the abduction, runaway or exploitation of children or locating missing children. The term of the chair shall run concurrently with his or her term of office as a member of the council. The council shall conduct all meetings in accordance
with the open governmental meetings law pursuant to article nine-a, chapter six of this code.

(e) The employee of the West Virginia State Police who is primarily responsible for the clearinghouse established by section one hundred and one of this article shall serve as the executive director of the council. He or she shall receive no additional compensation for service as the executive director of the council but shall be reimbursed for any reasonable and necessary expenses actually incurred in the performance of his or her duties as executive director in a manner consistent with the guidelines of the travel management office of the Department of Administration.

(f) The expenses of council members and the executive director shall be reimbursed from funds provided by foundation grants, in-kind contributions or funds obtained pursuant to subsection (b), section one hundred fifteen of this article.

(g) The executive director shall provide or obtain information necessary to support the administrative work of the council and, to that end, may contract with one or more nonprofit organizations or state agencies for research and administrative support.

(h) The executive director of the council shall be available to the Governor and to the Speaker of the House of Delegates and the President of the Senate to analyze and comment upon proposed legislation and rules which relate to or materially affect missing or exploited children.

(i) The council shall prepare and publish an annual report of its activities and accomplishments and submit it to the Governor and to the Joint Committee on Government and Finance on or before December 15 of each year.
§49-6-114. Powers and duties of clearinghouse advisory council; comprehensive strategic plan required to be provided to the Legislature.

The council shall prepare a comprehensive strategic plan and recommendation of programs in furtherance thereof that will support efforts to prevent the abduction, runaway and exploitation, or any thereof, of children to locate missing children; advise the West Virginia State Police regarding operation of the clearinghouse and its other responsibilities under this article; and cooperate with and coordinate the efforts of state agencies and private organizations involved with issues relating to missing or exploited children. The council may seek public and private grants, contracts, matching funds and procurement arrangements from the state and federal government, private industry and other agencies in furtherance of its mission and programs. An initial comprehensive strategic plan that will support and foster efforts to prevent the abduction, runaway and exploitation of children and to locate missing children shall be developed and provided to the Governor, the Speaker of the House of Delegates and the President of the Senate no later than July 1, 2015, and shall include, but not be limited to, the following:

1. Findings and determinations regarding the extent of the problem in this state related to: (A) Abducted children; (B) runaway children; and (C) exploited children;

2. Findings and determinations identifying the systems, both public and private, existing in the state to prevent the abduction, runaway or exploitation of children and to locate missing children and assessing the strengths and weaknesses of those systems and the clearinghouse;

3. The inclusion of exploited children within the functions of the clearinghouse. For purposes of this article, an exploited
child is a person under the age of eighteen years who has been:

(A) Used in the production of pornography; (B) subjected to
sexual exploitation or sexual offenses under article eight-b,
chapter sixty-one of this code; or (C) employed or exhibited in
any injurious, immoral or dangerous business or occupation in
violation of sections five through eight, article eight, chapter
sixty-one of this code;

(4) Recommendations of legislative changes required to
improve the effectiveness of the clearinghouse and other efforts
to prevent abduction, runaway or exploitation of children and to
locate missing children. Those recommendations shall consider
the following:

(A) Interaction of the clearinghouse with child custody
proceedings;

(B) Involvement of hospitals, child care centers and other
private agencies in efforts to prevent child abduction, runaway
or exploitation and to locate missing children;

(C) Publication of a directory of and periodic reports
regarding missing children;

(D) Required reporting by public and private agencies and
penalties for failure to report and false reporting;

(E) Removal of names from the list of missing children;

(F) Creating of an advocate for missing and exploited
children;

(G) State funding for the clearinghouse and efforts to prevent
the abduction, runaway and exploitation of children and to locate
missing children;

(H) Mandated involvement of state agencies, such as
publication of information regarding missing children in existing
state publications and coordination with the state registrar of vital statistics under section twelve, article five, chapter sixteen of this code; and

(I) Expanded requirement for boards of education to notify the clearinghouse in addition to local law-enforcement agencies under section five-c, article two, chapter eighteen of this code or if a birth certificate or school record received appears to be inaccurate or fraudulent and to receive clearinghouse approval before releasing records;

(5) Methods that will coordinate and engender collaborative efforts among organizations throughout the state, whether public or private, involved with missing or exploited children;

(6) Plans for the use of technology in the clearinghouse and other efforts related to missing or exploited children;

(7) Compliance of the clearinghouse, state law and all rules promulgated pursuant thereto with applicable federal law so as to enhance opportunities for receiving federal grants;

(8) Consultation with the State Board of Education and other agencies responsible for promulgating rules under this article;

(9) Possible methods for identifying missing children prior to enrollment in a public or nonpublic school;

(10) The feasibility and effectiveness of utilizing the federal parent locator service in locating missing children; and

(11) Programs for voluntary fingerprinting.

§49-6-115. Public-private partnerships; funding.

(a) In furtherance of its mission, the clearinghouse council is authorized to enter into contracts or joint venture agreements
with federal and state agencies; with nonprofit corporations
organized pursuant to the corporate laws of this state or other
jurisdictions that are qualified under Section 501(c)(3) of the
Internal Revenue Code; and with other organizations that
conduct research, make grants, improve educational programs
and work for the prevention of missing or exploited children and
to locate missing children. All contracts and joint venture
agreements must be approved by a majority vote of the council.
The council may also enter into contractual agreements for
consideration or recompense to it even though the entities are
funded from sources other than the state. Members of the council
are not prohibited from sitting on the boards of directors of any
contracting private nonprofit corporation, foundation or firm.
However, members of the council are not exempt from chapter
six-b of this code.

(b) The council shall solicit and is authorized to receive and
accept gifts or grants from private foundations, corporations,
individuals, devises and bequests or from other lawful sources.
The funds shall be paid into a special account in the State
Treasury for the use and benefit of the council.

ARTICLE 7. INTERSTATE COOPERATION.

PART I. INTERSTATE COMPACT
ON THE PLACEMENT OF CHILDREN.

§49-7-101. Adoption of compact.

The interstate compact on the placement of children is
hereby enacted into law and entered into with all other
jurisdictions legally joining therein in form substantially as
follows:

INTERSTATE COMPACT ON THE PLACEMENT OF
CHILDREN
ARTICLE I. PURPOSE AND POLICY.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. DEFINITIONS.

As used in this compact:

(a) “Child” means a person who, by reason of minority is legally subject to parental, guardianship or similar control.

(b) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends,
brings, or causes to be sent or brought any child to another party state.

(c) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) “Placement” means the arrangement for the care of a child in a family free home or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. CONDITIONS FOR REPLACEMENT.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.
(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for the proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency’s state, and shall be entitled to receive therefrom, the supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. A violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any punishment or penalty, a violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.
ARTICLE V.  RETENTION OF JURISDICTION.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency’s state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. The jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of the case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI.  INSTITUTIONAL CARE OF DELINQUENT CHILDREN.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact
but no placement shall be made unless the child is given a court
hearing on notice to the parent or guardian with opportunity to
be heard, prior to his or her being sent to the other party
jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the
sending agency’s jurisdiction; and

2. Institutional care in the other jurisdiction is in the best
interest of the child and will not produce undue hardship.

ARTICLE VII. COMPACT ADMINISTRATOR.

The executive head of each jurisdiction party to this compact
shall designate an officer who shall be general coordinator of
activities under this compact in his or her jurisdiction and who,
acting jointly with like officers of other party jurisdictions, shall
have power to promulgate rules and regulations to carry out
more effectively the terms and provisions of this compact.

ARTICLE VIII. LIMITATIONS.

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state
by his or her parent, stepparent, grandparent, adult brother or
sister, adult uncle or aunt, or his or her guardian and leaving the
child with a relative or nonagency guardian in the receiving
state.

(b) Any placement, sending or bringing of a child into a
receiving state pursuant to any other interstate compact to which
both the state from which the child is sent or brought and the
receiving state are party, or to any other agreement between the
states which has the force of law.

ARTICLE IX. ENACTMENT AND WITHDRAWAL.

This compact shall be open to joinder by any state, territory
or possession of the United States, the District of Columbia, the
Commonwealth of Puerto Rico, and, with the consent of
Congress, the government of Canada or any province thereof. It
shall become effective with respect to those jurisdictions when
that other jurisdiction has enacted the same into law. Withdrawal
from this compact shall be by the enactment of a statute
repealing the same, but shall not take effect until two years after
the effective date of the statute and until written notice of the
withdrawal has been given by the withdrawing state to the
Governor of each other party jurisdiction. Withdrawal of a party
state shall not affect the rights, duties and obligations under this
compact of any sending agency therein with respect to a
placement made prior to the effective date of withdrawal.

ARTICLE X. CONSTRUCTION.

The provisions of this compact shall be liberally construed
to effectuate the purposes thereof. The provisions of this
compact shall be severable and if any phrase, clause, sentence or
provision of this compact is declared to be contrary to the
Constitution of any party state or of the United States or the
applicability thereof to any government, agency, person or
circumstance is held invalid, the validity of the remainder of this
compact and the applicability thereof to any government,
agency, person or circumstance shall not be affected thereby. If
this compact shall be held contrary to the Constitution of any
state party thereto, the compact shall remain in full force and
effect as to the remaining states and in full force and effect as to
the state affected as to all severable matters.

§49-7-102. Definitions; implementation.

(a) Financial responsibility for any child placed pursuant to
the provisions of the Interstate Compact on the Placement of
Children shall be determined in accordance with the provisions
of Article V thereof in the first instance. However, in the event
of partial or complete default of performance thereunder, section
one hundred one, article two of this chapter may be invoked.
(b) The “appropriate public authorities” as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the Department of Health and Human Resources and the agency shall receive and act with reference to notices required by Article III.

(c) As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase “appropriate authority in the receiving state” with reference to this state shall mean the Department of Health and Human Resources.

(d) The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. An agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof is not binding unless it has the approval in writing of the Auditor in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

(e) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under sections one hundred eight and one hundred eleven, article two of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

(f) Section one hundred nine, article two of this chapter does not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

(g) Any court having jurisdiction to place delinquent children may place a child in an institution of or in another state
pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

(h) As used in Article VII of the interstate compact on the placement of children, the term “executive head” means the Governor. The Governor is hereby authorized to appoint a compact administrator in accordance with the terms of that Article VII.

PART II. INTERSTATE ADOPTION ASSISTANCE COMPACT.

§49-7-201. Interstate adoption assistance compact; findings and purpose.

(a) The Legislature finds that:

(1) Finding adoptive families for children, for whom state assistance is desirable pursuant to section one hundred twelve, article four, of this chapter and assuring the protection of the interests of the children affected during the entire assistance period, require special measures when the adoptive parents move to other states or are residents of another state; and

(2) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states.

(b) The purposes of sections two hundred one through two hundred four of this article are to:

(1) Authorize the Department of Health and Human Resources to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the Department of Health and Human Resources; and
§49-7-202. Interstate adoption assistance compacts authorized; definitions.

(a) The Department of Health and Human Resources is authorized to develop, participate in the development of, negotiate and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in sections two hundred one through two hundred four of this article. When so entered into, and for so long as it shall remain in force, the compact shall have the force and effect of law.

(b) For the purposes of sections two hundred one through two hundred four of this article, the term “state” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a Territory or Possession of or administered by the United States.

(c) For the purposes of sections two hundred one through two hundred four of this article, the term “adoption assistance state” means the state that is signatory to an adoption assistance agreement in a particular case.

(d) For the purposes of sections two hundred one through two hundred four of this article, the term “residence state” means the state of which the child is a resident by virtue of the residence of the adoptive parents.

§49-7-203. Interstate adoption assistance compact; contents of compact.

A compact entered into pursuant to the authority conferred by sections two hundred one through two hundred four of this article shall have the following content:
(1) A provision making it available to joinder by all states.

(2) A provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal.

(3) A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode.

(4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state department which undertakes to provide the adoption assistance, and further, that the agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents, and the state agency providing the adoption assistance.

(5) Other provisions as may be appropriate to implement the proper administration of the compact.

§49-7-204. Medical assistance for children with special needs; rule-making; penalties.

(a) A child with special needs resident in this state who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this state upon the filing in the Division of Human Services of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Department of Health and Human Resources
the adoptive parents shall be required at least annually to show
that the agreement is still in force or has been renewed.

(b) The Department of Health and Human Resources shall
consider the holder of a medical assistance identification
pursuant to this section as any other holder of a medical
assistance identification under the laws of this state and shall
process and make payment on claims on account of the holder in
the same manner and pursuant to the same conditions and
procedures as for other recipients of medical assistance.

(c) The Department of Health and Human Resources shall
provide coverage and benefits for a child who is in another state
and who is covered by an adoption assistance agreement made
by the Department of Health and Human Resources for the
coverage or benefits, if any, not provided by the residence state.
To this end, the adoptive parents acting for the child may submit
evidence of payment for services or benefit amounts not payable
in the residence state and shall be reimbursed therefor. However,
there may be no reimbursement for services or benefit amounts
covered under any insurance or other third party medical
contract or arrangement held by the child or the adoptive parents.
The Department of Health and Human Resources shall propose
rules in accordance with article three, chapter twenty-nine-a of
this code that are necessary to effectuate the requirements and
purposes of this section. The additional coverages and benefit
amounts provided pursuant to this section shall be for services to
the cost of which there is no federal contribution, or which, if
federally aided, are not provided by the residence state. Among
other things, the regulations shall include procedures to be
followed in obtaining prior approvals for services in those
instances where required for the assistance.

(d) Any person who submits a claim for payment or
reimbursement for services or benefits pursuant to this section or
the making of any statement in connection therewith, which
claim of statement the maker knows or should know to be false, misleading or fraudulent is guilty of a felony and, upon conviction, shall be fined not more than $10,000, or incarcerated in a correctional facility not more than two years, or both fined and incarcerated.

(e) This section applies only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

PART III. INTERSTATE COMPACT FOR JUVENILES.

§49-7-301. Execution of interstate compact for juveniles.

The Governor of this state is authorized and directed to execute a compact on behalf of the State of West Virginia with any state or states of the United States legally joining therein, and substantially as follows:

INTERSTATE COMPACT FOR JUVENILES

ARTICLE I. PURPOSE.

(a) The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home
and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact, through means of joint and cooperative action among the compacting states:

(1) To ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(2) To ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(3) To return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(4) To make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(5) To provide for the effective tracking and supervision of juveniles;

(6) To equitably allocate the costs, benefits and obligations of the compacting states;

(7) To establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;
(8) To ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(9) To establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(10) To establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;

(11) To monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(12) To coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in the activity; and

(13) To coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise.

(c) It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall
be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II. DEFINITIONS.

As used in this compact, unless the context clearly requires a different construction:

(a) “Bylaws” means those bylaws established by the interstate commission for its governance, or for directing or controlling its actions or conduct.

(b) “Compact administrator” means the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

(c) “Compacting state” means any state which has enacted the enabling legislation for this compact.

(d) “Commissioner” means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(e) “Court” means any court having jurisdiction over delinquent, neglected, or dependent children.

(f) “Deputy compact administrator” means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.
(g) “Interstate commission” means the interstate commission for juveniles created by Article III of this compact.

(h) “Juvenile” means any person defined as a juvenile in any member state or by the rules of the interstate commission, including:

(1) Accused delinquent – a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated delinquent – a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused status offender – a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated status offender - a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(i) Nonoffender – a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(j) “Noncompacting state” means any state which has not enacted the enabling legislation for this compact.

(k) “Probation or parole” means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(l) “Rule” means a written statement by the interstate commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the
commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

(m) “State” means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III. INTERSTATE COMMISSION FOR JUVENILES.

(a) The compacting states hereby create the “Interstate Commission for Juveniles.” The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and the additional powers as may be conferred upon it by subsequent action of the respective Legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the interstate commission in the capacity under or pursuant to the applicable law of the compacting state.

(c) In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners, but who are members of interested organizations. The noncommissioner members must include a member of the national organizations of Governors, legislators, state chief justices, attorneys general, interstate compact for adult offender supervision, interstate
compact for the placement of children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the interstate commission shall be ex officio (nonvoting) members. The interstate commission may provide in its bylaws for the additional ex officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

(d) Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(e) The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(f) The interstate commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules, and performs other duties as directed by the interstate commission or set forth in the bylaws.

(g) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the
interstate commission. A member shall vote in person and shall
not delegate a vote to another compacting state. However, a
commissioner, in consultation with the state council, shall
appoint another authorized representative, in the absence of the
commissioner from that state, to cast a vote on behalf of the
compacting state at a specified meeting. The bylaws may
provide for members’ participation in meetings by telephone or
other means of telecommunication or electronic communication.

(h) The interstate commission’s bylaws shall establish
conditions and procedures under which the interstate
commission shall make its information and official records
available to the public for inspection or copying. The interstate
commission may exempt from disclosure any information or
official records to the extent they would adversely affect
personal privacy rights or proprietary interests.

(i) Public notice shall be given of all meetings and all
meetings shall be open to the public, except as set forth in the
rules or as otherwise provided in the compact. The interstate
commission and any of its committees may close a meeting to
the public where it determines by two-thirds vote that an open
meeting would be likely to:

(1) Relate solely to the interstate commission’s internal
personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure
by statute;

(3) Disclose trade secrets or commercial or financial
information which is privileged or confidential;

(4) Involve accusing any person of a crime, or formally
censuring any person;

(5) Disclose information of a personal nature where
disclosure would constitute a clearly unwarranted invasion of
personal privacy;
(6) Disclose investigative records compiled for law-enforcement purposes;

(7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of the person or entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(9) Specifically relate to the interstate commission’s issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(j) For every meeting closed pursuant to subsection (i) of this section, the interstate commission’s legal counsel shall publicly certify that, in the legal counsel’s opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in the minutes.

(k) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. The methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to
up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV. POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The interstate commission shall have the following powers and duties:

(a) To provide for dispute resolution among compacting states.

(b) To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(c) To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission.

(d) To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(e) To establish and maintain offices which shall be located within one or more of the compacting states.

(f) To purchase and maintain insurance and bonds.

(g) To borrow, accept, hire or contract for services of personnel.

(h) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including,
but not limited to, an executive committee as required by Article
III which shall have the power to act on behalf of the interstate
commission in carrying out its powers and duties hereunder.

(i) To elect or appoint officers, attorneys, employees, agents,
or consultants, and to fix their compensation, define their duties
and determine their qualifications.

(j) To establish the interstate commission’s personnel
policies and programs relating to, inter alia, conflicts of interest,
rates of compensation, and qualifications of personnel.

(k) To accept any and all donations and grants of money,
equipment, supplies, materials, and services, and to receive,
utilize, and dispose of it.

(l) To lease, purchase, accept contributions or donations of,
or otherwise to own, hold, improve or use any property, real,
personal, or mixed.

(m) To sell, convey, mortgage, pledge, lease, exchange,
abandon, or otherwise dispose of any property, real, personal or
mixed.

(n) To establish a budget and make expenditures and levy
dues as provided in Article VIII of this compact.

(o) To sue and be sued.

(p) To adopt a seal and bylaws governing the management
and operation of the interstate commission.

(q) To perform functions as may be necessary or appropriate
to achieve the purposes of this compact.

(r) To report annually to the Legislatures, Governors,
judiciary, and state councils of the compacting states concerning
the activities of the interstate commission during the preceding
year. Reports shall also include any recommendations that may
have been adopted by the interstate commission.

(s) To coordinate education, training and public awareness
regarding the interstate movement of juveniles for officials
involved in the activity.

(t) To establish uniform standards of the reporting, collecting
and exchanging of data.

(u) The interstate commission shall maintain its corporate
books and records in accordance with the bylaws.

ARTICLE V. ORGANIZATION AND OPERATION OF THE
INTERSTATE COMMISSION.

Section A. Bylaws.

1 (a) The interstate commission shall, by a majority of the
members present and voting, within twelve months after the first
interstate commission meeting, adopt bylaws to govern its
contact as may be necessary or appropriate to carry out the
purposes of the compact, including, but not limited to:

6 (1) Establishing the fiscal year of the interstate commission;

(2) Establish an executive committee and the other
committees as may be necessary to;

3 (3) Provide for the establishment of committees governing
any general or specific delegation of any authority or function of
the interstate commission;

4 (4) Provide reasonable procedures for calling and conducting
meetings of the interstate commission, and ensure reasonable
notice of each meeting;
(5) Establish the titles and responsibilities of the officers of the interstate commission;

(6) Provide a mechanism for concluding the operations of the interstate commission and the return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations.

(7) Providing “start-up” rules for initial administration of the compact; and

(8) Establish standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff.

(b) (1) The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have the authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson’s absence or disability, the vice-chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon terms and conditions and compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member and shall hire and supervise other staff as may be authorized by the interstate commission.
Section C. Qualified Immunity, Defense and Indemnification.

1. (c)(1) The commission’s executive director and employees shall be 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 or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

2. (2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of a person’s employment or duties for acts, errors, or omissions occurring within such person’s state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect a person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of a person.

3. (3) The interstate commission shall defend the executive director or the employees or representatives of the interstate commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend the commissioner or the commissioner’s representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not
result from intentional or willful and wanton misconduct on the part of such person.

(4) The interstate commission shall indemnify and hold the commissioner of a compacting state, or the commissioner’s representatives or employees, or the interstate commission’s representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI. RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

(a) The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the “Model State Administrative Procedures Act,” 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the interstate commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.

(c) When promulgating a rule, the interstate commission shall, at a minimum:
(1) Publish the proposed rule’s entire text stating the reason(s) for that proposed rule;

(2) Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;

(3) Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and

(4) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(d) Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the federal district court where the interstate commission’s principal office is located for judicial review of such rule. If the court finds that the interstate commission’s action is not supported by substantial evidence in the rule-making record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(e) If a majority of the Legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

(f) The existing rules governing the operation of the “Interstate Compact on Juveniles” superceded by this article shall be null and void twelve months after the first meeting of the interstate commission created hereunder.
(g) Upon determination by the interstate commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to the rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

ARTICLE VII. OVERSIGHT, ENFORCEMENT AND DISPUTE SOLUTION BY THE INTERSTATE COMMISSION.

Section A. Oversight.

1. (a)(1) The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

2. (2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact’s purposes and intent.

3. (3) The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules.

4. (4) In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, it shall be entitled to receive all service
of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution.

(b)(1) The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(2) The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII. FINANCE.

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission’s annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population
of each compacting state and the volume of interstate movement
of juveniles in each compacting state and shall promulgate a rule
binding upon all compacting states which governs the
assessment.

(c) The interstate commission shall not incur any obligations
of any kind prior to securing the funds adequate to meet the
same; nor shall the interstate commission pledge the credit of
any of the compacting states, except by and with the authority of
the compacting state.

(d) The interstate commission shall keep accurate accounts
of all receipts and disbursements. The receipts and
disbursements of the interstate commission shall be subject to
the audit and accounting procedures established under its
bylaws. However, all receipts and disbursements of funds
handled by the interstate commission shall be audited yearly by
a certified or licensed public accountant and the report of the
audit shall be included in and become part of the annual report
of the interstate commission.

ARTICLE IX. THE STATE COUNCIL.

Each member state shall create a state council for interstate
juvenile supervision. While each state may determine the
membership of its own state council, its membership must
include at least one representative from the legislative, judicial,
and executive branches of government, victims groups, and the
compact administrator, deputy compact administrator or
designee. Each compacting state retains the right to determine
the qualifications of the compact administrator or deputy
compact administrator. Each state council will advise and may
exercise oversight and advocacy concerning that state’s
participation in interstate commission activities and other duties
as may be determined by that state, including, but not limited to,
development of policy concerning operations and procedures of
the compact within that state.
ARTICLE X. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.

(a) Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The Governors of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) The interstate commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI. WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT.

Section A. Withdrawal.

(a)(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.
(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state’s intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default.

(b)(1) If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(A) Remedial training and technical assistance as directed by the interstate commission;

(B) Alternative dispute resolution;

(C) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission; and
(D) Suspension or termination of membership in the compact shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the Governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state’s Legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules and any other grounds designated in commission bylaws and rules.

(3) The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default.

(4) The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(5) Within sixty days of the effective date of termination of a defaulting state, the commission shall notify the Governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state’s Legislature, and the state council of such termination.
(6) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(7) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(8) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

Section C. Judicial Enforcement.

(c) The interstate commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

Section D. Dissolution of Compact.

(d)(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be
concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII. SEVERABILITY AND CONSTRUCTION.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII. BINDING EFFECT OF COMPACT AND OTHER LAWS.

Section A. Other Laws.

(a)(1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states’ laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact.

(b)(1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission
may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the Legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

§49-7-302. State council for interstate juvenile supervision; members; authority.

(a) Upon the effective date of the interstate compact for juveniles, there shall be created a state council for interstate juvenile supervision. The state council shall be comprised of a total of nine members, to be selected and designated as follows:

(1) Two members designated by the Legislature, one of whom shall be named and appointed by the Speaker of the House, and the other of whom shall be designated by the President of the Senate;

(2) Two members designated by the judiciary, both of whom shall be named and appointed by the Chief Justice of the Supreme Court of Appeals of West Virginia;

(3) The compact administrator or a designee of the compact administrator; and

(4) Four members to be designated and appointed by the Governor, two of whom must be representatives of state agencies dealing with juvenile corrections, juvenile placement or juvenile services, and one of whom must be a representative of a victims’ group.
(b) Within ninety days of the effective date of this compact, the state council shall meet and designate a commissioner who shall represent the state as the compacting state’s voting representative under Article III of this compact.

c) The state council will exercise oversight and advocacy concerning West Virginia’s participation in interstate commission activities and rule makings, and engage in other duties and activities as determined by its members, including, but not limited to, the development of policy concerning the operations and procedures for implementing the compact and interstate commission rules within West Virginia.

§49-7-303. Appointment of compact administrator.

(a) Upon and after the effective date of the interstate compact for juveniles, the Governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like offices of the other party states, shall be responsible for the administration and management of this state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and the policies adopted by the state council under this compact. The compact administrator shall serve subject to the will and pleasure of the Governor, and must meet the minimum qualifications for the position of compact administrator, as established by the state council. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state hereunder.

(b) Until the state council has met and established minimum qualifications for the position of compact administrator the
individual or administrator who has been designated to act as the
juvenile compact administrator for the interstate compact for
juveniles may perform the duties and responsibilities of compact
administrator under this article.

(c) Until the state council has met and designated a
commissioner to vote on behalf of the State of West Virginia at
the interstate commission, the individual or administrator who
has been designated to act as the juvenile compact administrator
for the interstate compact for juveniles shall function as the
acting commissioner for the State of West Virginia before the
interstate commission formed under the new compact.

§49-7-304. Notification of the effective date of the interstate
compact for juveniles.

Within ten days of the date that the thirty-fifth state adopts
legislation approving this compact, the appointed or designated
juvenile compact administrator under section three hundred
three, article seven of this chapter shall advise the Governor, the
Chief Justice of the Supreme Court of Appeals of West Virginia,
the Speaker of the House of Delegates and the President of the
Senate of the effective date of this compact.

CHAPTER 47

(Com. Sub. for H. B. 2939 - By Delegate B. White)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]
and §49-2-812 of said code, all relating to requirements for mandatory reporting of sexual offenses on school premises involving or between students; defining terms; adding conduct that must be reported to law enforcement; defining nature of conduct to be reported; creating criminal penalties for failure to report; increasing penalties for other reporting requirements; and requiring school administrators to provide written notice of reporting requirement to employees and to obtain and preserve signed acknowledgments thereof.

Be it enacted by the Legislature of West Virginia:

That §49-1-201 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-2-803 and §49-2-812 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

*§49-1-201. Definitions related, but not limited, to child abuse and neglect.

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 context in which the word is used clearly indicates that a different meaning is intended.

“Abandonment” means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child;

“Abused child” means a child whose health or welfare is being harmed or threatened by:

*NOTE: This section was also amended by H. B. 2200 (Chapter 46) which passed prior to this Act.
(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 section fourteen-h, article two, chapter sixty-one of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

“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 part six, article four of this chapter, 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 section two hundred two, article twenty-seven, chapter forty-eight 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 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 thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, 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 or a 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 section one hundred one, article one, chapter sixty-a 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; or
(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;

(C) “Neglected child” does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

“Petitioner or co-petitioner” means the Department or any reputable person who files a child abuse or neglect petition pursuant to section six hundred one, article four of this chapter.

“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 co-petitioners.

“Sexual abuse” means:

(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section three, article eight-c, chapter sixty-one, 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 sixteen years of age the child may have willingly participated in that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct or, for a child sixteen 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 sections seven, eight
or nine of article eight-b, chapter sixty-one of this code.

“Sexual assault” means any of the offenses proscribed in
sections three, four or five of article eight-b, chapter sixty-one of
this code.

“Sexual contact” means sexual contact as that term is
defined in section one, article eight-b, chapter sixty-one 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
section one, article eight-c, chapter sixty-one of this code; or

(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.

“Sexual intercourse” means sexual intercourse as that term
is defined in section one, article eight-b, chapter sixty-one of this
code.

“Sexual intrusion” means sexual intrusion as that term is
defined in section one, article eight-b, chapter sixty-one of this
code.
“Serious physical abuse” means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

*§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.

(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 or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than forty-eight hours after suspecting this abuse or neglect, report the circumstances or cause a report to be made 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, or cause a report to be made, 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

*NOTE: This section was also amended by H. B. 2200 (Chapter 46) which passed prior to this Act.
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.

(b) Any person over the age of eighteen who receives a
disclosure from a credible witness or observes any sexual abuse
or sexual assault of a child, shall immediately, and not more than
forty-eight hours after receiving that disclosure or observing the
sexual abuse or sexual assault, report the circumstances or cause
a report to be made to the Department of Health and Human
Resources or the State Police or other law-enforcement agency
having jurisdiction to investigate the report. In the event that the
individual receiving the disclosure or observing the sexual abuse
or sexual assault has a good faith belief that the reporting of the
event to the police would expose either the reporter, the subject
child, the reporter’s children or other children in the subject
child’s household to an increased threat of serious bodily injury,
the individual may delay making the report while he or she
undertakes measures to remove themselves or the affected
children from the perceived threat of additional harm and the
individual makes the report as soon as practicable after the threat
of harm has been reduced. The law-enforcement agency that
receives a report under this subsection shall report the
allegations to the Department of Health and Human Resources
and coordinate with any other law-enforcement agency, as
necessary to investigate the report.

(c) Any school teacher or other school personnel who
receives a disclosure from a witness, which a reasonable prudent
person would deem credible, or personally observes any sexual
contact, sexual intercourse or sexual intrusion, as those terms are
defined in article eight-b, chapter sixty-one, of a child on school
premises or on school buses or on transportation used in
furtherance of a school purpose shall immediately, but not more
than 24 hours, report the circumstances or cause a report to be made to the State Police or other law-enforcement agency having jurisdiction to investigate the report: Provided, That this subsection will not impose any reporting duty upon school teachers or other school personnel who observe, or receive a disclosure of any consensual sexual contact, intercourse, or intrusion occurring between students who would not otherwise be subject to section three, five, seven or nine of article eight-eight, chapter sixty-one of this code: Provided, however, That any teacher or other school personnel shall not be in violation of this section if he or she makes known immediately, but not more than 24 hours, to the principal, assistant principal or similar person in charge, a disclosure from a witness, which a reasonable prudent person would deem credible, or personal observation of conduct described in this section: Provided further, That a principal, assistant principal or similar person in charge made aware of such disclosure or observation from a teacher or other school personnel shall be responsible for immediately, but not more than 24 hours, reporting such conduct to law enforcement.

(d) County boards of education and private school administrators shall provide all employees with a written statement setting forth the requirement contained in this subsection and shall obtain and preserve a signed acknowledgment from school employees that they have received and understand the reporting requirement.

(e) The reporting requirements contained in this section specifically include reported, disclosed or observed conduct involving or between students enrolled in a public or private institution of education, or involving a student and school teacher or personnel. When the alleged conduct is between two students or between a student and school teacher or personnel, the law enforcement body that received the report under this section is required to make such a report under this section shall additionally immediately, but not more than 24 hours, notify the
students’ parents, guardians, and custodians about the allegations.

(f) 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.

*§49-2-812. Failure to report; penalty.*

(a) Any person, official or institution required by this article to report a case involving a child known or suspected to be abused or neglected, or required by section eight hundred nine of this article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction, shall be confined in jail not more than ninety days or fined not more than $5,000, or both fined and confined.

(b) Any person, official or institution required by this article to report a case involving a child known or suspected to be sexually assaulted or sexually abused, or student known or suspected to have been a victim of any non-consensual sexual contact, sexual intercourse or sexual intrusion on school premises, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than six months or fined not more than $10,000, or both.

*NOTE: This section was also amended by H. B. 2200 (Chapter 46) which passed prior to this Act.*
AN ACT to amend and reenact §5-16B-1 and §5-16B-2 of the Code of West Virginia, 1931, as amended, all relating to transferring the Children’s Health Insurance Program and Children’s Health Insurance Agency from the Department of Administration to the Department of Health and Human Resources; providing for orderly transfer of functions, funds and accounts; and clarifying definition of “Children’s Health Insurance Agency”.

Be it enacted by the Legislature of West Virginia:

That §5-16B-1 and §5-16B-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16B. WEST VIRGINIA CHILDREN’S HEALTH INSURANCE PROGRAM.

§5-16B-1. Expansion of health care coverage to children; creation of program; legislative directives.

(a) It is the intent of the Legislature to expand access to health services for eligible children and to pay for this coverage by using private, state and federal funds to purchase those services or purchase insurance coverage for those services. To achieve this intention, the West Virginia Children’s Health Insurance Program is created. The program shall be administered by the Children’s Health Insurance Agency within the Department of Administration in accordance with the provisions
of this article and the applicable provisions of Title XXI of the Social Security Act of 1997: Provided, That on and after July 1, 2015, the agencies, boards and programs including all of the allied, advisory, affiliated or related entities and funds associated with the Children’s Health Insurance Program and Children’s Health Insurance Agency, shall be incorporated in and administered as a part of the Department of Health and Human Resources. Participation in the program may be made available to families of eligible children, subject to eligibility criteria and processes to be established, which does not create an entitlement to coverage in any person. Nothing in this article requires any appropriation of State General Revenue Funds for the payment of any benefit provided in this article. In the event that this article conflicts with the requirements of federal law, federal law governs.

(b) In developing a Children’s Health Insurance Program that operates with the highest degree of simplicity and governmental efficiency, the board shall avoid duplicating functions available in existing agencies and may enter into interagency agreements for the performance of specific tasks or duties at a specific or maximum contract price.

(c) In developing benefit plans, the board may consider any cost savings, administrative efficiency or other benefit to be gained by considering existing contracts for services with state health plans and negotiating modifications of those contracts to meet the needs of the program.

(d) For the transfer of the functions of the Children’s Health Insurance Program and the Children’s Health Insurance Agency from the Department of Administration to the Department of Health and Human Resources, the Secretary of the Department of Health and Human Resources and the Secretary of the Department of Administration, acting jointly, are empowered to authorize and shall authorize the transfers of program and agency funds including, but not limited to, the West Virginia
Children’s Health Fund created in section seven of this article and associated investment accounts; and transfers of Children’s Health Insurance Program and Children’s Health Insurance Agency personnel and equipment, as are necessary, to facilitate an orderly transfer of the functions of the Children’s Health Insurance Program and the Children’s Health Insurance Agency.

(e) In order to enroll as many eligible children as possible in the program created by this article and to expedite the effective date of their health insurance coverage, the board shall develop and implement a plan whereby applications for enrollment may be taken at any primary care center or other health care provider, as determined by the director, and transmitted electronically to the program’s offices for eligibility screening and other necessary processing. The board may use any funds available to it in the development and implementation of the plan, including grant funds or other private or public moneys.

§5-16B-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(a) “Agency” means the Children’s Health Insurance Agency.

(b) “Board” means the Children’s Health Insurance Program Board.

(c) “Director” means the Director of the Children’s Health Insurance Agency.

(d) “Essential community health service provider” means a health care provider that:

(1) Has historically served medically needy or medically indigent patients and demonstrates a commitment to serve low-income and medically indigent populations which constitute a significant portion of its patient population or, in the case of a
15 sole community provider, serves medically indigent patients
16 within its medical capability; and
17
18 (2) Either waives service fees or charges fees based on a
19 sliding scale and does not restrict access or services because of
20 a client’s financial limitations. Essential community health
21 service provider includes, but is not limited to, community
22 mental health centers, school health clinics, primary care centers,
23 pediatric health clinics or rural health clinics.
24
25 (e) “Program” means the West Virginia Children’s Health
26 Insurance Program.

CHAPTER 49

(H. B. 2876 - By Delegate(s) E. Nelson, Ashley, Boggs,
Williams, Anderson, A. Evans, Walters, Canterbury, Hamilton,
L. Phillips and Pethtel)

[Passed March 9, 2015; in effect from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT finding and declaring certain claims against the state and its
agencies to be moral obligations of the state; and directing the
Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department
of Administration/Office of Technology; Department of
Agriculture; Division of Corrections; Division of Highways;
Division of Homeland Security and Emergency Manage-
ment; Division of Motor Vehicles; Division of Natural Resources; Division of Natural Resources/Parks and Recreation; Real Estate Commission; Regional Jail and Correctional Facility Authority; State of West Virginia and West Virginia State Police to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and recommendations reported to it by the Court of Claims 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 certain 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) CDI Corporation. .................. $8,164.00

(2) Peak-Ryzex Inc. .................... $6,091.80

(3) Verizon Business. ................. $115,987.50

(4) Verizon Select Services Inc. ....... $151,496.38

(b) Claim against the Department of Agriculture:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Atrium TRS V LLC dba Embassy Suites. . $10,101.20
(c) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Yesser Abdelhaq. ........................................ $20.95
(2) Abner Allen. ............................................. $87.67
(3) Robert Blake. ........................................... $31.54
(4) William Bumpus. ...................................... $40.00
(5) Miguel Delgado. ....................................... $25.00
(6) Robert E. Gura. ....................................... $160.00
(7) Mark F. Hanna. ....................................... $129.99
(8) Keith W.R. Lowe. ..................................... $950.00
(9) Jason Ramsey........................................ $85.93
(10) Gary Wade Stanley. ................................. $502.16
(11) Bruce Thomas. ....................................... $6.35
(12) Edward Wall. ......................................... $273.45
(13) Jason S. Williams..................................... $48.74
(14) Neil Williams........................................ $259.00

(d) Claims against the Division of Highways:

(TO BE PAID FROM STATE ROAD FUND)

(1) Stacy L. Acree. ....................................... $187.62
(2) Danny C. Aderholt.................................... $581.02
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(31) Gerald R. Bailes. ......................... $50.00
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(40) John D. Ballard and Tammy R. Ballard. .. $313.01
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(42) Baltic Capital Inc. .......................... $493.83
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(46) Brian Barnett and Tammy Barnett........ $219.95
(47) John J. Barr. .............................. $321.00
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(49) Jaclyn Marie Barron....................... $69.95
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(51) Wendy Michelle Basham.................. $494.62
(52) Jennifer Kay Bass. ......................... $968.77
(53) Linda L. Batton. ........................... $85.11
(54) Michael Baumann and Melody Baumann... $500.00
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(142) Douglas W. Cavender and Jodi Cavender. $1,000.00
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689 (637) Thomas W. Mitchell...................... $250.00
690 (638) Velma J. Mitchell....................... $162.18
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692 (640) Mobile Properties LLC................... $445.42
693 (641) Sharon Mobley............................ $200.31
694 (642) James M. Molina and
695 Marsha A. Molina.............................. $1,000.00
696 (643) Steven E. Monroe......................... $898.39
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946 (893) Phyllis J. Stratton. ....................... $250.00
947 (894) Tabitha Strickland. ...................... $500.00
948 (895) Shelly Stump. ............................ $206.38
949 (896) Brian Sturm and Kelsey Sturm. ........ $500.00
950 (897) Christopher M. Suarez. .................. $500.00
951 (898) Judith A. Summers. ...................... $776.96
952 (899) Jeremy Susanek. ........................ $500.00
953 (900) Tammy Renee Sutton ..................... $329.38
954 (901) Regina Swaney. .......................... $301.00
955 (902) Mary Sypolt. ............................. $278.94
956 (903) Brett M. Szligo. ........................ $100.00
957 (904) Kenneth E. Tabor. ....................... $94.34
958 (905) Cherra Taylor. ........................... $185.48
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961 (908) Ruth Taylor. ............................. $500.00
962 (909) Scott Taylor. ............................. $119.15
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(e) Claim against the Division of Homeland Security and Emergency Management:

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(f) Claims against the Division of Motor Vehicles:

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(2) Huntington Cycles Inc., dba Charlie’s Harley Davidson. $347.50
(3) Joe’s Cars. $355.50
(4) Keith Paul Rhea. $4,240.00

(g) Claim against the Division of Natural Resources:

(h) Claim against the Division of Natural Resources/Parks and Recreation:

(i) Claim against the Real Estate Commission:

(j) Claims against the Regional Jail and Correctional Facility Authority:

(1) William Andrews. $169.84
(2) Allen Baker and Beverly Baker. $28.98
(3) Gary R. Baker. $20.00
(4) Jonathan Butts. $18.21
(5) Stella Frantz and Marguerita May. . . . . . . . . . . . $30.81
(6) Lawrence Galbearch. . . . . . . . . . . . . . . . . . . . . $14.95
(7) Christopher Hayman. . . . . . . . . . . . . . . . . . . . . $65.76
(8) Adam Ruthers. . . . . . . . . . . . . . . . . . . . . . . . . $50.00
(9) Norman D. Staley. . . . . . . . . . . . . . . . . . . . . . . $39.92
(10) Timothy L. Taylor. . . . . . . . . . . . . . . . . . . . . . $22.24
(11) Carl Tyndale. . . . . . . . . . . . . . . . . . . . . . . . . $360.00

(k) Claim against the State of West Virginia:

(1) Landon R. Brown. . . . . . . . . . . . . . . . . . . . . . $11,655.05

(l) Claim against the West Virginia State Police:

(1) Sarah M. Weidig. . . . . . . . . . . . . . . . . . . . . . $2,608.81

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 Court of Claims 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 Court of Claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §14-2A-19b, relating to allowing the Court of Claims to establish maximum rates and service limitations for reimbursement of health care services; requiring rates to be filed with Joint Committee on Government and Finance; setting effective date for changes to rates and limitations; prohibiting payment from other sources, as well as claimants; and authorizing court to review claims.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §14-2A-19b, to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-19b. Rates and limitations for health care services.

1 The court may establish by court rule or court order maximum rates and service limitations for reimbursement of health care services rendered by a physician, hospital, or other health care provider. An informational copy of the maximum rates and service limitations shall be filed with the Joint Committee on Government and Finance upon adoption by the court. Any change in the maximum rates or service limitations
shall be effective sixty days after the adoption of the changes. A provider who accepts payment from the court for a service shall accept the court’s rates as payment in full and may not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the court for that service. A provider may not charge a claimant for any difference between the cost of a service provided to a claimant and the court’s payment for that service.

To ensure service limitations are uniform and appropriate to the levels of treatment required by the claimant, the court may review all claims for these services as necessary to ensure their medical necessity.

CHAPTER 51

(S. B. 382 - By Senators M. Hall and Walters)

[Passed February 28, 2015; in effect from passage.]
[Approved by the Governor on March 5, 2015.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Health and Human Resources to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services
rendered by certain claimants herein and has considered these claims against the state, and agency thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the Court of Claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the Court of Claims on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the Court of Claims as its own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the Auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the Code of West Virginia, 1931, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

1. **Claims against the Department of Health and Human Resources:**

2. **(TO BE PAID FROM GENERAL REVENUE FUND)**

3. (1) Altmeyer Funeral Homes Inc. $13,595.00

4. (2) Bailey-Kirk Funeral Home. $5,000.00

5. (3) Bartlett-Chapman Funeral Home. $2,500.00

6. (4) Beard Mortuary. $2,500.00

7. (5) Browning Funeral Home Inc. $2,500.00

8. (6) Broyles-Shrewsbury Funeral Home Inc. $1,250.00
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<td>(14) Douglas Mortuary.</td>
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<td>19</td>
<td>(15) Family Heritage Funeral Home.</td>
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<td>20</td>
<td>(16) Fanning Funeral Home Inc.</td>
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<td>21</td>
<td>(17) Ferrell-Chambers Funeral Home and Ceredo Kenova Funeral Home</td>
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<td>23</td>
<td>(18) Ford Funeral Home Inc.</td>
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<td>(19) Giffin Funeral Home Inc.</td>
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<td>(20) Helsley-Johnson Funeral Home Inc.</td>
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<td>(22) Johnson Tiller Funeral Home.</td>
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<td>(23) Keller Funeral Home.</td>
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<td>(24) Kimes Funeral Home.</td>
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<td>30</td>
<td>(25) Klingel-Carpenter Mortuary. $1,250.00</td>
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<td>(26) Lambert-Tatman Funeral Home. $11,250.00</td>
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<td>(32) Perry &amp; St. Clair Funeral Home. $1,250.00</td>
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<td>(33) Pivont Funeral Service Inc. $1,250.00</td>
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<td>(36) Seaver Funeral Services Inc. $6,250.00</td>
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<td>(38) Stevens &amp; Grass Funeral Home. $660.61</td>
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<td>(39) Tankersley Funeral Home. $1,250.00</td>
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<td>(40) Taylor &amp; Verdale Funeral Home Inc. $2,500.00</td>
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<td>(41) Vaughn Funeral Home. $2,500.00</td>
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<td>47</td>
<td>(42) Wallace &amp; Wallace Inc. $1,250.00</td>
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<td>48</td>
<td>(43) Wallace Funeral Home Inc. $3,750.00</td>
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Office of Miners’ Health, Safety and Training; defining terms; providing rule-making authority; providing that rules previously approved by Diesel Equipment Commission continue in full force and effect; requiring rules for statewide hardness-based aluminum water quality criteria for protection of aquatic life; prohibiting wholesale incorporation of water quality standards into permits; modifying the scope of the permit shield as it relates to compliance with water quality standards; establishing an administrative and civil enforcement process for coal mining-related permits that conforms with corresponding federal requirements; making legislative findings; requiring suspension or revocation of a certificate held by a certified person under certain circumstances; disallowing prescription as a defense if prescription is more than one year old; setting forth requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; increasing distance from the nearest working face where transportation of certain personnel in certain instances is done exclusively by rail; requiring certain equipment be readily available in certain circumstances; increasing distance of track to be maintained when a section is fully developed and being prepared for retreating; establishing criteria for the use of sideboards on shuttle cars; changing distance of shelter holes along haulage entries; and setting requirements for riders on locomotives.

Be it enacted by the Legislature of West Virginia:

That §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307 of the Code of West Virginia, 1931, as amended, be repealed; that §22-3-13 and §22-3-19 of said code be amended and reenacted; that §22-11-6 and §22-11-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22-11-22a; that said code be amended by adding thereto a new section, designated §22A-1-41; that §22A-1A-1 of said code be amended and reenacted; that §22A-2-6, §22A-2-28 and §22A-2-37 of said code be amended and reenacted; that §22A-2A-101,

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.


(a) Any permit issued by the director pursuant to this article to conduct surface mining operations shall require that the surface mining operations meet all applicable performance standards of this article and other requirements set forth in legislative rules proposed by the director.

(b) The following general performance standards are applicable to all surface mines and require the operation, at a minimum, to:

(1) Maximize the utilization and conservation of the solid fuel resource being recovered to minimize reaffecting the land in the future through surface mining;

(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution and the permit applicants’ declared proposed land use following reclamation is not considered to be impractical or unreasonable, inconsistent
with applicable land use policies and plans, involves unreasonable delay in implementation or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials and grade in order to restore the approximate original contour: Provided, That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region: Provided, however, That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region and the overburden or spoil shall be shaped and graded in a way as to
prevent slides, erosion and water pollution and revegetated in accordance with the requirements of this article: Provided further, That the director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code governing variances to the requirements for return to approximate original contour or highwall elimination and where adequate material is not available from surface mining operations permitted after the effective date of this article for:

(A) Underground mining operations existing prior to August 3, 1977; or (B) for areas upon which surface mining prior to July 1, 1977, created highwalls;

(4) Stabilize and protect all surface areas, including spoil piles, affected by the surface mining operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area or, if not utilized immediately, segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material: Provided, That if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner any other strata which is best able to support vegetation;

(6) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) Ensure that all prime farmlands are mined and reclaimed in accordance with the specifications for soil removal, storage, replacement and reconstruction established by the United States
Secretary of Agriculture and the Soil Conservation Service pertaining thereto. The operator, at a minimum, shall: (A) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (C) replace and regrade the root zone material described in paragraph (B) of this subdivision with proper compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon described in paragraph (A) of this subdivision;

(8) Create, if authorized in the approved surface mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities in accordance with rules promulgated by the director;

(9) Where augering is the method of recovery, seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the director determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public welfare and safety: Provided, That the director may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the
(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (I) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters; (B) conducting surface mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event may contributions be in excess of requirements set by applicable state or federal law; (C) constructing an approved drainage system pursuant to paragraph (B) of this subdivision, prior to commencement of surface mining operations, the system to be certified by a person approved by the director to be constructed as designed and as approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; (E) unless otherwise authorized by the director, cleaning out and removing temporary or large settling ponds or other siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the director; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) any other actions prescribed by the director;

(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other
than the mine working excavations: (A) Stabilize all waste piles in designated areas through construction in compacted layers, including the use of noncombustible and impervious materials if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site will be stabilized and revegetated according to the provisions of this article; and (B) assure that the construction of any coal waste pile or other coal waste storage area utilizes appropriate technologies, such as capping or the use of liners, or any other demonstrated technologies or measures which are consistent with good engineering practices, to prevent an acid mine drainage discharge;

(12) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided, That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the director; and (B) the operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: Provided, however, That any breakthrough which does occur shall be sealed;
(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained combustion: Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the director, which shall include provisions to:

(A) Maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; and

(B) Require that all blasting operations be conducted by persons certified by the Office of Explosives and Blasting.

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface mining operations. Time limits shall be established by the director requiring backfilling, grading and planting to be kept current: Provided, That where surface mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the director may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the director finds in writing that:
(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article; and

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b) of this section;

(B) If the director has promulgated specific rules to govern the granting of the variances in accordance with the provisions of this subparagraph and has imposed any additional requirements as the director considers necessary;

(C) If variances granted under the provisions of this paragraph are reviewed by the director not more than three years from the date of issuance of the permit: Provided, That the underground mining permit shall terminate if the underground operations have not commenced within three years of the date the permit was issued, unless extended as set forth in subdivision (3), section eight of this article; and
(D) If liability under the bond filed by the applicant with the director pursuant to subsection (b), section eleven of this article is for the duration of the underground mining operations and until the requirements of subsection (g), section eleven of this article and section twenty-three of this article have been fully complied with;

(17) Ensure that the construction, maintenance and post-mining conditions of access and haul roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: Provided, That access roads constructed for and used to provide infrequent service to surface facilities, such as ventilators or monitoring devices, are exempt from specific construction criteria provided adequate stabilization to control erosion is achieved through alternative measures;

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to the channel so as to significantly alter the normal flow of water;

(19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety suitable for human consumption and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved post-mining land use plan;

(20) Assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the director, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19)
of this subsection: *Provided, That when the director issues a*
*written finding approving a long-term agricultural post-mining*
*land use as a part of the mining and reclamation plan, the*
director may grant exception to the provisions of subdivision
(19) of this subsection: *Provided, however, That when the*
director approves an agricultural post-mining land use, the
applicable five growing seasons of responsibility for
revegetation begins on the date of initial planting for the
agricultural post-mining land use;

On lands eligible for remining assume the responsibility for
successful revegetation, as required by subdivision (19) of this
subsection, for a period of not less than two growing seasons, as
defined by the director after the last year of augmented seeding,
fertilizing, irrigation or other work in order to assure compliance
with subdivision (19) of this subsection;

(21) Protect off-site areas from slides or damage occurring
during surface mining operations and not deposit spoil material
or locate any part of the operations or waste accumulations
outside the permit area: *Provided, That spoil material may be*
placed outside the permit area if approved by the director after
a finding that environmental benefits will result from the placing
of spoil material outside the permit area;

(22) Place all excess spoil material resulting from surface
mining activities in a manner that: (A) Spoil is transported and
placed in a controlled manner in position for concurrent
compaction and in a way as to assure mass stability and to
prevent mass movement; (B) the areas of disposal are within the
bonded permit areas and all organic matter is removed
immediately prior to spoil placements; (C) appropriate surface
and internal drainage system or diversion ditches are used to
prevent spoil erosion and movement; (D) the disposal area does
not contain springs, natural water courses or wet weather seeps,
unless lateral drains are constructed from the wet areas to the
main under drains in a manner that filtration of the water into the
spoil pile will be prevented; (E) if placed on a slope, the spoil is
placed upon the most moderate slope among those upon which,
in the judgment of the director, the spoil could be placed in
compliance with all the requirements of this article, and is
placed, where possible, upon, or above, a natural terrace, bench
or berm, if placement provides additional stability and prevents
mass movement; (F) where the toe of the spoil rests on a
downslope, a rock toe buttress, of sufficient size to prevent mass
movement, is constructed; (G) the final configuration is
compatible with the natural drainage pattern and surroundings
and suitable for intended uses; (H) the design of the spoil
disposal area is certified by a qualified registered professional
ingineer in conformance with professional standards; and (I) all
other provisions of this article are met: Provided, That where the
excess spoil material consists of at least eighty percent, by
volume, sandstone, limestone or other rocks that do not slake in
water and will not degrade to soil material, the director may
approve alternate methods for disposal of excess spoil material,
including fill placement by dumping in a single lift, on a site-
specific basis: Provided, however, That the services of a
qualified registered professional engineer experienced in the
design and construction of earth and rockfill embankment are
utilized: Provided further, That the approval may not be
unreasonably withheld if the site is suitable;

(23) Meet any other criteria necessary to achieve reclamation
in accordance with the purposes of this article, taking into
consideration the physical, climatological and other
characteristics of the site;

(24) To the extent possible, using the best technology
currently available, minimize disturbances and adverse impacts
of the operation on fish, wildlife and related environmental
values, and achieve enhancement of these resources where
practicable;
(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where: (A) Natural barriers do not provide adequate stability; (B) natural barriers would result in potential future water quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That at a minimum, the constructed barrier shall be of sufficient width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points; and

(26) The director shall promulgate for review and consideration by the West Virginia Legislature legislative rules or emergency rules during the 2016 Regular Session of the West Virginia Legislature, revisions to rules for contemporaneous reclamation as required under subdivision (16), subsection (b) of this section. The secretary shall specifically consider the adoption of federal standards codified at 30 C. F. R. §§816.100-116 (1983) and 30 C. F. R. §§817.100-116 (1983) when proposing revisions to the state rule.

(c) (1) The director may prescribe procedures pursuant to which he or she may permit surface mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b) or (d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as
provided in paragraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining and capable of supporting post-mining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, commercial forestry, residential or public facility including recreational uses is proposed for the post-mining use of the affected land, the director may grant a permit for a surface mining operation of the nature described in subdivision (2) of this subsection where: (A) The proposed post-mining land use is determined to constitute an equal or better use of the affected land, as compared with premining use; (B) the applicant presents specific plans for the proposed post-mining land use and appropriate assurances that the use will be: (I) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) obtainable according to data regarding expected need and market; (iv) supported by commitments from public agencies where appropriate; (v) practicable with respect to private financial capability for completion of the proposed use; (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the post-mining land use; and (vii) designed by a person approved by the director in conformance with standards established to assure the stability, drainage and configuration necessary for the intended use of the site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local land use plans and programs; (D) the director provides the county commission of the county in which the land is located and any state or federal agency which the director, in his or her discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and (E) all other requirements of this article will be met.
(4) In granting any permit pursuant to this subsection, the director shall require that: (A) A natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where: (i) Natural barriers do not provide adequate stability; (ii) natural barriers would result in potential future water quality deterioration; and (iii) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That, at a minimum, the constructed barrier shall be sufficient in width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points; (B) the reclaimed area is stable; (C) the resulting plateau or rolling contour drains inward from the outslopes except at specific points; (D) no damage will be done to natural watercourses; (E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned post-mining land use: And provided further, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure stability of the spoil retained on the mountaintop and meet the other requirements of this article.

(5) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit; unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) In addition to those general performance standards required by this section, when surface mining occurs on slopes of twenty degrees or greater, or on lesser slopes as may be defined by rule after consideration of soil and climate, no debris,
abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: Provided, That soil or spoil material from the initial cut of earth in a new surface mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the director that the soil or spoil will not slide and that the other requirements of this section can still be met.

(e) The director may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code that permit variances from the approximate original contour requirements of this section: Provided, That the watershed control of the area is improved: Provided, however, That complete backfilling with spoil material is required to completely cover the highwall, which material will maintain stability following mining and reclamation.

(f) The director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection shall include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: Provided, That whenever the director finds that any coal processing waste pile constitutes an imminent danger to human life, he or she may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who
operated or operates a pile or the landowners involved, enter
upon the premises where any coal processing waste pile exists
and may take or order to be taken any remedial action that may
be necessary or expedient to secure the coal processing waste
pile and to abate the conditions which cause the danger to human
life: Provided, however, That the cost reasonably incurred in any
remedial action taken by the director under this subsection may
be paid for initially by funds appropriated to the division for
these purposes and the sums expended shall be recovered from
any responsible operator or landowner, individually or jointly,
by suit initiated by the Attorney General at the request of the
director. For purposes of this subsection, “operates” or
“operated” means to enter upon a coal processing waste pile, or
part of a coal processing waste pile, for the purpose of disposing,
depositing, dumping coal processing wastes on the pile or
removing coal processing waste from the pile, or to employ a
coal processing waste pile for retarding the flow of or for the
impoundment of water.

§22-3-19. Permit revision and renewal requirements; incidental
boundary revisions; requirements for transfer; assignment and sale of permit rights; operator
reassignment; and procedures to obtain inactive status.

(a) (1) Any valid permit issued pursuant to this article carries
with it the right of successive renewal upon expiration with
respect to areas within the boundaries of the existing permit. The
holders of the permit may apply for renewal and the renewal
shall be issued: Provided, That on application for renewal, the
burden is on the opponents of renewal, unless it is established
that and written findings by the secretary are made that: (A) The
terms and conditions of the existing permit are not being
satisfactorily met: Provided, however, That if the permittee is
required to modify operations pursuant to mining or reclamation
requirements which become applicable after the original date of
permit issuance, the permittee shall be provided an opportunity to submit a schedule allowing a reasonable period to comply with such revised requirements; (B) the present surface mining operation is not in compliance with the applicable environmental protection standards of this article; (C) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas; (D) the operator has not provided evidence that the bond in effect for said operation will continue in effect for any renewal requested as required pursuant to sections eleven or twelve of this article; or (E) any additional revised or updated information as required pursuant to rules promulgated by the secretary has not been provided.

(2) If an application for renewal of a valid permit includes a proposal to extend the surface mining operation beyond the boundaries authorized in the existing permit, that portion of the application for renewal which addresses any new land area is subject to the full standards of this article, which includes, but is not limited to: (A) Adequate bond; (B) a map showing the disturbed area and facilities; and (C) a reclamation plan.

(3) Any permit renewal shall be for a term not to exceed the period of time for which the original permit was issued. Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit.

(4) Any renewal application for an active permit shall be on forms prescribed by the secretary and shall be accompanied by a filing fee of $3,000. The application shall contain such information as the secretary requires pursuant to rule.

(b) (1) During the term of the permit, the permittee may submit to the secretary an application for a revision of the permit, together with a revised reclamation plan.

(2) An application for a significant revision of a permit is subject to all requirements of this article and rules promulgated
pursuant thereto and shall be accompanied by a filing fee of $2,000.

(3) Any extension to an area already covered by the permit, except incidental boundary revisions, shall be made by application for another permit. If the permittee desires to add the new area to his or her existing permit in order to have existing areas and new areas under one permit, the secretary may so amend the original permit: Provided, That the application for the new area is subject to all procedures and requirements applicable to applications for original permits under this article and a filing fee of $550.

(c) The secretary shall review outstanding permits of a five-year term before the end of the third year of the permit. Other permits shall be reviewed within the time established by rules. The secretary may require reasonable revision or modification of the permit following review: Provided, That such revision or modification shall be based upon written findings and shall be preceded by notice to the permittee of an opportunity for hearing.

(d) No transfer, assignment or sale of the rights granted under any permit issued pursuant to this article may be made without the prior written approval of the secretary, application for which shall be accompanied by a filing fee of $1,500 for transfer or $1,500 for assignment.

(e) Each request for inactive status shall be submitted on forms prescribed by the secretary, shall be accompanied by a filing fee of $2,00, and shall be granted in accordance with the procedure established in the Surface Mining and Reclamation Rule.

(f) The secretary shall promulgate for review and consideration by the West Virginia Legislature legislative rules
or emergency rules during the 2016 Regular Session of the West Virginia Legislature revisions to rules for granting inactive status under this article. The secretary shall specifically consider the adoption of federal standards codified at 30 C. F. R. §816.131 (1979) and 30 C. F. R. §817.131 (1979).

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

All persons affected by rules establishing water quality standards and effluent limitations shall promptly comply therewith: Provided, That:

(1) Where necessary and proper, the secretary may specify a reasonable time for persons not complying with such standards and limitations to comply therewith and upon the expiration of any such 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 such 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 deemed 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 such 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
(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 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 twenty-four months of the effective date of this subdivision, the secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine 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 thirty 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.

§22-11-8. Prohibitions; permits required.

(a) The secretary may, after public notice and opportunity for public hearing, issue a permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this
state upon condition that the discharge or disposition meets or
will meet all applicable state and federal water quality standards
and effluent limitations and all other requirements of this article
and article three, chapter twenty-two-b of this code. While
permits shall contain conditions that are designed to meet all
applicable state and federal water quality standards and effluent
limitations, water quality standards themselves shall not be
incorporated wholesale either expressly or by reference as
effluent standards or limitations in a permit issued pursuant to
this article.

(b) It is unlawful for any person, unless the person holds a
permit therefor from the department, which is in full force and
effect, to:

(1) Allow sewage, industrial wastes or other wastes, or the
effluent therefrom, produced by or emanating from any point
source, to flow into the waters of this state;

(2) Make, cause or permit to be made any outlet, or
substantially enlarge or add to the load of any existing outlet, for
the discharge of sewage, industrial wastes or other wastes, or the
effluent therefrom, into the waters of this state;

(3) Acquire, construct, install, modify or operate a disposal
system or part thereof for the direct or indirect discharge or
deposit of treated or untreated sewage, industrial wastes or other
wastes, or the effluent therefrom, into the waters of this state, or
any extension to or addition to the disposal system;

(4) Increase in volume or concentration any sewage,
industrial wastes or other wastes in excess of the discharges or
disposition specified or permitted under any existing permit;

(5) Extend, modify or add to any point source, the operation
of which would cause an increase in the volume or concentration
of any sewage, industrial wastes or other wastes discharging or
flowing into the waters of the state;
(6) Construct, install, modify, open, reopen, operate or abandon any mine, quarry or preparation plant, or dispose of any refuse or industrial wastes or other wastes from the mine or quarry or preparation plant: Provided, That the department’s permit is only required wherever the aforementioned activities cause, may cause or might reasonably be expected to cause a discharge into or pollution of waters of the state, except that a permit is required for any preparation plant: Provided, however, that unless waived in writing by the secretary, every application for a permit to open, reopen or operate any mine, quarry or preparation plant or to dispose of any refuse or industrial wastes or other wastes from the mine or quarry or preparation plant shall contain a plan for abandonment of the facility or operation, which plan shall comply in all respects to the requirements of this article. The plan of abandonment is subject to modification or amendment upon application by the permit holder to the secretary and approval of the modification or amendment by the secretary; or

(7) Operate any disposal well for the injection or reinjection underground of any industrial wastes, including, but not limited to, liquids or gases, or convert any well into such a disposal well or plug or abandon any such disposal well.

(c) Where a person has a number of outlets emerging into the waters of this state in close proximity to one another, the outlets may be treated as a unit for the purposes of this section, and only one permit issued for all the outlets.

§22-11-22a. Civil penalties and injunctive relief; civil administrative penalties for coal mining operations.

(a) Any person who holds a permit to operate a coal mining operation issued under article three of this chapter who violates any provision of any permit issued under or subject to the
provisions of this article or article eleven-a of this chapter is subject to a civil penalty not to exceed $25,000 per day of the violation and any person who violates any provision of this article or of any rule or who violates any standard or order promulgated or made and entered under the provisions of this article, article eleven-a of this chapter or article one, chapter twenty-two-b of this code is subject to a civil penalty not to exceed $25,000 per day of the violation: Provided, That any penalty imposed pursuant to the Surface Coal Mining and Reclamation Act [§§ 22-3-1 et seq.] shall be credited against any enforcement action under this article for violations of standards protecting state waters.

(1) Any such civil penalty may be imposed and collected only by a civil action instituted by the secretary in the circuit court of the county in which the violation occurred or is occurring or of the county in which the waters thereof are polluted as the result of such violation.

(2) In determining the amount of a civil penalty the circuit court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of the violations, any good-faith efforts to comply with the applicable requirements, cooperation by the permittee with the secretary, the economic impact of the penalty on the violator, and other matters as justice may require.

(3) Upon application by the secretary, the circuit courts of the state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, article eleven-a of this chapter, the rules of the board or secretary, effluent limitations, the terms and conditions of any permit granted under the provisions of this article or article eleven-a of this chapter or any order of the secretary or board, and the venue of any such actions shall be the county in which the violations or noncompliance exists or is taking place.
or in any county in which the waters thereof are polluted as the result of the violation or noncompliance. The court or the judge thereof in vacation may issue a temporary or preliminary injunction in any case pending a decision on the merits of any injunction application filed. Any other section of this code to the contrary notwithstanding, the state is not required to furnish bond as a prerequisite to obtaining injunctive relief under this article or article eleven-a of this chapter. An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

(4) The judgment of the circuit court upon any application filed or in any civil action instituted under the provisions of this section is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking review in any injunctive proceeding must be filed with said Supreme Court of Appeals within ninety days from the date of entry of the judgment of the circuit court.

(5) Legal counsel and services for the director, secretary or the board in all civil penalty and injunction proceedings in the circuit court and in the Supreme Court of Appeals of this state shall be provided by legal counsel employed by the department, the Attorney General or his or her assistants and by the prosecuting attorneys of the several counties as well, all without additional compensation, or the director, secretary or the board may employ counsel to represent him or her or it in a particular proceeding.
(b) The secretary may assess a civil administrative penalty whenever he or she finds that a person who holds a permit to operate a coal mining operation issued under article three of this chapter has violated any provision of this article or article eleven-a of this chapter, any permit issued under or subject to the provisions of this article or article eleven-a of this chapter or any rule or order issued pursuant to this article or article eleven-a of this chapter. A civil administrative penalty may be assessed unilaterally by the director in accordance with this subsection.

(1) Any civil administrative penalty assessed pursuant to this section shall not exceed $10,000 per violation and the maximum amount of any civil administrative penalty assessed pursuant to this section shall not exceed $125,000: Provided, That any stipulated penalties accrued after the date of the draft order shall not be included for purposes of determining the total amount of the civil administrative penalty. For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2) In determining the amount of any civil administrative penalty assessed under this subsection, the secretary shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of good faith, economic benefit or savings, if any, resulting from the violation, cooperation of the alleged violator, and such other matters as justice may require.

(3) No assessment may be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service pursuant to the West Virginia rules of civil procedure. The notice shall include a proposed order which refers to the provision of the statute, rule, order or permit alleged to have been violated, a concise statement of the facts alleged to
constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator’s right to an informal hearing prior to the issuance of the proposed order.

(A) The alleged violator has thirty calendar days from receipt of the notice within which to deliver to the secretary a written request for an informal hearing.

(B) If no hearing is requested, the proposed order becomes a draft order after the expiration of the thirty-day period.

(C) If an informal hearing is requested, the director shall inform the alleged violator of the time and place of the hearing. The secretary may appoint an assessment officer to conduct the informal hearing and make a written recommendation to the secretary concerning the proposed order and the assessment of a civil administrative penalty.

(D) Within thirty days following the informal hearing, the secretary shall render and furnish to the alleged violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. The proposed order shall be revised, if necessary, and shall become a draft order.

(4) The secretary shall provide the opportunity for the public to comment on any draft order by publishing a Class II legal advertisement in the newspaper with the largest circulation in the county in which the violation occurred, and by other such means as the secretary deems appropriate, which shall provide notice of the draft order, including the civil administrative penalty assessment. The secretary shall consider any comments received in determining whether to revise the draft order before issuance of a final order. During the thirty-day public comment period, any person may request a public hearing regarding the draft order and the secretary may grant or deny the request at his or
her discretion. If a request for a public hearing is denied, the secretary shall provide notice to the person requesting a hearing and reasons for such denial.

(5) Within thirty days of the close of the public comment period on a draft order, the secretary shall issue a final order or make a determination not to issue a final order, and shall provide written notice by certified mail or personal service pursuant to the West Virginia rules of civil procedure to the alleged violator and shall provide notice by certified mail or personal service pursuant to the West Virginia rules of civil procedure to those persons who submitted written comments on the draft order during the public comment period.

(6) The issuance of a final order assessing a civil administrative penalty pursuant to subsection (b) of this section may be appealed to the environmental quality board pursuant to section twenty-one of this article. Any person who submitted written comments on a draft order during the public comment period shall have the right to file such an appeal or intervene in any appeal filed by the alleged violator.

(7) The authority to levy a civil administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator under this section shall exceed $25,000 for each violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this section may not be the subject of a separate civil penalty action. No assessment levied pursuant to this section becomes due and payable until at least thirty days after receipt of the final order or the procedures for review of the assessment, including any appeals, have been completed, whichever is later.
(c) In addition to the authorities set forth in this section, the secretary may also enter into agreements, settlements and other consent orders resolving alleged violations of this chapter.

(d) The secretary shall propose, for legislative review, rules, including emergency rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish procedures for assessing civil administrative penalties in accordance with this section by no later than July 1, 2015.

CHAPTER 22A. MINERS’ HEALTH, SAFETY AND TRAINING.

ARTICLE 1. OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.


(a) Legislative findings. —

(1) In the past six years, West Virginia’s coal industry has been battered by constant judicial and regulatory assaults, which have disproportionally raised the cost of mining coal in West Virginia compared with production costs in other coal producing states. These increased costs of production have caused West Virginia coal to become uncompetitive with other coals in the declining worldwide and domestic coal markets.

(2) Coal production in West Virginia has fallen from one hundred sixty-five million tons in 2008 to approximately one hundred fifteen million tons in 2014, a decline of thirty-one percent. Much of this decline has been concentrated in the southern coalfields.
(3) The number of active mines producing coal has decreased by more than fifty-three percent, from two hundred fifty-nine in 2008 to just one hundred twenty-one today.

(4) During that same period, direct coal mining employment has decreased by approximately four thousand jobs, from a high of twenty-two thousand three hundred thirty-six in 2011 to just eighteen thousand two hundred today, a decline of nineteen percent.

(5) When the coal-related jobs multiplier, established by the West Virginia University and Marshall University Colleges of Business, 2010 Joint Economic Impact Report, is factored in the total direct and indirect jobs impact on the West Virginia economy shows a twenty thousand six hundred eighty-job decline in mining and mine-dependent employment in the state from one hundred thousand eleven six hundred eighty in 2011 to ninety-one thousand today. The impact of this damage to the West Virginia economy is demonstrated by the rapid rise of unemployment in the coalfields with some counties now reporting an unemployment rate of more than ten percent.

(6) The economic stress to the coal industry and to the state as a whole is evident in the estimated loss of nearly $300 million in direct mining wages paid since 2011. This loss is exponentially higher when you factor in indirect wages lost as mining support jobs decline.

(7) As a direct result of the damage to the coal industry, West Virginia has also lost significant tax revenues, as coal severance taxes have declined by approximately twenty-four percent in just the past two years – from a high of $527 million in 2012 to an estimated $406 million in 2014. This damage reverberates through the total economy, with reductions in money available to fund schools, highways, basic services and health care – needs that increase when income and health care is lost with the loss of jobs.
(8) All of these challenges must be addressed and overcome if we are to continue to provide the economic foundation for our state’s economy. The encouragement of economic growth and development in the coal industry in this state is in the public interest and promotes the general welfare of the people of this state.

(b) *Coal Jobs and Safety Act of 2015*. — Therefore, in order to encourage the recovery of the West Virginia coal industry and to increase direct and indirect employment thus created, the Legislature enacts the Coal Jobs and Safety Act of 2015 and it is collectively comprised of:

(1) This section;

(2) The amendments to:

(A) Sections thirteen and nineteen, article three, chapter twenty-two of this code;

(B) Sections six and eight, article eleven, chapter twenty-two of this code;

(C) Section one, article one-a of this chapter;

(D) Sections six, twenty-eight and thirty-seven, article two of this chapter;

(E) Section one hundred one, article two-a, chapter twenty-two-a of this code; and

(F) Sections three hundred one, three hundred eight, three hundred nine, three hundred ten, four hundred two, four hundred three, four hundred four, four hundred five, five hundred one, six hundred one, six hundred two, six hundred three and six hundred four, article two-a of this chapter; and

(3) The following new sections:
(A) Section twenty-two-a, article eleven, chapter twenty-two of this code; and

(B) Section two hundred four-a, article two-a of this chapter that were adopted and enacted during the 2015 Regular Session of the Legislature.

ARTICLE 1A. OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING; ADMINISTRATION; SUBSTANCE ABUSE.

§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures for screening.

(a) Every employer of certified persons, as defined in section two, article one of this chapter, shall implement a substance abuse screening policy and program that shall, at a minimum, include:

(1) A preemployment, ten-panel urine test for the following and any other substances as set out in rules adopted by the Office of Miners’ Health, Safety and Training:

(A) Amphetamines;

(B) Cannabinoids/THC;

(C) Cocaine;

(D) Opiates;

(E) Phencyclidine (PCP);

(F) Benzodiazepines;

(G) Propoxyphene;

(H) Methadone;
16 (I) Barbiturates; and

17 (J) Synthetic narcotics.

18 Split samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation’s rule, 49 C. F. R. Part 40, which may be amended, from time to time, by legislative rule of the Office of Miners’ Health, Safety and Training. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this subdivision, the mine operator may implement a more stringent substance abuse screening policy and program;

30 (2) A random substance abuse testing program covering the substances referenced in subdivision (1) of this subsection. “Random testing” means that each person subject to testing has a statistically equal chance of being selected for testing at random and at unscheduled times. The selection of persons for random testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with the persons’ Social Security numbers, payroll identification numbers or other comparable identifying numbers; and

39 (3) Review of the substance abuse screening program with all persons required to be tested at the time of employment, upon a change in the program and annually thereafter.

43 (b) For purposes of this subsection, preemployment testing shall be required upon hiring by a new employer, rehiring by a former employer following a termination of the employer/employee relationship or transferring to a West Virginia mine from an employer’s out-of-state mine to the extent
that any substance abuse test required by the employer in the
other jurisdiction does not comply with the minimum standards
for substance abuse testing required by this article. Furthermore,
the provisions of this section apply to all employers that employ
certified persons who work in mines, regardless of whether that
employer is an operator, contractor, subcontractor or otherwise.

(c) (1) Every employer shall notify the director, on a form
prescribed by the director, within seven days of any of the
following:

(A) A positive drug or alcohol test of a certified person,
whether it be a preemployment test, random test, reasonable
suspicion test or post-accident test. However, for purposes of
determining whether a drug test is positive the certified
employee may not rely on a prescription dated more than one
year prior to the date of the drug test result;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an
adulterated sample; or

(D) A certified person submitting a substituted sample or an
adulterated sample.

(2) With respect to any certified person subject to a
collective bargaining agreement, the employer shall notify the
director, on a form prescribed by the director, within seven days
of any of the following:

(A) A positive drug or alcohol test of a certified person,
whether it be a preemployment test, random test, reasonable
suspicion test or post-accident test. However, for purposes of
determining whether a drug test is positive the certified
employee may not rely on a prescription dated more than one
year prior to the date of the drug test result;
(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(3) When the employer submits the completed notification form prescribed by the director, the employer shall also submit a copy of the laboratory test results showing the substances tested for and the results of the test.

(4) Notice shall result in the immediate temporary suspension of all certificates held by the certified person who failed the screening, pending a hearing before the board of appeals pursuant to section two of this article.

(d) Suspension or revocation of a certified person’s certificate as a miner or other miner specialty in another jurisdiction by the applicable regulatory or licensing authority for substance abuse-related matters shall result in the director immediately and temporarily suspending the certified person’s West Virginia certificate until such time as the certified person’s certification is reinstated in the other jurisdiction.

(e) The provisions of this article shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program or substance abuse program that exceeds the minimum requirements set forth in this section. The provisions of this article shall also not be construed to require an employer to alter, amend, revise or otherwise change, in any respect, a previously established substance abuse screening policy and program that meets or exceeds the minimum requirements set forth in this section. The provisions of this article shall require an employer to subject its employees who as part of their employment are regularly present at a mine...
and who are employed in a safety-sensitive position to preemployment and random substance abuse tests: Provided, that each employer shall retain the discretion to establish the parameters of its substance abuse screening policy and program so long as it meets the minimum requirements of this article. For purposes of this section, a “safety-sensitive position” means an employment position where the employee’s job responsibilities include duties and activities that involve the personal safety of the employee or others working at a mine.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-6. Requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; premovement requirements; certified and qualified persons.

Mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel. When equipment is being transported or trammed where trolley wire is energized on the split of air in which said equipment is being transported or trammed, no person shall be permitted to be inby the equipment in the ventilating split that is passing over such equipment, except those directly involved with transporting or tramming the equipment, and shall be under the supervision of a certified foreman. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.


The use of underground mining equipment of a size that does not conform to the height of the seam being mined, which creates unsafe working conditions for the miner operating the...
equipment or others, is prohibited: Provided, That the addition
of or use of sideboards on shuttle cars shall be permitted if the
shuttle car is equipped with cameras: Provided, however, That
shuttle cars with sideboards as manufactured by an equipment
manufacturer shall be permitted to be used without the use of
cameras if permitted by the director. The board of coal mine
health and safety shall promulgate such rules as are necessary to
effectuate this section.

§22A-2-37. Haulage roads and equipment; shelter holes;
prohibited practices; signals; inspection.

(a) The roadbed, rails, joints, switches, frogs and other
elements of all haulage roads shall be constructed, installed and
maintained in a manner consistent with speed and type of
haulage operations being conducted to ensure safe operation.
Where transportation of personnel is exclusively by rail, track
shall be maintained to within one thousand five hundred feet of
the nearest working face, except that when any section is fully
developed and being prepared for retreating, then the track shall
be maintained to within one thousand five hundred feet of that
retreat mining section if a rubber tired vehicle is readily
available: Provided, That in any case where such track is
maintained to within a distance of more than five hundred feet
and not more than one thousand five hundred feet of the nearest
working face, a self-propelled rubber-tired vehicle capable of
transporting an injured worker shall be readily available.

(b) Track switches, except room and entry development
switches, shall be provided with properly installed throws, bridle
bars and guard rails; switch throws and stands, where possible,
shall be placed on the clearance side.

(c) Haulage roads on entries shall have a continuous,
unobstructed clearance of at least twenty-four inches from the
farthest projection of any moving equipment on the clearance
side.
(d) On haulage roads where trolley lines are used, the clearance shall be on the side opposite the trolley lines.

(e) On the trolley wire or “tight” side, there shall be at least twelve inches of clearance from the farthest projection of any moving equipment.

(f) Warning lights or reflective signs or tapes shall be installed along haulage roads at locations of abrupt or sudden changes in the overhead clearance.

(g) The clearance space on all haulage roads shall be kept free of loose rock, coal, supplies or other material: Provided, That not more than twenty-four inches need be kept free of such obstructions.

(h) Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors which in no event shall be less than twenty-four inches.

(i) Shelter holes shall be provided along haulage entries. Such shelter holes shall be spaced not more than one hundred five feet apart, except when variances are authorized by the director with unanimous agreement of the mine safety and technical review committee. Shelter holes shall be on the side of the entry opposite the trolley wire except that shelter holes may be on the trolley wire and feeder wire side if the trolley wire and feeder wire are guarded in a manner approved by the director.

(j) Shelter holes shall be at least five feet in depth, not more than four feet in width and as high as the traveling space, unless the director with unanimous agreement of the mine safety and technical review committee grants a waiver. Room necks and crosscuts may be used as shelter holes even though their width exceeds four feet.
(k) Shelter holes shall be kept clear of refuse and other obstructions.

(l) Shelter holes shall be provided at switch throws and manually operated permanent doors.

(m) No steam locomotive shall be used in mines where miners are actually employed in the extraction of coal, but this shall not prevent operation of a steam locomotive through any tunnel haulway or part of a mine that is not in actual operation and producing coal.

(n) Underground equipment powered by internal combustion engines using petroleum products, alcohol, or any other compound shall not be used in a coal mine, unless the equipment is diesel-powered equipment approved, operated and maintained as provided in article two-a of this chapter.

(o) Locomotives, personnel carriers, mine cars, supply cars, shuttle cars, and all other haulage equipment shall be maintained in a safe operating condition. Each locomotive, personnel carrier, barrier tractor and other related equipment shall be equipped with a suitable lifting jack and handle. An audible warning device and headlights shall be provided on each locomotive and each shuttle car. All other mobile equipment, using the face areas of the mine, shall be provided with a conspicuous light or other approved device so as to reduce the possibility of collision.

(p) No persons other than those necessary to operate a trip or car shall ride on any loaded car or on the outside of any car. Where pusher locomotives are not used, the locomotive operator shall have an assistant to assist him or her in his or her duties.

(q) The pushing of trips, except for switching purposes, is prohibited on main haulage roads: Provided, That nothing herein shall prohibit the use of a pusher locomotive to assist the locomotive pulling a trip. Motormen and trip riders shall use
care in handling locomotives and cars. It shall be their duty to
see that there is a conspicuous light on the front and rear of each
trip or train of cars when in motion: Provided, however, That trip
lights need not be used on cars being shifted to and from loading
machines, or on cars being handled at loading heads during
gathering operations at working faces. No person, other than
the motorman and brakeman, should ride on a locomotive unless
authorized by the mine foreman, and then only when safe riding
facilities are provided. An empty car or cars shall be used to
provide a safe distance between the locomotive and the material
car when rail, pipe or long timbers are being hauled. A safe
clearance shall be maintained between the end car or trips placed
on side tracks and moving traffic. On haulage roads the
clearance point shall be marked with an approved device.

(r) No motorman, trip rider or brakeman shall get on or off
cars, trips or locomotives while they are in motion, except that
a trip rider or brakeman may get on or off the rear end of a
slowly moving trip or the stirrup of a slowly moving locomotive
to throw a switch, align a derail or open or close a door.

(s) Flying or running switches and riding on the front
bumper of a car or locomotive are prohibited. Back poling shall
be prohibited except with precaution to the nearest turning point
(not over eighty feet), or when going up extremely steep grades
and then only at slow speed. The operator of a shuttle car shall
face in the direction of travel except during the loading operation
when he or she shall face the loading machine.

(t) (1) A system of signals, methods or devices shall be used
to provide protection for trips, locomotives and other equipment
coming out onto tracks used by other equipment.

(2) In any coal mine where more than three hundred fifty
tons of coal are produced on any shift in each 24-hour period, a
dispatcher shall be on duty when there are movements of track
(3) The dispatcher’s only duty shall be to direct traffic: Provided, That the dispatcher’s duties may also include those of the responsible person required by section forty-two of this article: Provided, however, That the dispatcher may perform other duties which do not interfere with his or her dispatching responsibilities and do not require him or her to leave the dispatcher’s station except as approved by the mine safety and technical review committee.

(4) Any dispatcher’s station shall be on the surface.

(5) All self-propelled track equipment shall be equipped with two-way communications.

(u) Motormen shall inspect locomotives, and report any mechanical defects found to the proper supervisor before a locomotive is put in operation.

(v) A locomotive following another trip shall maintain a distance of at least three hundred feet from the rear end of the trip ahead, unless such locomotive is coupled to the trip ahead.

(w) Positive stop blocks or derails shall be installed on all tracks near the top and at landings of shafts, slopes and surface inclines. Positive-acting stop blocks or derails shall be used where necessary to protect persons from danger of runaway haulage equipment.

(x) Shuttle cars shall not be altered by the addition of sideboards so as to inhibit the view of the operator: Provided, That the addition of or use of sideboards on shuttle cars shall be permitted if the shuttle car is equipped with cameras: Provided,
however, That shuttle cars with sideboards as manufactured by
an equipment manufacturer shall be permitted to be used without
the use of cameras if permitted by the director.

(y) Mining equipment shall not be parked within fifteen feet
of a check curtain or fly curtain.

(z) All self-propelled track haulage equipment shall be
equipped with an emergency stop switch, self centering valves,
or other devices designed to de-energize the traction motor
circuit in the event of an emergency. All track mounted trolley
equipment shall be equipped with trolley pole swing limiters or
other means approved by the mine safety and technical review
committee to restrict movement of the trolley pole when it is
disengaged from the trolley wire. Battery-powered mobile
equipment shall have the operating controls clearly marked to
distinguish the forward and reverse positions.

ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN
UNDERGROUND COAL MINES.

PART I. GENERAL PROVISIONS.


Diesel-powered equipment for use in underground coal
mines may only be approved, operated and maintained in
accordance with rules, requirements and standards established
pursuant to this article.

§22A-2A-204a. Director defined.

“Director” means the Director of the Office of Miners’
Health, Safety and Training established in section one, article
one of this chapter.
§22A-2A-301. The West Virginia Diesel Equipment Commission abolished; transfer of duties and responsibilities; transfer of equipment and records; continuation of prior approvals of diesel equipment for use in underground coal mines; continuation of rules of the commission.

(a) The West Virginia Diesel Equipment Commission is hereby abolished. All duties and responsibilities heretofore imposed upon the commission are hereby imposed upon the Director of the Office of Miners’ Health, Safety and Training.

(b) On the effective date of the reenactment of this section, all equipment and records necessary to effectuate the purposes of this article shall be transferred to the director.

(c) The rules of the commission in effect immediately prior to the effective date of the reenactment of this section shall remain in force and effect until promulgation of new or additional rules by the director pursuant to section three hundred eight of this article. To the extent the director finds that the commission rules in effect on the effective date of the reenactment of this section adequately fulfill any of the duties of the commission that are transferred to the director by the reenactment of any of the provisions of this article, such rules are deemed to be actions taken by the director to fulfill such duties.

(d) All approvals of diesel-powered equipment, diesel power packages or engines and exhaust emissions control and conditioning systems made by the commission and in effect prior to the effective date of this article shall remain in full force and effect.
§22A-2A-308. Director’s authority to promulgate legislative rules; continuation of rules adopted by the commission.

(a) The director has the power and authority to propose legislative rules to carry out and implement the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code. In proposing rules for legislative approval, the director shall consider the highest achievable measures of protection for miners’ health and safety through available technology, engineering controls and performance requirements and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines.

(b) All rules promulgated and adopted by the commission in effect prior to the effective date of this section shall remain in effect until changed or superseded by legislative rule enacted pursuant to subsection (a) of this section.

(c) The duties imposed upon the director in this article that were previously required to be performed by the adoption of rules by the commission and that were satisfied or fulfilled by rules adopted by the commission are deemed to be the acts of the director.

§22A-2A-309. Director’s authority to approve site-specific experimental testing prior to initial rules.

The director may approve limited site-specific requests for experimental and testing use of diesel-powered equipment in underground coal mines prior to promulgation of initial rules in accordance with subsections (b), (c), (d), (e), (f) and (g), section three hundred ten of this article.


(a) It is the duty of the director to carry out and implement this article and to evaluate and adopt state-of-the-art technology
and methods, reflected in engines and engine components, emission control equipment and procedures, which when applied to diesel-powered underground mining machinery, shall reasonably reduce or eliminate diesel exhaust emissions and enhance protections of the health and safety of miners. The technology and methods adopted by the director shall have been demonstrated to be reliable. In making a decision to adopt new technology and methods, the director shall consider the highest achievable measures of protection for miners’ health and safety through available technology, engineering controls and performance requirements and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines. Any state-of-the-art technology or methods adopted by the director shall not reduce or compromise the level of health and safety protection of miners.

(b) Upon application of a coal mine operator, the director shall consider site-specific requests for the use of diesel equipment in underground coal mines and for the use of alternative diesel-related health and safety technologies and methods. The director’s action on applications submitted under this subsection shall be on a mine-by-mine basis. Upon receipt of a site-specific application, the director shall conduct an investigation, which investigation shall include consultation with the mine operator and the authorized representatives of the miners at the mine. Authorized representatives of the miners shall include a mine health and safety committee elected by miners at the mine, a person or persons employed by an employee organization representing miners at the mine or a person or persons authorized as the representative or representatives of miners of the mine in accordance with MSHA regulations at 30 C. F. R. Pt. 40 (relating to representative of miners). Where there is no authorized representative of the miners, the director shall consult with a reasonable number of
miners at the mine. Upon completion of the investigation, the
director may approve the application for the site-specific request.

(1) Within one hundred eighty days of receipt of an
application for use of alternative technologies or methods, the
director shall complete its investigation. However, the director
has an additional one hundred eighty days to complete
investigations upon applications filed prior to the effective date
of the reenactment of this section. The time period may be
extended with the consent of the applicant.

(2) The director shall have thirty days upon completion of
the investigation in which to render a final decision approving or
rejecting the application.

(3) The director may not approve an application made under
this section if, at the conclusion of the investigation, the director
determines that the use of the alternative technology or method
will reduce or compromise the level of health and safety
protection of miners.

(4) The written approval of an application for the use of
alternative technologies or methods shall include the results of
the director’s investigation and describe the specific conditions
of use for the alternative technology or method.

(5) The written decision to reject an application for the use
of alternative technologies or methods shall include the results
of the director’s investigation and shall outline in detail the basis
for the rejection.

(c) The director shall establish conditions for the use of
diesel-powered equipment in shaft and slope construction
operations at coal mines.

(d) The director shall have access to the services of the
Board of Coal Mine Health and Safety necessary for the director
to implement and carry out the provisions of this article. The board, at the request of the director, shall provide administrative support and assistance pursuant to section six, article six of this chapter to enable the director to carry out the duties imposed upon the director in this article.

(e) Any action taken by the commission, prior to the effective date of the reenactment of this section, or by the director to either approve or reject the use of an alternative technology or method, or establish conditions under subsection (c) of this section shall be final and binding and not subject to further review except where a decision by the commission, prior to the effective date of the reenactment of this section, or by the director may be deemed to be an abuse of discretion or contrary to law. If any party affected by a decision of the commission, prior to the effective date of the reenactment of this section, or by the director believes that the decision is an abuse of discretion or contrary to law, that party may file a petition for review with the circuit court of Kanawha County in accordance with the provisions of the administrative procedures act relating to judicial review of governmental determinations. The court, in finding that any decision made by the commission, prior to the effective date of the reenactment of this section, or by the director is an abuse of discretion or contrary to law, shall vacate and, if appropriate, remand the case.

(f) Appropriations for the funding of the commission and to effectuate the purposes of this article shall be made to a budget account hereby established for that purpose in the General Revenue Fund. Expenditures from this fund are provided for in section six, article six of this chapter.

§22A-2A-402. Approval of diesel power package or diesel engine.

Every diesel power package or diesel engine used in underground coal mining shall be approved by the director when
it complies with applicable requirements, standards and procedures established by this article, and be certified or approved, as applicable, by MSHA and maintained in accordance with MSHA certification or approval.

§22A-2A-403. Exhaust emissions control and conditioning systems.

(a) All exhaust emissions control and conditioning systems and their component devices for diesel-powered equipment for use in underground coal mines shall be approved by the director. Such approval requires compliance with applicable standards and procedures pursuant to this article for the use of the system or device in reducing or eliminating diesel particulate matter, carbon monoxide and oxides of nitrogen.

All exhaust emissions control and conditioning systems must undergo an initial series of laboratory tests, using test equipment requirements and standard procedures approved by the director for testing for gaseous and particulate emissions. The director shall compile a list of acceptable third-party laboratories where testing is performed competently and reliable results are produced.

(b) Requirements and standards for exhaust emissions control and conditioning systems include, but are not limited to, the following:

(1) A minimum standard, stated as an average percentage, for the reduction of diesel particulate matter emissions by a diesel particulate matter filter or other comparably effective emissions control device;

(2) A minimum standard, stated in parts per million, for the reduction of emissions of undiluted carbon monoxide, using an oxidation catalyst or other gaseous emissions control device;

(3) A minimum standard, stated in parts per million, for the reduction of emissions of oxides of nitrogen, using advanced
control technology such as catalytic control technology or other comparably effective control methods; and

(4) Any additional requirements established by the rules of the commission prior to the enactment of this section, as may be supplemented or amended by legislative rules promulgated by the director or MSHA regulations relating to requirements for permissible mobile diesel-powered transportation equipment set forth in part 36, title thirty of the code of federal regulations, 30 C. F. R. §36.1, et seq.


The director shall establish procedures for monitoring and controlling emissions from diesel-powered equipment. The procedures shall include, but not be limited to, monitoring and controlling activities to be performed by a qualified person.


(a) For monitoring and controlling exhaust gases, the director shall establish the maximum allowable ambient concentration of exhaust gases in the mine atmosphere. Standards for exhaust gases, stated in parts per million, shall be established for carbon monoxide and oxides of nitrogen. The rules shall establish the location in the mine at which the concentration of these exhaust gases is to be measured, the frequency at which measurements are to be made, and requirements prescribing the sampling instruments to be used in the measurement of exhaust gases.

(b) The director shall establish the concentration of exhaust gas, stated as a percentage of an exposure limit, that when present will require changes to be made in the use of diesel-powered equipment or the methods of mine ventilation, or will require other modifications in the mining process.
(c) The director shall provide for the remedial action to be taken if the concentration of any of the gases listed in subsection (a) of this section exceeds the exposure limit.

(d) In addition to the other maintenance requirements required by this article, the director shall establish requirements, provide for service, maintenance and tests which are specific to an engine’s fuel delivery system, timing or exhaust emissions control and conditioning system.

PART 5. VENTILATION.


(a) The director shall establish values to be maintained for the minimum quantities of ventilating air where diesel-powered equipment is operated. The purpose of these rules is to ensure that necessary minimum ventilating air quantity is provided where diesel-powered equipment is operated.

(b) The director shall require that each specific model of diesel-powered equipment shall be approved before it is taken underground. Each diesel engine shall have an assigned MSHA approval number securely attached to the engine with the information required by 30 C. F. R. §§7.90 and 7.105, the approval plate shall also specify the minimum ventilating air quantity required by the director for the specific piece of diesel-powered equipment. The minimum ventilating air quantity shall be determined by the director based on the amount of air necessary at all times to maintain the exhaust emissions at levels not exceeding the exposure limits established pursuant to section four hundred six of this article.

(c) The minimum quantities of air in any split where any individual unit of diesel-powered equipment is being operated shall be at least that specified on the approval plate for that equipment. Air quantity measurements to determine compliance
with this requirement shall be made at the individual unit of
diesel-powered equipment.

(d) The director shall establish the minimum quantities of air
required in any split when multiple units are operated. Air
quantity measurements to determine compliance with this
requirement shall be made at the most downwind unit of
diesel-powered equipment that is being operated in that air split.

(e) Minimum quantities of air in any split where any
diesel-powered equipment is operated shall not be less than the
minimum air quantities established pursuant to subsections (a)
and (b) of this section and shall be specified in the mine diesel
ventilation plan.

PART 6. FUEL.


(a) The director shall establish standards for fuel to be used
in diesel-powered equipment in underground coal mines. A
purpose of these standards is to require the use of low volatile
fuels that will lower diesel engine gaseous and particulate
emissions and will reduce equipment maintenance by limiting
the amount of sulfur in the fuel. Another purpose of the
standards for fuel is to reduce the risk of fire in underground
mines by establishing a minimum flash point for the diesel fuel
used.

(b) Each coal mine using diesel equipment underground
shall establish a quality control plan for assuring that the diesel
fuel used complies with the standards established pursuant to this
section. The director shall also establish a procedure under
which each mine operator will provide evidence that the diesel
fuel used in diesel-powered equipment underground meets the
standards for fuel established by the commission.

(a) The director shall establish requirements for the safe storage of diesel fuel underground so as to minimize the risks associated with fire hazards in areas where diesel fuel is stored.

(b) (1) The director shall either provide:

(A) That all stationary underground diesel fuel tanks are prohibited; or

(B) That a stationary underground diesel fuel tank may only be authorized through a petitioning process that permits a stationary underground diesel fuel tank to be located in a permanent underground diesel fuel storage facility, on a site-specific basis. Stationary underground diesel fuel tanks may not be located in temporary underground diesel fuel storage areas.

(c) The director shall establish requirements for the transportation and storage of diesel fuel in diesel fuel tanks and safety cans.

(d) The director shall establish limits on the total amount of diesel fuel that may be stored in each permanent underground diesel fuel storage facility and in each temporary underground diesel fuel storage area.


The director shall establish requirements governing the refueling of diesel-powered equipment which shall, at a minimum, comply with the provisions of part 75 of the code of federal regulations dealing with the dispensing of diesel fuel, set forth in 30 C. F. R. §75.1905, effective April 25, 1997.
§22A-2A-604. Location of fueling.

(a) Fueling of diesel-powered equipment is not to be conducted in the intake escapeways unless the mine design and entry configuration make it necessary. For those cases where fueling in the intake escapeways is necessary, the director shall establish a procedure whereby the mine operator shall submit a plan for approval, outlining the special safety precautions that will be taken to insure the protection of miners. The plan shall specify a fixed location where fueling will be conducted in the intake escapeway and all other safety precautions that will be taken, which shall include an examination of the area for spillage or fire by a qualified person.

(b) At least one person, specially trained in the cleanup and disposal of diesel fuel spills, shall be on duty at the mine when diesel-powered equipment or mobile fuel transportation equipment is being used or when any fueling of diesel-powered equipment is being conducted.

CHAPTER 53

(Com. Sub. for S. B. 255 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

[Passed February 20, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 3, 2015.]

AN ACT to repeal §15-8-1, §15-8-2, §15-8-3, §15-8-4, §15-8-5, §15-8-6, §15-8-7, §15-8-8, §15-8-9, §15-8-10, §15-8-11 and §15-8-12 of the Code of West Virginia, 1931, as amended; to repeal §16-5J-5 of said code; to repeal §16-5T-1 of said code; to
repeal §16-42-1, §16-42-2, §16-42-3, §16-42-4, §16-42-5 and §16-42-6 of said code; to repeal §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7 of said code; to repeal §18B-1C-3 of said code; to repeal §18B-14-11 of said code; to repeal §18B-16-6 of said code; to repeal §20-2B-2a of said code; to repeal §21-3A-10 and §21-3A-18 of said code; to repeal §21-3B-3 of said code; to repeal §22C-5-1, §22C-5-2, §22C-5-3, §22C-5-4, §22C-5-5, §22C-5-6, §22C-5-7 and §22C-5-8 of said code; to repeal §23-1-1a of said code; to repeal §29-12B-4 and §29-12B-5 of said code; to repeal §31-16-1, §31-16-2, §31-16-3 and §31-16-4 of said code; to repeal §33-48-2 and §33-48-3 of said code; to repeal §55-15-1, §55-15-2, §55-15-3, §55-15-4, §55-15-5 and §55-15-6 of said code; and to repeal §62-11E-1, §62-11E-2 and §62-11E-3 of said code, all relating to eliminating unnecessary, inactive or redundant boards, councils, committees, panels, task forces and commissions; terminating West Virginia Sheriffs’ Bureau; terminating Clinical Laboratories Quality Assurance Advisory Board; terminating Care Home Advisory Board; terminating Comprehensive Behavioral Health Commission; terminating Public and Higher Education Unified Educational Technology Strategic Plan, including Governor’s Advisory Council for Educational Technology; terminating West Virginia Consortium for Undergraduate Research and Engineering; terminating Governor’s Commission on Graduate Study in Science, Technology, Engineering and Mathematics; terminating West Virginia Rural Health Advisory Panel; terminating Ohio River Management Fund Advisory Board; terminating Occupational Safety and Health Review Commission; terminating Occupational Safety and Health Advisory Board; terminating Environmental Assistance Resource Board; terminating Commercial Hazardous Waste Management Facility Siting Board; terminating Workers’ Compensation Board of Managers; terminating State Medical Malpractice Advisory Panel; terminating West Virginia Steel Futures Program, including Steel Advisory Commission; terminating West Virginia Health
Insurance Plan Board; terminating Alternative Dispute Resolution Commission; and terminating Sexually Violent Predator Management Task Force.

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

**§1. Repeal of article relating to the West Virginia Sheriffs’ Bureau.**

§1-8-1, §15-8-2, §15-8-3, §15-8-4, §15-8-5, §15-8-6, §15-8-7, §15-8-8, §15-8-9, §15-8-10, §15-8-11 and §15-8-12 of the Code of West Virginia, 1931, as amended, are hereby repealed.

**§2. Repeal of section relating to the Clinical Laboratories Quality Assurance Advisory Board.**

§16-5J-5 of the Code of West Virginia, 1931, as amended, is hereby repealed.

**§3. Repeal of section relating to the Care Home Advisory Board.**

§16-5T-1 of the Code of West Virginia, 1931, as amended, is hereby repealed.

**§4. Repeal of article relating to the Comprehensive Behavioral Health Commission.**


**§5. Repeal of article relating to the Public and Higher Education Unified Educational Technology Strategic Plan.**

§6. Repeal of section relating to the West Virginia Consortium for Undergraduate Research and Engineering.

1 §18B-1C-3 of the Code of West Virginia, 1931, as amended, is hereby repealed.

§7. Repeal of section relating to the Governor’s Commission on Graduate Study in Science, Technology, Engineering and Mathematics.

1 §18B-14-11 of the Code of West Virginia, 1931, as amended, is hereby repealed.

§8. Repeal of section relating to the West Virginia Rural Health Advisory Panel.

1 §18B-16-6 of the Code of West Virginia, 1931, as amended, is hereby repealed.

§9. Repeal of section relating to the Ohio River Management Fund Advisory Board.

1 §20-2B-2a of the Code of West Virginia, 1931, as amended, is hereby repealed.

§10. Repeal of section relating to the Occupational Safety and Health Review Commission.

1 §21-3A-10 of the Code of West Virginia, 1931, as amended, is hereby repealed.

§11. Repeal of section relating to the Occupational Safety and Health Advisory Board.

1 §21-3A-18 of the Code of West Virginia, 1931, as amended, is hereby repealed.
§12. Repeal of section relating to terminating the Environmental Assistance Resource Board.

§21-3B-3 of the Code of West Virginia, 1931, as amended, is hereby repealed.

§13. Repeal of article relating to the Commercial Hazardous Waste Management Facility Siting Board.

§22C-5-1, §22C-5-2, §22C-5-3, §22C-5-4, §22C-5-5, §22C-5-6, §22C-5-7 and §22C-5-8 of the Code of West Virginia, 1931, as amended, are hereby repealed.

§14. Repeal of section relating to the Workers’ Compensation Board of Managers.

§23-1-1a of the Code of West Virginia, 1931, as amended, is hereby repealed.

§15. Repeal of sections relating to the Medical Malpractice Advisory Panel.

§29-12B-4 and §29-12B-5 of the Code of West Virginia, 1931, as amended, are hereby repealed.

§16. Repeal of article relating to the West Virginia Steel Futures Program.

§31-16-1, §31-16-2, §31-16-3 and §31-16-4 of the Code of West Virginia, 1931, as amended, are hereby repealed.

§17. Repeal of sections relating to the West Virginia Health Insurance Plan Board.

§33-48-2 and §33-48-3 of the Code of West Virginia, 1931, as amended, are hereby repealed.
§18. Repeal of article relating to the Alternative Dispute Resolution Commission.


CHAPTER 54

(S. B. 267 - By Senators Cole (Mr. President) and Kessler)
[By Request of the Executive]

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to repeal §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4, §16-29H-5, §16-29H-6, §16-29H-7, §16-29H-8, §16-29H-9 and §16-29H-10 of the Code of West Virginia, 1931, as amended, relating to the Governor’s Office of Health Enhancement and Lifestyle Planning.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the Governor’s Office of Health Enhancement and Lifestyle Planning.

§16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4, §16-29H-5, §16-29H-6, §16-29H-7, §16-29H-8, §16-29H-9 and §16-29H-10
of the Code of West Virginia, 1931, as amended, are hereby repealed.

CHAPTER 55


[Passed January 27, 2015; in effect from passage.]
[Approved by the Governor on February 3, 2015.]


Be it enacted by the Legislature of West Virginia:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2F. NET METERING OF CUSTOMER-GENERATORS.

§1. Repeal of sections relating to alternative and renewable energy portfolio standard.

§24-2F-1, §24-2F-2, §24-2F-3, §24-2F-4, §24-2F-5, §24-2F-6, §24-2F-7, §24-2F-9, §24-2F-10, §24-2F-11 and §24-2F-12 of the Code of West Virginia, 1931, as amended, are hereby repealed.
CHAPTER 56

(H. B. 2492 - By Delegate(s) Householder, Azinger, Espinosa, Upson, Ellington, Gearheart, Campbell, Ihle, Blair, Hamrick and Waxman)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to repeal §29-5A-10 of the Code of West Virginia, 1931, as amended, relating to the authority of the State Athletic Commission.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section that requires the sanction of the athletic commission for showing of telecasts of certain events.

§29-5A-10 of the Code of West Virginia, 1931, as amended, is hereby repealed.

CHAPTER 57

(S. B. 360 - By Senators Miller, Beach, Carmichael, D. Hall, Mullins, Nohe, Sypolt, Williams, Woelfel, Laird, Plymale and Facemire)

[Passed March 12, 2015; in effect from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to repeal §51-4-9 and §51-4-11 of the Code of West Virginia, 1931, as amended, relating to outdated provisions containing
circuit clerk responsibilities with regard to indexes of books and reports concerning claims against the state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS RELATING TO CLERKS OF COURTS.

§1. Repeal of outdated provisions relating to circuit clerk responsibilities.

§51-4-9 and §51-4-11 of the Code of West Virginia, 1931, as amended, are hereby repealed.

CHAPTER 58

(Com. Sub. for H. B. 2810 - By Delegate(s) Guthrie, Pushkin, Byrd, Rowe, McCuskey, B. White, Stansbury and Walters)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-18-28, generally relating to implementing the West Virginia Property Rescue Initiative; providing legislative findings relating to the need of such program; requiring the West Virginia Housing Development Fund to facilitate the West Virginia Property Rescue Initiative; providing that the West Virginia Housing Development Fund provide technical assistance to counties and municipalities for identification, purchase, removal and rehabilitation of dilapidated properties; requiring that the West Virginia Housing Development Fund establish and fund a revolving loan fund; directing the West
Virginia Housing Development Fund to deposit monies into the revolving loan fund over a five year period; providing that no obligation of the state shall be created by the West Virginia Property Rescue Initiative; and requiring annual reports over five years; and requiring a final report on the effectiveness of the West Virginia Property Rescue Initiative.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §31-18-28, to read as follows:

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-28. West Virginia Property Rescue Initiative: findings; technical assistance and revolving loan program for removal of dilapidated housing; reporting required.

(a) The program set forth in this section shall be known as the “West Virginia Property Rescue Initiative”.

(b) The Legislature finds that a great number of dilapidated housing structures exist throughout the state and that county and municipal officials often lack the training and resources to identify, purchase, remove, or rehabilitate these structures and return the property to a condition beneficial to their communities. The Legislature further finds that these structures contribute to increased crime in neighborhoods, including illicit drug use and sales; pose threats to health and safety; decrease the values of surrounding properties; and reduce the quality of life in their communities and neighborhoods. The Legislature further finds that improved properties expand housing opportunities, increase property values and enhance the quality of life in communities and neighborhoods.
(c) The Legislature finds that the housing development fund, as a public body corporate and the state’s leading housing authority, has the expertise and resources to lead a property rescue initiative to assist counties and municipalities in removing or rehabilitating dilapidated housing and improving their communities and neighborhoods by providing technical assistance, training and consultation as well as needed financial resources.

(d) The housing development fund shall implement the West Virginia Property Rescue Initiative to provide technical assistance, training and consultation to counties and municipalities which include, but are not limited to, the following: (1) maintaining lists of contractors, developers, nonprofit organizations, disposal companies and land fills available to assist counties and municipalities in the removal or rehabilitation of dilapidated properties; (2) providing information on the use of the West Virginia Property Rescue Initiative in other jurisdictions; and (3) conducting or facilitating seminars in strategic areas of the state to encourage and inform community leaders in counties and municipalities on how to successfully use the West Virginia Property Rescue Initiative to improve their communities and neighborhoods individually and in combination with other counties or municipalities for economies of scale and efficient use of local resources.

(e) For the purpose of the West Virginia Property Rescue Initiative, the housing development fund shall establish and fund a revolving loan program to make funding available to counties and municipalities for the removal of dilapidated structures on such terms for repayment of loans, with or without interest, as the housing development fund finds appropriate and to provide technical assistance, training and consulting services to counties and municipalities regarding the identification, purchase, removal and rehabilitation of properties to maximize the benefits
of the West Virginia Property Rescue Initiative on an ongoing
basis, with a commitment by the housing development fund to
deposit at least $5 million dollars to the West Virginia Property
Rescue Initiative Revolving Loan Fund over a five year period
beginning on July, 2015, at the rate of at least $1 million dollars
per fiscal year.

(f) Notwithstanding any other provision to the contrary, the
revolving loan fund established in this section shall not be
considered or construed as an obligation of the state.

(g) To enhance the success of the West Virginia Property
Rescue Initiative, the housing development fund may, as a form
of its technical assistance, seek grants and awards of funding to
be made to the housing development fund or directly to counties
and municipalities for their property rescue initiatives, from
public and private organizations and government agencies,
federal and state, in order to provide both for additional funding
for the property rescue revolving loan fund or the repayment of
loans and for grants to counties and municipalities with dire need
and limited resources such that special aid and funding is needed
to begin and complete their local property rescue initiatives.

(h) The executive director of the housing development fund
shall report on the West Virginia Property Rescue Initiative to
the Joint Committee on Government and Finance annually
during the initial five years of the West Virginia Property Rescue
Initiative. At the end of the initial five years of the West Virginia
Property Rescue Initiative, the housing development fund board
of directors shall evaluate participation and success of the West
Virginia Property Rescue Initiative as well as other aspects of
the West Virginia Property Rescue Initiative in order determine
whether and how to adjust services and levels of funding under
this section.
AN ACT to repeal §55-7-13 and §55-7-24 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §55-7-13a, §55-7-13b, §55-7-13c and §55-7-13d, all generally relating to predicating actions for damages upon principles of comparative fault; establishing the comparative fault standard; abolishing joint liability and implementing several liability; establishing how to consider the fault of parties and nonparties to a civil action; establishing how to consider the fault of, and the amounts paid by, settling parties; establishing how to reallocate any portion of a judgment a plaintiff is unable to collect; providing for the use of special interrogatories; establishing certain exceptions to several liability; clarifying fault may be imputed to another person who was acting as an agent or servant of another; establishing limits on liability where a plaintiff is involved in a felony criminal act; providing for the burden of proof and limitations; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §55-7-13 and §55-7-24 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto four new sections, designated §55-7-13a, §55-7-13b, §55-7-13c and §55-7-13d, all to read as follows:
ARTICLE  7. ACTIONS FOR INJURIES.

§55-7-13a. Modified comparative fault standard established.

(a) For purposes of this article, “comparative fault” means the degree to which the fault of a person was a proximate cause of an alleged personal injury or death or damage to property, expressed as a percentage. Fault shall be determined according to section thirteen-c of this article.

(b) In any action based on tort or any other legal theory seeking damages for personal injury, property damage, or wrongful death, recovery shall be predicated upon principles of comparative fault and the liability of each person, including plaintiffs, defendants and nonparties who proximately caused the damages, shall be allocated to each applicable person in direct proportion to that person’s percentage of fault.

(c) The total of the percentages of comparative fault allocated by the trier of fact with respect to a particular incident or injury must equal either zero percent or one hundred percent.

§55-7-13b. Definitions.

As used in this article:

“Compensatory damages” means damages awarded to compensate a plaintiff for economic and noneconomic loss.

“Defendant” means, for purposes of determining an obligation to pay damages to another under this chapter, any person against whom a claim is asserted including a counter-claim defendant, cross-claim defendant or third-party defendant.

“Fault” means an act or omission of a person, which is a proximate cause of injury or death to another person or persons, damage to property, or economic injury, including, but not
limited to, negligence, malpractice, strict product liability, absolute liability, liability under section two, article four, chapter twenty-three of this code or assumption of the risk.

“Plaintiff” means, for purposes of determining a right to recover under this chapter, any person asserting a claim.

§55-7-13c. Liability to be several; amount of judgment; allocation of fault.

(a) In any action for damages, the liability of each defendant for compensatory damages shall be several only and may not be joint. Each defendant shall be liable only for the amount of compensatory damages allocated to that defendant in direct proportion to that defendant’s percentage of fault, and a separate judgment shall be rendered against each defendant for his or her share of that amount. However, joint liability may be imposed on two or more defendants who consciously conspire and deliberately pursue a common plan or design to commit a tortious act or omission. Any person held jointly liable under this section shall have a right of contribution from other defendants that acted in concert.

(b) To determine the amount of judgment to be entered against each defendant, the court, with regard to each defendant, shall multiply the total amount of compensatory damages recoverable by the plaintiff by the percentage of each defendant’s fault and, subject to subsection (d) of this section, that amount shall be the maximum recoverable against that defendant.

(c) Any fault chargeable to the plaintiff shall not bar recovery by the plaintiff unless the plaintiff’s fault is greater than the combined fault of all other persons responsible for the total amount of damages, if any, to be awarded. If the plaintiff’s fault is less than the combined fault of all other persons, the plaintiff’s
recovery shall be reduced in proportion to the plaintiff’s degree of fault.

(d) Notwithstanding subsection (b) of this section, if a plaintiff through good faith efforts is unable to collect from a liable defendant, the plaintiff may, not later than one year after judgment becomes final through lapse of time for appeal or through exhaustion of appeal, whichever occurs later, move for reallocation of any uncollectible amount among the other parties found to be liable.

(1) Upon the filing of the motion, the court shall determine whether all or part of a defendant’s proportionate share of the verdict is uncollectible from that defendant and shall reallocate the uncollectible amount among the other parties found to be liable, including a plaintiff at fault, according to their percentages at fault: Provided, That the court may not reallocate to any defendant an uncollectible amount greater than that defendant’s percentage of fault multiplied by the uncollectible amount: Provided, however, That there shall be no reallocation against a defendant whose percentage of fault is equal to or less than the plaintiff’s percentage of fault.

(2) If the motion is filed, the parties may conduct discovery on the issue of collectibility prior to a hearing on the motion.

(e) A party whose liability is reallocated under subsection (d) of this section is nonetheless subject to contribution and to any continuing liability to the plaintiff on the judgment.

(f) This section does not affect, impair or abrogate any right of indemnity or contribution arising out of any contract or agreement or any right of indemnity otherwise provided by law.

(g) The fault allocated under this section to an immune defendant or a defendant whose liability is limited by law may not be allocated to any other defendant.
(h) Notwithstanding any other provision of this section to the contrary, a defendant that commits one or more of the followings acts or omissions shall be jointly and severally liable:

(1) A defendant whose conduct constitutes driving a vehicle under the influence of alcohol, a controlled substance, or any other drug or any combination thereof, as described in section two, article five, chapter seventeen-c of this code, which is a proximate cause of the damages suffered by the plaintiff;

(2) A defendant whose acts or omissions constitute criminal conduct which is a proximate cause of the damages suffered by the plaintiff; or

(3) A defendant whose conduct constitutes an illegal disposal of hazardous waste, as described in section three, article eighteen, chapter twenty-two of this code, which conduct is a proximate cause of the damages suffered by the plaintiff.

(i) This section does not apply to the following statutes:

(1) Article twelve-a, chapter twenty-nine of this code;

(2) Chapter forty-six of this code; and

(3) Article seven-b, chapter fifty-five of this code.

§55-7-13d. Determination of fault; imputed fault; plaintiff’s involvement in felony criminal act; burden of proof; limitations; applicability; severability.

(a) Determination of fault of parties and nonparties.

(1) In assessing percentages of fault, the trier of fact shall consider the fault of all persons who contributed to the alleged damages regardless of whether the person was or could have been named as a party to the suit.
(2) Fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice no later than one hundred-eight days after service of process upon said defendant that a nonparty was wholly or partially at fault. Notice shall be filed with the court and served upon all parties to the action designating the nonparty and setting forth the nonparty’s name and last-known address, or the best identification of the nonparty which is possible under the circumstances, together with a brief statement of the basis for believing such nonparty to be at fault;

(3) In all instances where a nonparty is assessed a percentage of fault, any recovery by a plaintiff shall be reduced in proportion to the percentage of fault chargeable to such nonparty. Where a plaintiff has settled with a party or nonparty before verdict, that plaintiff’s recovery will be reduced in proportion to the percentage of fault assigned to the settling party or nonparty.

(4) Nothing in this section is meant to eliminate or diminish any defenses or immunities, which exist as of the effective date of this section, except as expressly noted herein;

(5) Assessments of percentages of fault for nonparties are used only as a vehicle for accurately determining the fault of named parties. Where fault is assessed against nonparties, findings of such fault do not subject any nonparty to liability in that or any other action, or may not be introduced as evidence of liability or for any other purpose in any other action; and

(6) In all actions involving fault of more than one person, unless otherwise agreed by all parties to the action, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating the percentage of the total fault that is allocated to each party and nonparty pursuant to this article. For this purpose, the court may
determine that two or more persons are to be treated as a single person.

(b) *Imputed fault.* – Nothing in this section may be construed as precluding a person from being held liable for the portion of comparative fault assessed against another person who was acting as an agent or servant of such person, or if the fault of the other person is otherwise imputed or attributed to such person by statute or common law. In any action where any party seeks to impute fault to another, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, on the issue of imputed fault.

(c) *Plaintiff's involvement in felony criminal act.* – In any civil action, a defendant is not liable for damages that the plaintiff suffers as a result of the negligence or gross negligence of a defendant if such damages arise out of the plaintiff’s commission, attempt to commit or fleeing from the commission of a felony criminal act: *Provided,* That the plaintiff has been convicted of such felony, or if deceased, the jury makes a finding that the decedent committed such felony.

(d) *Burden of proof.* – The burden of alleging and proving comparative fault shall be upon the person who seeks to establish such fault.

(e) *Limitations.* – Nothing in this section creates a cause of action. Nothing in this section alters, in any way, the immunity of any person as established by statute or common law.

(f) *Applicability.* – This section applies to all causes of action arising or accruing on or after the effective date of its enactment.

(g) *Severability.* – The provisions of this section are severable from one another, so that if any provision of this section is held void, the remaining provisions of this section shall remain valid.
AN ACT to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended, relating to permitting those individuals who hold a valid current concealed weapons permit to keep firearms in their motor vehicles on the State Capitol Complex grounds if the vehicle is locked and the weapon is out of normal view.

Be it enacted by the Legislature of West Virginia:

That §61-6-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-19. Willful disruption of governmental processes; offenses occurring at State Capitol Complex; penalties.

(a) If any person willfully interrupts or molests the orderly and peaceful process of any department, division, agency or branch of state government or of its political subdivisions, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100, or confined in jail not more than six months, or both fined and confined: Provided, That any assembly in a peaceable, lawful and orderly manner for a redress of grievances shall not be a violation of this section.

(b) It is unlawful for any person to bring upon the State Capitol Complex any weapon as defined in section two, article seven of this chapter: Provided, That a person who holds a valid,
current concealed weapons permit issued by a sheriff of this state or the appropriate authority of another jurisdiction may keep a firearm in his or her motor vehicle upon the State Capitol Complex if the vehicle is locked and the weapon is out of normal view. It is unlawful for any person to willfully deface any trees, wall, floor, stairs, ceiling, column, statue, monument, structure, surface, artwork or adornment in the State Capitol Complex. It is unlawful for any person or persons to willfully block or otherwise willfully obstruct any public access, stair or elevator in the State Capitol Complex after being asked by a law-enforcement officer acting in his or her official capacity to desist: Provided, That, in order to preserve the constitutional right of the people to assemble, it is not willful blocking or willful obstruction for persons gathered in a group or crowd if the persons move to the side or part to allow other persons to pass by the group or crowd to gain ingress or egress: Provided, however, That this subsection does not apply to a law-enforcement officer acting in his or her official capacity.

Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 or confined in jail not more than six months, or both.

CHAPTER 61

(S. B. 250 - By Senators Trump, Blair, Carmichael, M. Hall, Leonhardt, Miller, Snyder, Unger, Williams and Plymale)

[Passed March 14, 2015; in effect from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §19-21A-4a of the Code of West Virginia, 1931, as amended, relating to the administration of the
West Virginia Conservation Agency programs; providing that
conservation district supervisors have their applications to
participate in West Virginia Conservation Agency financial
assistance programs evaluated and approved or rejected by the
West Virginia Conservation Agency; prohibiting conservation
district supervisor from voting for authorization, approval or
ratification of a contract in which he or she or an immediate family
member is beneficially interested; and requiring State
Conservation Committee to propose rules for legislative approval.

Be it enacted by the Legislature of West Virginia:

That §19-21A-4a of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-4a. Administration of West Virginia Conservation
Agency programs; legislative rules.

1    (a) If a conservation district supervisor applies to participate
2    in a West Virginia Conservation Agency financial assistance
3    program, then his or her application for that particular program
4    shall be evaluated for approval or denial by the West Virginia
5    Conservation Agency.

6    (b) A conservation district supervisor may not vote for the
7    authorization, approval or ratification of a contract in which he
8    or she or an immediate family member is beneficially interested.

9    (c) The State Conservation Committee shall propose rules
10    for legislative approval pursuant to article three, chapter twenty-
11    nine-a of this code to establish:

12    (1) The criteria, ranking and standards required for an
13    applicant to qualify to participate in West Virginia Conservation
14    Agency programs;
(2) A process to disclose the recipients of the award; and

(3) The process for an unsuccessful qualified applicant to appeal an award.

(d) The State Conservation Committee may propose emergency rules as necessary to implement the provisions of this section.

CHAPTER 62

(H. B. 2926 - By Delegate(s) Folk, Ashley and Walters)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §46A-3-114 of the Code of West Virginia, 1931, as amended, relating to modification charges in connection with a real estate secured consumer credit sale or consumer loan; and providing for a minimum and maximum modification charge that may be collected.

Be it enacted by the Legislature of West Virginia:

That §46A-3-114 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-114. Deferral and modification charges.

1 (1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties before
or after default may agree in writing to a deferral of all or part of
one or more unpaid installments, and the seller or lender may
make and collect a deferral charge not exceeding the amount of
the sales finance charge or loan finance charge attributable to the
first of the deferred monthly installment periods multiplied by
number of months in the deferral period (the period in which no
payment is required or made by reason of a deferral): Provided,
That, no installment on which a delinquency charge has been
collected or partial payment made shall be deferred unless the
amount of the delinquency charge or partial payment is first
applied to the deferral charge. If prepayment in full occurs
during a deferral period, the portion of the deferral charge
attributable to the unexpired full months in the deferral period
shall be also rebated.

(2) The seller or lender, in addition to the deferral charge,
may make appropriate additional charges, and the amount of
these charges which is not paid in cash may be added to the
amount deferred for the purpose of calculating the deferral
charge.

(3) The parties may agree in writing at the time of a
precomputed consumer credit sale or consumer loan, refinancing
or consolidation that if an installment is not paid within ten days
after its due date as originally scheduled or as deferred, the seller
or lender may unilaterally grant a deferral and make charges as
provided in this section. No deferral charge may be made for a
period after the date on which the seller or lender elects to
accelerate the maturity of the agreement.

(4) With respect to a real estate secured consumer credit sale
or consumer loan, the parties before or after default may agree
in writing to a modification or amendment of, or allonge to, the
consumer credit sale or consumer loan, and the seller or lender
may make and collect a modification charge equal to the greater
of $250 or one percent of the outstanding balance of the
consumer credit sale or consumer loan at the time of the
modification, amendment or allonge: Provided, That, no
modification charge may be made where prohibited by federal
law or regulation.

(5) The commissioner shall prescribe by rule the method or
procedure for the calculation of deferral charges consistent with
the other provisions of this chapter where the precomputed
consumer credit sale or consumer loan is payable in unequal or
irregular installments.

CHAPTER 63

(Com. Sub. for S. B. 542 - By Senators D. Hall,
Carmichael, M. Hall, Gaunch, Trump, Blair and Nohe)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend and reenact §46A-2-125, §46A-2-126 and §46A-2-
128 of the Code of West Virginia, 1931, as amended; to amend and
reenact §46A-3-112 and §46A-3-113 of said code; to amend and
reenact §46A-5-101 and §46A-5-106 of said code; and to amend
said code by adding thereto a new section, designated §46A-5-107,
all relating to clarifying permitted and prohibited actions with
regard to the prohibition on oppression and abuse in the course of
debt collection; clarifying permitted and prohibited actions with
regard to the prohibition of unreasonable publication; clarifying
permitted and prohibited actions and communications with regard
to the prohibition on the use of unfair or unconscionable means in
the course of debt collection; increasing permitted delinquency
charges; modifying damages and penalties for violations;
modifying the limitation of actions brought under this chapter;
adjusting time allowed after discovery to correct an error without liability in certain circumstances; adjusting damages for inflation; and specifying venue of an action or proceeding brought by a consumer.

Be it enacted by the Legislature of West Virginia:

That §46A-2-125, §46A-2-126 and §46A-2-128 of the Code of West Virginia, as amended, be amended and reenacted; that §46A-3-112 and §46A-3-113 of said code be amended and reenacted; that §46A-5-101 and §46A-5-106 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §46A-5-107, all to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.


1. No debt collector shall unreasonably oppress or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(b) Engaging any person in telephone conversation without disclosure of the caller’s identity and with the intent to annoy, harass or threaten any person at the called number;

(c) Causing expense to any person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication, by concealment of the true purpose of the communication; and

(d) Calling any person more than thirty times per week or engaging any person in telephone conversation more than ten
times per week, or at unusual times or at times known to be
inconvenient, with intent to annoy, abuse, oppress or threaten
any person at the called number. In determining whether a debt
collector’s conduct violates this section, the debt collector’s
conduct will be evaluated from the standpoint of a reasonable
person. In the absence of knowledge of circumstances to the
contrary, a debt collector shall assume that the convenient time
for communicating with a consumer is after eight o’clock
antemeridian and before nine o’clock postmeridian, local time at
the consumer’s location.

§46A-2-126. Unreasonable publication.

No debt collector shall unreasonably publicize information
relating to any alleged indebtedness or consumer. For purposes
of this section, a debt collector does not unreasonably publicize
information relating to any alleged indebtedness by identifying
themselves to the debtor by name, identifying the debt
collector’s employer by name, if expressly requested by the
debtor, or by providing a telephone number or other contact
information to the debtor. Without limiting the general
application of the foregoing, the following conduct is deemed to
violate this section:

(a) The communication to any employer or his agent before
judgment has been rendered of any information relating to an
employee’s indebtedness other than through proper legal action,
process or proceeding;

(b) The disclosure, publication or communication of
information relating to a consumer’s indebtedness to any relative
or family member of the consumer if such person is not residing
with the consumer, except through proper legal action or process
or at the express and unsolicited request of the relative or family
member;
(c) The disclosure, publication or communication of any information relating to a consumer’s indebtedness to any other person other than a credit reporting agency, by publishing or posting any list of consumers, commonly known as “deadbeat lists”, except lists to prevent the fraudulent use of credit accounts or credit cards, by advertising for sale any claim to enforce payment thereof, or in any manner other than through proper legal action, process or proceeding; and

(d) The use of any form of communication to the consumer, which ordinarily may be seen by any other persons, that displays or conveys any information about the alleged claim other than the name, address and phone number of the debt collector.

Nothing in this chapter shall prohibit a creditor or debt collector from communicating with any person other than the consumer for the purpose of acquiring or confirming the consumer’s location information provided they do so in a manner consistent with the provisions of 15 U.S.C. § 1692b, as the same may be amended from time to time. For purposes of this section, “communication” or “communicating” or any derivation of those terms shall not include the filing of a complaint or other document, pleading or filing with any court.

§46A-2-128. Unfair or unconscionable means.

No debt collector may use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer’s obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;
(b) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt except where such affirmation is obtained pursuant to applicable bankruptcy law;

(c) The collection or the attempt to collect from the consumer all or any part of the debt collector’s fee or charge for services rendered: Provided, That attorney’s fees, court costs and other reasonable collection costs and charges necessary for the collection of any amount due upon delinquent educational loans made by any institution of higher education within this state may be recovered when the terms of the obligation so provide. Recovery of attorney’s fees and collection costs may not exceed thirty-three and one-third percent of the amount due and owing to any such institution: Provided, however, That nothing contained in this subsection shall be construed to limit or prohibit any institution of higher education from paying additional attorney fees and collection costs as long as such additional attorney fees and collection costs do not exceed an amount equal to five percent of the amount of the debt actually recovered and such additional attorney fees and collection costs are deducted or paid from the amount of the debt recovered for the institution or paid from other funds available to the institution;

(d) The collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating or modifying the obligation and by statute or regulation;

(e) Any communication with a consumer made more than seventy-two hours after the debt collector receives written notice, either on paper or electronically, from the consumer or his or her attorney that the consumer is represented by an
attorney specifically with regard to the subject debt. To be
effective under this subsection, such notice must clearly state the
attorney’s name, address and telephone number and be sent to
the debt collector’s registered agent, identified by the debt
collector at the office of the West Virginia Secretary of State or,
if not registered with the West Virginia Secretary of State, then
to the debt collector’s principal place of business.
Communication with a consumer is not prohibited under this
subsection if the attorney fails to answer correspondence, return
phone calls or discuss the obligation in question, or if the
attorney consents to direct communication with the consumer.
Regular account statements provided to the consumer and
notices required to be provided to the consumer pursuant to
applicable law shall not constitute prohibited communications
under this section; and

(f) When the debt is beyond the statute of limitations for
filing a legal action for collection, failing to provide the
following disclosure informing the consumer in its initial written
communication with such consumer that:

(1) When collecting on a debt that is not past the date for
obsolescence provided for in section 605(a) of the Fair Credit
can be sued on a debt. Because of the age of your debt, (INSERT
OWNER NAME) cannot sue you for it. If you do not pay the
debt, (INSERT OWNER NAME) may report or continue to
report it to the credit reporting agencies as unpaid”; and

(2) When collecting on debt that is past the date for
obsolescence provided for in section 605(a) of the Fair Credit
can be sued on a debt. Because of the age of your debt, (INSERT
OWNER NAME) cannot sue you for it and (INSERT OWNER
NAME) cannot report it to any credit reporting agencies.”
ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

(1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount not exceeding the greater of:

(a) Five percent of the unpaid amount of the installment, not to exceed $30; or

(b) An amount equivalent to the deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

(2) A delinquency charge under subdivision (a), subsection (1) of this section may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled or deferred installment due date, even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection, payments shall be applied first to current installments, then to delinquent installments and then to delinquency and other charges.
(4) If two installments, or parts thereof, of a precomputed consumer credit sale or consumer loan are in default for ten days or more, the creditor may elect to convert such sale or loan from a precomputed sale or loan to one in which the sales finance charge or loan finance charge is based on unpaid balances. In such event, the creditor shall make a rebate pursuant to the provisions on rebate upon prepayment, refinancing or consolidation as of the maturity date of any installment then delinquent and thereafter may make a sales finance charge or loan finance charge as authorized by the appropriate provisions on sales finance charges or loan finance charges for consumer credit sales or consumer loans. The amount of the rebate may not be reduced by the amount of any permitted minimum charge. If the creditor proceeds under this subsection, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the delinquent installments shall be rebated and no further delinquency or deferral charges shall be made.

(5) The commissioner shall prescribe by rule the method or procedure for the calculation of delinquency charges consistent with the other provisions of this chapter where the precomputed consumer credit sale or consumer loan is payable in unequal or irregular installments.

§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

(1) In addition to the continuation of the sales finance charge or loan finance charge on a delinquent installment with respect to a nonprecomputed consumer credit sale or consumer loan, refinancing or consolidation, repayable in installments, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date of five percent of the unpaid amount of the installment, not to exceed $30.
(2) A delinquency charge under subsection (1) of this section may be collected only once on an installment however long it remains in default. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled or deferred installment due date, even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection, payments shall be applied first to current installments, then to delinquent installments and then to delinquency and other charges.

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.


(1) If a creditor or debt collector has violated the provisions of this chapter applying to collection of excess charges, security in sales and leases, disclosure with respect to consumer leases, receipts, statements of account and evidences of payment, limitations on default charges, assignment of earnings, authorizations to confess judgment, illegal, fraudulent or unconscionable conduct, any prohibited debt collection practice, or restrictions on interest in land as security, assignment of earnings to regulated consumer lender, security agreement on household goods for benefit of regulated consumer lender, and renegotiation by regulated consumer lender of a loan discharged in bankruptcy, the consumer has a cause of action to recover: (a) Actual damages; and (b) a right in an action to recover from the person violating this chapter a penalty of $1,000 per violation: Provided, That the aggregate amount of the penalty awarded shall not exceed the greater of $175,000 or the total alleged outstanding indebtedness: Provided, however, That in a class
action the aggregate limits on the amount of the penalty set forth above shall be applied severally to each named plaintiff and each class member such that no named plaintiff nor any class member may recover in excess of the greater of $175,000 or the total alleged outstanding indebtedness. With respect to violations arising from consumer credit sales, consumer leases, or consumer loans, or from sales as defined in article six of this chapter, no action pursuant to this subsection may be brought more than four years after the violations occurred. This limitations period shall apply to all actions filed on or after September 1, 2015.

(2) If a creditor has violated the provisions of this chapter respecting authority to make regulated consumer loans, the loan is void and the consumer is not obligated to pay either the principal or the loan finance charge. If he has paid any part of the principal or of the finance charge, he has a right to recover in an action the payment from the person violating this chapter or from an assignee of that person’s rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from regulated consumer loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than four years after the violation occurred. With respect to violations arising from other regulated consumer loans, no action pursuant to this subsection may be brought more than four years after the violation occurred. This limitations period shall apply to all actions filed on or after September 1, 2015.

(3) A consumer is not obligated to pay a charge in excess of that allowed by this chapter and if he has paid an excess charge, he has a right to a refund. A refund may be made by reducing the consumer’s obligation by the amount of the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover in an action the excess amount from the person who made the excess charge or
from an assignee of that person’s rights who undertakes direct
collection of payments from or enforcement of rights against the
consumer arising from the debt.

(4) If a creditor or debt collector has contracted for or
received a charge in excess of that allowed by this chapter, the
consumer may, in addition to recovering such excess charge,
also recover from the creditor or the person liable in an action a
penalty of $1,000 per violation: Provided, That the aggregate
amount of the penalty awarded shall not exceed the greater of
$175,000 or the total alleged outstanding indebtedness:
Provided, however, That in a class action the aggregate limits on
the amount of the penalty set forth above shall be applied
severally to each named plaintiff and each class member such
that no named plaintiff nor any class member may recover in
excess of the greater of $175,000 or the total alleged outstanding
indebtedness. With respect to excess charges arising from
consumer credit sales, consumer leases, or consumer loans, no
action pursuant to this subsection may be brought more than four
years after the time the excess charge was made.. This
limitations period shall apply to all actions filed on or after
September 1, 2015.

(5) Except as otherwise provided, a violation of this chapter
does not impair rights on a debt.

(6) If an employer discharges an employee in violation of the
provisions prohibiting discharge, the employee may within
ninety days bring a civil action for recovery of wages lost as a
result of the violation and for an order requiring the
reinstatement of the employee. Damages recoverable shall not
exceed lost wages for six weeks.

(7) A creditor or debt collector has no liability for a penalty
under subsection (1) or (4) of this section if, after discovering an
error and prior to the institution of an action under this section
or the receipt of written notice of the error, the creditor notifies
the person concerned of the error and corrects the error: (a)
Within fifteen days if the error affects no more than two persons;
or (b) within sixty days if the error affects more than two
persons. If the violation consists of a prohibited agreement,
giving the consumer a corrected copy of the writing containing
the error is sufficient notification and correction. If the violation
consists of an excess charge, correction shall be made by an
adjustment or refund.

(8) If the creditor or debt collector establishes by a
preponderance of evidence that a violation is unintentional or the
result of a bona fide error of fact notwithstanding the
maintenance of procedures reasonably adapted to avoid any such
violation or error, no liability is imposed under subsections (1),
(2) and (4) of this section and the validity of the transaction is
not affected.

§46A-5-106. Adjustment of damages for inflation.

In any claim brought under this chapter applying to illegal,
fraudulent or unconscionable conduct or any prohibited debt
collection practice, the court may adjust the damages awarded
pursuant to section one hundred one of this article to account for
inflation from 12:01 a.m. on September 1, 2015, to the time of
the award of damages in an amount equal to the consumer price
index. Consumer price index means the last consumer price
index for all consumers published by the United States
Department of Labor.


Any civil action or other proceeding brought by a consumer
to recover actual damages or a penalty, or both, from creditor or
a debt collector, founded upon illegal, fraudulent or
unconscionable conduct, or prohibited debt collection practice,
or both, shall be brought either in the circuit court of the county in which the plaintiff has his or her legal residence at the time of the civil action, the circuit court of the county in which the plaintiff last resided in the state of West Virginia, or in the circuit court of the county in which the creditor or debt collector has its principal place of business or, if the creditor or debt collector is an individual, in the circuit court of the county of his or her legal residence. With respect to causes of action arising under this chapter, the venue provisions of this section shall be exclusive of and shall supersede the venue provisions of any other West Virginia statute or rule.

CHAPTER 64

(Com. Sub. for S. B. 315 - By Senator Mullins)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §46A-6-101, §46A-6-102, §46A-6-105 and §46A-6-106 of the Code of West Virginia, 1931, as amended, all relating to civil actions filed under the Consumer Protection Act; providing statement of legislative intent that courts be guided by federal court and agency interpretations of similar federal statutes; clarifying who may bring private cause of action; establishing requirement of out-of-pocket loss proximately caused by alleged violation in actions for damages; and providing right to demand a jury trial.

Be it enacted by the Legislature of West Virginia:

That §46A-6-101, §46A-6-102, §46A-6-105 and §46A-6-106 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-101. Legislative declarations; statutory construction.

1 (1) The Legislature hereby declares that the purpose of this article is to complement the body of federal law governing unfair competition and unfair, deceptive and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is the intent of the Legislature that, in construing this article, the courts be guided by the policies of the Federal Trade Commission and interpretations given by the Federal Trade Commission and the federal courts to Section 5(a)(1) of the Federal Trade Commission Act (15 U. S. C. § 45(a)(1)), as from time to time amended, and to the various other federal statutes dealing with the same or similar matters. To this end, this article shall be liberally construed so that its beneficial purposes may be served.

14 (2) It is, however, the further intent of the Legislature that this article not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor does this article repeal by implication the provisions of articles eleven, eleven-a and eleven-b, chapter forty-seven of this code.

§46A-6-102. Definitions.

1 When used in this article, the following words, terms and phrases, and any variations thereof required by the context, shall have the meaning ascribed to them in this article except where the context indicates a different meaning:

5 (1) “Advertisement” means the publication, dissemination or circulation of any matter, oral or written, including labeling, which tends to induce, directly or indirectly, any person to enter into any obligation, sign any contract or acquire any title or
interest in any goods or services and includes every word device
to disguise any form of business solicitation by using such terms
as “renewal”, “invoice”, “bill”, “statement” or “reminder” to
create an impression of existing obligation when there is none or
other language to mislead any person in relation to any sought-
after commercial transaction.

(2) “Consumer” means a natural person to whom a sale or
lease is made in a consumer transaction and a “consumer
transaction” means a sale or lease to a natural person or persons
for a personal, family, household or agricultural purpose.

(3) “Cure offer” means a written offer of one or more things
of value, including, but not limited to, the payment of money,
that is made by a merchant or seller and that is delivered by
certified mail to a person claiming to have suffered a loss as a
result of a transaction or to the attorney for such person.

(4) “Merchantable” means, in addition to the qualities
prescribed in section three hundred fourteen, article two, chapter
forty-six of this code, that the goods conform in all material
respects to applicable state and federal statutes and regulations
establishing standards of quality and safety of goods and, in the
case of goods with mechanical, electrical or thermal
components, that the goods are in good working order and will
operate properly in normal usage for a reasonable period of time.

(5) “Sale” includes any sale, offer for sale or attempt to sell
any goods for cash or credit or any services or offer for services
for cash or credit.

(6) “Trade” or “commerce” means the advertising, offering
for sale, sale or distribution of any goods or services and shall
include any trade or commerce, directly or indirectly, affecting
the people of this state.
39 (7) “Unfair methods of competition and unfair or deceptive acts or practices” means and includes, but is not limited to, any one or more of the following:

42 (A) Passing off goods or services as those of another;

43 (B) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

46 (C) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by another;

49 (D) Using deceptive representations or designations of geographic origin in connection with goods or services;

51 (E) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

55 (F) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

58 (G) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model if they are of another;

61 (H) Disparaging the goods, services or business of another by false or misleading representation of fact;

63 (I) Advertising goods or services with intent not to sell them as advertised;

65 (J) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
(K) Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;

(L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

(N) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading or deceptive or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

(O) Representing that any person has won a prize, one of a group of prizes or any other thing of value if receipt of the prize or thing of value is contingent upon any payment of a service charge, mailing charge, handling charge or any other similar charge by the person or upon mandatory attendance by the person at a promotion or sales presentation at the seller’s place of business or any other location: Provided, That a person may be offered one item or the choice of several items conditioned on the person listening to a sales promotion or entering a consumer transaction if the true retail value and an accurate description of
the item or items are clearly and conspicuously disclosed along
with the person’s obligations upon accepting the item or items;
such description and disclosure shall be typewritten or printed in
at least eight point regular type, in upper or lower case, where
appropriate; or

(P) Violating any provision or requirement of article six-b of
this chapter.

(8) “Warranty” means express and implied warranties
described and defined in sections three hundred thirteen, three
hundred fourteen and three hundred fifteen, article two, chapter
forty-six of this code and expressions or actions of a merchant
which assures the consumer that the goods have described
qualities or will perform in a described manner.

§46A-6-105. Exempted transactions.

This article does not apply to acts done by the publisher,
owner, agent or employee of a newspaper, periodical or radio or
television station in the publication or dissemination of an
advertisement, when the owner, agent or employee did not have
knowledge of the false, misleading or deceptive character of the
advertisement, did not prepare the advertisement and did not
have a direct financial interest in the sale or distribution of the
advertised goods or services.

§46A-6-106. Private causes of action.

(a) Subject to subsections (b) and (c) of this section, any
person who purchases or leases goods or services and thereby
suffers an ascertainable loss of money or property, real or
personal, as a result of the use or employment by another person
of a method, act or practice prohibited or declared to be unlawful
by the provisions of this article may bring an action in the circuit
court of the county in which the seller or lessor resides or has his
or her principal place of business or is doing business, or as
provided for in sections one and two, article one, chapter
fifty-six of this code, to recover actual damages or $200,
whichever is greater. The court may, in its discretion, provide
such equitable relief it considers necessary or proper. Any party
to an action for damages under this subsection has the right to
demand a jury trial.

(b) No award of damages in an action pursuant to subsection
(a) may be made without proof that the person seeking damages
suffered an actual out-of-pocket loss that was proximately
caused by a violation of this article. If a person seeking to
recover damages for a violation of this article alleges that an
affirmative misrepresentation is the basis for his or her claim
then he or she must prove that the deceptive act or practice
cause him or her to enter into the transaction that resulted in his
or her damages. If a person seeking to recover damages for a
violation of this article alleges that the concealment or omission
of information is the basis for his or her claim, then he or she
must prove that the person’s loss was proximately caused by the
concealment or omission.

(c) Notwithstanding the provisions of subsections (a) and (b)
of this section, no action, counterclaim, cross-claim or
third-party claim may be brought pursuant to the provisions of
this section until the person has informed the seller or lessor in
writing and by certified mail, return receipt requested, of the
alleged violation and provided the seller or lessor twenty days
from receipt of the notice of violation but ten days in the case a
cause of action has already been filed to make a cure offer:
Provided, That the person shall have ten days from receipt of the
cure offer to accept the cure offer or it is deemed refused and
withdrawn.

(d) If a cure offer is accepted, the seller or lessor has ten
days to begin effectuating the agreed upon cure and the cure
must be completed within a reasonable time.
(e) Any applicable statute of limitations is tolled for the twenty-day period set forth in subsection (c) of this section or for the period the effectuation of the cure offer is being performed, whichever is longer.

(f) Nothing in this section prevents a person that has accepted a cure offer from bringing a civil action against a seller or lessor for failing to timely effect the cure offer.

(g) Any permanent injunction, judgment or order of the court under section one hundred eight, article seven of this chapter for a violation of section one hundred four of this article is prima facie evidence in an action brought pursuant to the provisions of this section that the respondent used or employed a method, act or practice declared unlawful by section one hundred four of this article.

(h) Where an action is brought pursuant to the provisions of this section, it is a complete defense that a cure offer was made, accepted and the agreed upon cure was performed. If the finder of fact determines that the cure offer was accepted and the agreed upon cure performed, the seller or lessor is entitled to reasonable attorney’s fees and costs attendant to defending the action.

(i) No cure offer is admissible in any proceeding initiated pursuant to the provisions of this article unless the cure offer is delivered by a seller or lessor to the person claiming loss or to any attorney representing such person prior to the filing of the seller or lessee’s initial responsive pleading in such proceeding. If the cure offer is timely delivered by the seller or lessor, then the seller or lessee may introduce the cure offer into evidence at trial. The seller or lessor is not liable for the person’s attorney’s fees and court costs incurred following delivery of the cure offer unless the actual damages found to have been sustained and awarded, without consideration of attorney’s fees and court costs, exceed the value of the cure offer.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-6M-1, §46A-6M-2, §46A-6M-3, §46A-6M-4, §46A-6M-5 and §46A-6M-6, all relating generally to providing consumers with the right to cancel residential roofing contracts where the contract is expected to be paid from a property and casualty insurance policy; providing definitions; establishing a consumer’s right to cancel; creating standard disclosure and notice requirements; providing for advanced payment prohibition, refunds, emergency repairs and unenforceability of contract; prohibiting certain acts; private remedies; and misdemeanor criminal offense and penalty.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §46A-6M-1, §46A-6M-2, §46A-6M-3, §46A-6M-4, §46A-6M-5 and §46A-6M-6, all to read as follows:

ARTICLE  6M. STORM SCAMMER CONSUMER PROTECTION ACT.

§46A-6M-1. Definitions.

1. As used in this article:
(1) “Emergency repair” means a repair that is necessary to prevent the risk of imminent injury to a person or further damage to the homeowner’s residence;

(2) “Residential real estate” means any real property located in West Virginia, upon which is constructed or intended to be constructed a dwelling;

(3) “Roof system” means the components of a roof to include, but not be limited to, covering, framing, insulation, sheathing, ventilation, guttering and weatherproofing; and

(4) “Roofing contractor” means a person or entity in the business of contracting or offering to contract with an owner of residential real estate to repair or replace a roof system.

§46A-6M-2. Consumer’s right to cancel residential roofing contract.

(a) An owner, who on or after July 1, 2015, enters into a contract with a roofing contractor to provide goods or services related to a roof system of residential real estate and who expects the goods or services to be paid from the proceeds of a property and casualty insurance policy, may cancel the contract prior to midnight of the fifth business day after the owner has received notice from the insurer that all or part of the claim is not a covered loss under the property and casualty insurance policy.

(b) The contract with the roofing contract is cancelled when the owner either personally delivers written notice of cancellation to the roofing contractor; deposits the written notice of cancellation in the United States mail, postage prepaid and addressed to the roofing contractor at the address stated in the contract; transmits the notice of cancellation to the roofing contractor by facsimile; or sends an e-mails containing a notice of cancellation.
(c) The owner may use any form of notice of cancellation that is sufficient to indicate, by any form of written expression, the intention of the owner not to be bound by the contract.

§46A-6M-3. Roofing contractor’s duty to disclose rights of the consumer via standard form.

Prior to entering into a contract on or after July 1, 2015, for the provision of goods or services relating to the repair or replacement of any part of a roof system of residential real estate as provided in section two of this article, a roofing contractor shall furnish the owner of the residential real estate with:

1. The mailing address of the roofing contractor through which written communication may be received;

2. The telephone number of the roofing contractor and, if applicable, the facsimile number and e-mail address of the contractor;

3. A statement in at least ten point boldface type that states: “Because you expect all or part of the cost of the roofing repair or replacement to be paid out of the proceeds of a property and casualty insurance policy, you may cancel this contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy. This right to cancel is in addition to any other rights of cancellation you may have under state or federal law or rule or regulation. However, be advised that if you cancel this contract, you are still responsible to pay the reasonable and customary expenses of any emergency repair services you authorized. See the attached Notice of Cancellation form for an explanation of this right.”; and

4. A fully completed form in duplicate, under the conspicuous caption “NOTICE OF CANCELLATION,” and
attached to, but easily detachable from the contract, in at least
ten point boldface type that shall read as follows:

“NOTICE OF CANCELLATION

(enter date of transaction)

If you are notified by your insurer that all or any part of the
claim or contract is not a covered loss under the insurance
policy, you may cancel this contract without penalty or monetary
obligation, except where you have authorized emergency repair
services for which you are still responsible for payment, before
midnight of the fifth business day after you have received notice
from your insurer. To cancel this transaction you may use any of
the following methods: Mail or otherwise deliver a signed and
dated copy of this cancellation notice, or any other written notice
of cancellation which you- sign-and date, to (enter physical
address of roofing contractor), or e-mail a notice of cancellation
to (enter e-mail address of roofing contractor), or transmit a
notice of cancellation to (enter facsimile number of roofing
contractor), not later than midnight of the fifth day after you
receive notice from your insurer. By signing below, you certify
that your insurer has denied all or part of your claim.

I HEREBY ATTEST THAT I HAVE BEEN NOTIFIED BY
THE INSURER THAT ALL OR PART OF MY CLAIM HAS
BEEN DENIED AND I HEREBY CANCEL THIS
TRANSACTION.

(Date)

(Buyer’s Signature)”

§46A-6M-4. Advanced payments prohibited; refunds; emergency
repairs; unenforceable contract.

(a) Except as provided in subsection (c) of this section, on or
after July 1, 2015, a roofing contractor may not require any
advance payments under a contract for the repair or replacement
of any part of a roof system of a residential real estate, when
payment is expected to be made from the proceeds of a property
or casualty insurance policy until the cancellation period, as
provided in section two of this article has expired.

(b) Within ten days after a contract has been canceled, as
provided in section two of this article, a roofing contractor shall
tender to the owner, any payments, partial payments, or deposits
made, and any note or other evidence of indebtedness, except as
provided in subsection (c) of this section.

(c) A roofing contractor that performs any emergency repair
services authorized by the owner of residential real estate, may
collect a reasonable and customary amount for the emergency
repair services performed for the authorizing owner.

(d) Any provision in a contract executed on or after July 1,
2015, for the repair of a roof system of residential real estate, as
provided in sections one and five of this article, that requires the
payment of any fee, except for repair services performed under
subsection (c) of this section, is not enforceable against any
person who has canceled a contract under section two of this
article.

§46A-6M-5. Roofing contractors; prohibited acts.

(a) Notwithstanding the provisions relating to public
adjusters, as defined in section one-e, article twelve-b, chapter
thirty-three of this code, on or after July 1, 2015, a roofing
contractor may not represent, negotiate, or advertise to represent
or negotiate on behalf of an owner of residential real estate on
any insurance claim in connection with the repair or replacement
of a roof system. Nothing in this subsection may be construed to
prohibit a roofing contractor from:
(1) Providing an estimate for repair, replacement, construction or reconstruction of the roof system to the owner of residential real estate; or

(2) Conferring with an insurance company’s representative about damage to the property after a claim has been submitted by the owner of residential real estate.

(b) On or after July 1, 2015, a roofing contractor or person representing a roofing contractor may not:

(1) Offer to pay or rebate all or any portion of an insurance deductible or claims proceeds as an inducement to the sale of goods or services related to a residential roofing contract;

(2) Pay the owner of residential real estate for whom services have been performed pursuant to this article for any reason or any form of compensation, including, but not limited to a:

(A) Bonus;

(B) Coupon;

(C) Credit;

(D) Gift;

(E) Prize;

(F) Referral fee; or

(G) Any other tangible item having a monetary value.

§46A-6M-6. Private remedies for violation of article; criminal penalties.

(a) If a roofing contractor violates the provisions of this article, the owner or the applicable insurer may bring an action
against the roofing contractor in a court of competent jurisdiction for damages sustained by the owner or insurer as a consequence of the roofing contractor’s violation.

(b) A roofing contractor who willfully violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or confined in jail not more than one year, or both fined and confined.

CHAPTER 66

(H. B. 2931 - By Delegate Ashley)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §60A-2-204 of the Code of West Virginia, 1931, as amended, relating to adding drugs to the classification of schedule I drugs.

Be it enacted by the Legislature of West Virginia:

That §60A-2-204 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

(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.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, 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 (for purposes of subdivision (34) of this subsection only, the term isomer includes the optical and geometric isomers):

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]—phenylacetamide);

(2) Acetylmethadol;

(3) Allylprodine;

(4) Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidinyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(– propanilido) piperidine);

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]—phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

(13) Betameprodine;
(14) Betamethadol;
(15) Betaprodine;
(16) Clonitazene;
(17) Dextromoramide;
(18) Diampromide;
(19) Diethylthiambutene;
(20) Difenoxin;
(21) Dimenoxadol;
(22) Dimepheptanol;
(23) Dimethylthiambutene;
(24) Dioxaphetyl butyrate;
(25) Dipipanone;
(26) Ethylmethylthiambutene;
(27) Etonitazene;
(28) Etoxeridine;
(29) Furethidine;
(30) Hydroxypethidine;
(31) Ketobemidone;
(32) Levomoramide;
(33) Levophenacylmorphan;
(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
55  (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]—phenylpropanamide);
56
57  (36) Morpheridine;
58  (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
59  (38) Noracymethadol;
60  (39) Norlevorphanol;
61  (40) Normethadone;
62  (41) Norpipanone;
63  (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
64
65  (43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
66
67  (44) Phenadoxone;
68  (45) Phenampromide;
69  (46) Phenomorphan;
70  (47) Phenoperidine;
71  (48) Pirritramide;
72  (49) Proheptazine;
73  (50) Properidine;
74  (51) Propiram;
75  (52) Racemoramide;
76  (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
(c) **Opium derivatives.** — Unless specifically excepted or unless listed in another schedule, any of the following opium immediate derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

1. Acetorphine;
2. Acetyldihydrocodeine;
3. Benzylmorphine;
4. Codeine methylbromide;
5. Codeine-N-Oxide;
6. Cyprenorphine;
7. Desomorphine;
8. Dihydromorphine;
9. Drotebanol;
10. Etorphine (except HCl Salt);
11. Heroin;
12. Hydromorphinol;
13. Methyldesorphine;
14. Methyldihydromorphine;
15. Morphine methylbromide;
16. Morphine methylsulfonate;
(17) Morphine-N-Oxide;

(18) Myrophine;

(19) Nicocodeine;

(20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine;

(23) Thebacon.

(d) Hallucinogenic substances. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term “isomer” includes the optical, position and geometric isomers):

(1) Alpha-ethyltriptamine; some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA;

(3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

(4)(A) N-(2-Methoxybenzyl)-4-bromo-2, 5-dimethoxyphenethylamine. The substance has the acronym 25B-NBOMe.
(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe).

(C) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe)

(5) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

(6) 2,5-dimethoxy-4-ethylamphetamine; some trade or other names: DOET;

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);

(8) 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;

(9) 5-methoxy-3, 4-methylenedioxyamphetamine;

(10) 4-methyl-2,5-dimethoxyamphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; “DOM”; and “STP”;

(11) 3,4-methylenedioxyamphetamine;

(12) 3,4-methylenedioxymethamphetamine (MDMA);

(13) 3,4-methylenedioxy-N-ethylamphetamine (also known as – ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

(14) N-hydroxy-3,4-methylenedioxoamphetamine (also known as – hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and – hydroxy MDA);

(15) 3,4,5-trimethoxyamphetamine;

(16) 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);
(17) Alpha-methyltryptamine (other name: AMT);

(18) 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;

(19) Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;

(20) Dimethyltryptamine; some trade or other names: DMT;

(21) 5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);

(22) 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;

(23) Lysergic acid diethylamide;

(24) Marihuana;

(25) Mescaline;

(26) 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;

(27) 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;

(28) N-ethyl-3-piperidyl benzilate;

(29) N-methyl-3-piperidyl benzilate;

(30) Psilocybin;
(31) Psilocyn;

(32) 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.)

(33) Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(34) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(35) Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine; TPCP, TCP;

(36) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.

(37) 4-methylmethcathinone (Mephedrone);
(38) 3,4-methylenedioxypyrovalerone (MDPV);

(39) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(40) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)

(41) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)

(42) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)

(43) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)

(44) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)

(45) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)

(46) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)

(47) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P)

(48) 3,4-Methylenedioxy-N-methylcathinone (Methylone)

(49) (2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7, its optical isomers, salts and salts of isomers

(50) 5-methoxy-N,N-dimethyltryptamine some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT(5-MeO-DMT)

(51) Alpha-methyltryptamine (other name: AMT)

(52) 5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT)

(53) Synthetic Cannabinoids as follows:
(A) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol {also known as CP 47,497 and homologues};

(B) rel-2-[(1S,3R)-3-hydroxycyclohexyl] -5-(2-methylnonan-2-yl)phenol {also known as CP 47,497-C8 homolog};

(C) [(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};

(D) (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};

(E) 1-Pentyl-3-(1-naphthoyl)indole {also known as JWH-018};

(F) 1-Butyl-3-(1-naphthoyl)indole {also known as JWH-073};

(G) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenylmethanone {also known as JWH-015};

(H) (1-hexyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-019};

(I) [1-[2-(4-morpholinyl) ethyl] -1H-indol-3-yl]-1-naphthalenyl-methanone {also known as JWH-200};

(J) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone {also known as JWH-250};

(K) 2 - ((1S , 2 S , 5 S ) - 5 - h y d r o x y - 2 - ( 3 - hydroxypropyl)cyclohexyl)-5-(2-methyloctan-2-yl)phenol {also known as CP 55,940};

(L) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) - methanone {also known as JWH-122};
(M) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) methanone {also known as JWH-398;}

(N) (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone {also known as RCS-4;}

(O) 1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-methoxyphenyl) ethanone {also known as RCS-8;}

(P) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081;)

(Q) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201;)

and

(R) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694).

(54) Synthetic cannabinoids or any material, compound, mixture or preparation which contains any quantity of the following substances, including their analogues, congeners, homologues, isomers, salts and salts of analogues, congeners, homologues and isomers, as follows:

(A) CP 47,497 AND homologues, 2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methyloctan-2-YL)phenol;

(B) HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10,10A-tetrahydrobenzo[C]chromen-1-OL];

(C) HU-211, (dexanabinol, (6AS,10AS)-9-(hydroxymethyl)-6, 6-Dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10,10A-tetrahydrobenzo[C]chromen-1-OL);

(D) JWH-018, 1-pentyl-3-(1-naphthoyl)indole;

(E) JWH-019, 1-hexyl-3-(1-naphthoyl)indole;

(F) JWH-073, 1-butyl-3-(1-naphthoyl)indole;

(G) JWH-200, (1-(2-morpholin-4-ylethyl)indol-3-yl)-Naphthalen-1-ylmethanone;
(H) JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl)indole.]

(55) Synthetic cannabinoids including any material, compound, mixture or preparation that is not listed as a controlled substance in Schedule I through V, is not a federal Food and Drug Administration approved drug or used within legitimate and approved medical research and which contains any quantity of the following substances, their salts, isomers, whether optical positional or geometric, analogues, homologues and salts of isomers, analogues and homologues, unless specifically exempted, whenever the existence of these salts, isomers, analogues, homologues and salts of isomers, analogues and homologues if possible within the specific chemical designation:

(A) Tetrahydrocannabinols meaning tetrahydrocannabinols which are naturally contained in a plant of the genus cannabis as well as synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis or synthetic substances, derivatives and their isomers with analogous chemical structure and or pharmacological activity such as the following:

(i) DELTA-1 CIS OR trans tetrahydrocannabinol and their optical isomers.

(ii) DELTA-6 CIS OR trans tetrahydrocannabinol and their optical isomers.

(iii) DELTA-3,4 CIS or their trans tetrahydrocannabinol and their optical isomers.

(B) 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:
(i) JWH 015;
(ii) JWH 018;
(iii) JWH 019;
(iv) JWH 073;
(v) JWH 081;
(vi) JWH 122;
(vii) JWH 200;
(viii) JWH 210;
(ix) JWH 398;
(x) AM 2201;
(xi) WIN 55,212.

(56) Naphylmethylindoles or any compound containing a
1hindol-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.

(57) 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.

(58) Naphthylmethyldenedes 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.

(59) 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:

(A) RCS-8, SR-18 OR BTM-8;

(B) JWH 250;

(C) JWH 203;

(D) JWH 251;

(E) JWH 302.

(60) 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:

(A) CP 47,497 and its homologues and analogs;

(B) Cannabicyclohexanol;

(C) CP 55,940.

(61) 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:

(A) AM 694;

(B) Pravadoline WIN 48,098;
(C) RCS 4;

(D) AM 679.

(62) [2,3-dihydro-5 methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-DE]-1, 4-benzoxazin-6-YL]-1-napthalenymethanone. This shall include WIN 55,212-2.

(63) 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.

(64) 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.

(65) 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.

(66) N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide. This shall include AKB48.

(67) 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.
Controlled Substances

(68) Tryptamines:

(A) 5- methoxy-N-methyl-N-isopropyltryptamine (5-MeO-MiPT)

(B) 4-hydroxy-N,N-diisopropyltryptamine (4-HO-DiPT)

(C) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-MiPT)

(D) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET)

(E) 4-acetoxy-N,N-diisopropyltryptamine (4-AcO-DiPT)

(F) 5-methoxy-α-methyltryptamine (5-MeO-AMT)

(G) 4-methoxy-N,N-Dimethyltryptamine (4-MeO-DMT)

(H) 4-hydroxy Diethyltryptamine (4-HO-DET)

(I) 5- methoxy-N,N- diallyltryptamine (5-MeO-DALT)

(J) 4-acetoxy-N,N-Dimethyltryptamine (4-AcO DMT)

(K) 4-hydroxy Diethyltryptamine (4-HO-DET)

(e) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone.

(f) Stimulants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following
substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

1. Aminorex; some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

2. Cathinone; some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone;

3. Fenethylline;

4. Methcathinone, its immediate precursors and immediate derivatives, its salts, optical isomers and salts of optical isomers; some other names: (2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha—methylaminopropiophenone; monomethylpropion; 3,4-methylenedioxypyrovalerone and/or mephedrone;3,4-methylenedioxypyrovalerone (MPVD); ephedrine; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432;

5. (+-) cis-4-methylaminorex; ((+-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

6. N-ethylamphetamine;

7. N,N-dimethylamphetamine; also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

8. Alpha-pyrrolidinopentiophenone, also known as alpha-PVP, optical isomers, salts and salts of isomers.

9. Substituted amphetamines:

   A. 2-Fluoroamphetamine

   B. 3-Fluoroamphetamine
(C) 4-Fluoroamphetamine
(D) 2-chloroamphetamine
(E) 3-chloroamphetamine
(F) 4-chloroamphetamine
(G) 2-Fluoromethamphetamine
(H) 3-Fluoromethamphetamine
(I) 4-Fluoromethamphetamine
(J) 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:

(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers.

(2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

(3) N-benzylpiperazine, also known as BZP.

(h) The following controlled substances are included in Schedule I:

(1) 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:
(A) By substitution in the ring system to any extent with Alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl or halide substituents whether or not further substituted in the ring system by one or more other univalent substituents.

(B) By substitution at the 3-position with an acyclic alkyl substituent.

(C) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups.

(D) By inclusion of the 2-amino nitrogen atom in a cyclic structure.

(2) 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.
controlled substances monitoring law and extending the expiration
date of provisions relating to the Multi-/State Real-Time Tracking
System.

Be it enacted by the Legislature of West Virginia:

That §60A-2-208 of the Code of West Virginia, 1931, as amended,
be amended and reenacted; that §60A-9-3, §60A-9-4, §60A-9-4a and
§60A-9-5 of said code be amended and reenacted; and that §60A-10-16
of said code be amended and reenacted, all to read as follows:

ARTICLE  2. STANDARDS AND SCHEDULES.

§60A-2-208. Schedule III.

(a) Schedule III 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.

(b) Stimulants. — Unless specifically excepted or unless
listed in another schedule, any material, compound, mixture or
preparation which contains any quantity of the following
substances having a stimulant effect on the central nervous
system, including its salts, isomers (whether optical, position or
geometric) and salts of such isomers whenever the existence of
the salts, isomers and salts of isomers is possible within the
specific chemical designation:

(1) Those compounds, mixtures or preparations in dosage
unit form containing any stimulant substances listed in Schedule
II which compounds, mixtures or preparations were listed on
August 25, 1971, as excepted compounds under 21 C.F.R.
§1308.32, and any other drug of the quantitative
composition shown in that list for those drugs or which is the
same except that it contains a lesser quantity of controlled
substances;

(2) Benzphetamine;

(3) Chlorphentermine;
(4) Clortermine;

(5) Phendimetrazine.

(c) Depressants. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

(A) Amobarbital;

(B) Secobarbital;

(C) Pentobarbital; or any salt of pentobarbital and one or more other active medicinal ingredients which are not listed in any schedule;

(2) Any suppository dosage form containing:

(A) Amobarbital;

(B) Secobarbital;

(C) Pentobarbital; or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(4) Aprobarbital;

(5) Butabarbital (secbutabarbital);

(6) Butalbital (including, but not limited to, Fioricet);

(7) Butobarbital (butethal);
(8) Chlorhexadol;

(9) Embutramide;

(10) Gamma Hydroxybutyric Acid preparations;

(11) Ketamine, its salts, isomers and salts of isomers [Some other names for ketamine: (+-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone];

(12) Lysergic acid;

(13) Lysergic acid amide;

(14) Methyprylon;

(15) Sulfondiethylmethane;

(16) Sulfonethylmethane;

(17) Sulfonmethane;

(18) Thiamylal;

(19) Thiopental;

(20) Tiletamine and zolazepam or any salt of tiletamine and zolazepam; some trade or other names for a tiletamine-zolazepam combination product: Telazol; some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; some trade or other names for zolazepam: 4-(2-fluorophenyl)-6, 8-dihydro-1, 3, 8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon; and

(21) Vinbarbital.

(d) Nalorphine.

(e) Narcotic drugs. — Unless specifically excepted or unless listed in another schedule:
(1) 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:

(A) Not more than 1.8 grams of codeine per 100 milliliters and not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than 1.8 grams of dihydrocodeine per 100 milliliters and not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(D) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(F) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(2) Any material, compound, mixture or preparation containing buprenorphine or its salts (including, but not limited to, Suboxone).
(f) Anabolic steroids. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of anabolic steroids, including its salts, isomers and salts of isomers whenever the existence of the salts of isomers is possible within the specific chemical designation.

(g) Human growth hormones.

(h) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6, 9-trimethyl-3-penty1-6H-dibenzod[bd]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol).

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-3. Reporting system requirements; implementation; central repository requirement.

(a) The Board of Pharmacy shall implement a program wherein a central repository is established and maintained which shall contain such information as is required by the provisions of this article regarding Schedule II, III, and IV controlled substance prescriptions written or filled in this state. In implementing this program, the Board of Pharmacy shall consult with the West Virginia State Police, the licensing boards of practitioners affected by this article and affected practitioners.

(b) The program authorized by subsection (a) of this section shall be designed to minimize inconvenience to patients, prescribing practitioners and pharmacists while effectuating the collection and storage of the required information. The board shall allow reporting of the required information by electronic data transfer where feasible, and where not feasible, on reporting forms promulgated by the board. The information required to be
submitted by the provisions of this article shall be required to be filed no more frequently than within twenty-four hours.

(c) (1) The board shall provide for the electronic transmission of the information required to be provided by this article by and through the use of a toll-free telephone line.

(2) A dispenser, who does not have an automated record-keeping system capable of producing an electronic report in the established format may request a waiver from electronic reporting. The request for a waiver shall be made to the board in writing and shall be granted if the dispenser agrees in writing to report the data by submitting a completed “Pharmacy Universal Claim Form” as defined by legislative rule.

§60A-9-4. Required information.

(a) Whenever a medical services provider dispenses a controlled substance listed in Schedule II, III or IV as established under the provisions of article two of this chapter or whenever a prescription for the controlled substance is filled by: (i) A pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for out-patient use; or (iii) a pharmacy or pharmacist licensed by the Board of Pharmacy, but situated outside this state for delivery to a person residing in this state, the medical services provider, health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated by the board under 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 dispensed;

(5) The quantity and dosage of the Schedule II, III, and IV controlled substance 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, the first name, last name and middle initial, address and birth date of 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; and

(9) The source of payment for the controlled substance dispensed.

(b) The board may prescribe by rule promulgated under this article the form to be used in prescribing a Schedule II, III, and IV substance if, in the determination of the board, the administration of the requirements of this section would be facilitated.

(c) Products regulated by the provisions of article ten of this chapter shall be subject to reporting pursuant to the provisions of this article to the extent set forth in said article.

(d) 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: Provided, That the quantity dispensed may not exceed an amount adequate to treat the patient for a maximum of seventy-two hours with no greater than two seventy-two-hour cycles dispensed in any fifteen-day period of time.

§60A-9-4a. Verification of identity.

Prior to releasing a Schedule II, III, or IV controlled substance sold at retail, a pharmacist or pharmacy shall verify the full legal name, address and birth date of the person picking up the controlled substance dispensed by requiring the presentation of a valid government-issued photo identification card. This information shall be reported in accordance with the provisions of this article.

§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 is confidential and not subject to the provisions of chapter twenty-nine-b 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 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 licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III, and IV controlled substances, prescribing practitioners and pharmacists and persons with an enforceable court order or
regulatory agency administrative subpoena: Provided, That 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’s legislative rules, shall be certified as a West Virginia law-enforcement officer and shall have successfully completed training approved by the board. All information released by the board 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, however, That the West Virginia Controlled Substances Monitoring Program Database Review Committee established in subsection (b) of this section is authorized to query the database to comply with said subsection.

(2) Subject to the provisions of subdivision (1) of this subsection, the board shall also review the West Virginia Controlled Substance Monitoring Program database and issue reports that identify abnormal or unusual practices of patients who exceed parameters as determined by the advisory committee established in this section. The board shall communicate with prescribers 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 shall be kept confidential. The board 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 section four of this article may be subject to a claim for civil damages or other civil relief for the reporting of information to the board as required under and in accordance with the provisions of this article.

(3) The board shall establish an advisory committee to develop, implement and recommend parameters to be used in identifying abnormal or unusual usage patterns of patients 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 Osteopathy, 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.

(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 subsection (a), subdivision (2) of this section.

(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 twenty-four hour reporting requirement for the Controlled Substances Monitoring Program set forth in section three of this article, 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 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 prescribers or dispensers under consideration. The review committee shall also review notices provided by the chief medical examiner pursuant to subsection (h), section ten, article twelve, chapter sixty-one 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
Ch. 67] CONTROLLED SUBSTANCES 1007

122 occupational standards or committed a criminal act when
123 prescribing the controlled substance at issue to the decedent.
124 Only in those cases in which there is reasonable cause to believe
125 a breach of professional or occupational standards or a criminal
126 act may have occurred, the review committee shall notify the
127 appropriate professional licensing agency having jurisdiction
128 over the applicable prescriber or dispenser and appropriate
129 law-enforcement agencies and provide pertinent information
130 from the database for their consideration. The number of cases
131 identified shall be determined by the review committee based on
132 a number that can be adequately reviewed by the review
133 committee. The information obtained and developed may not be
134 shared except as provided in this article and is not subject to the
135 provisions of chapter twenty-nine-b of this code or obtainable as
136 discovering in civil matters absent a court order.

(c) The board is responsible for establishing and providing
137 administrative support for the advisory committee and the West
138 Virginia Controlled Substances Monitoring Program Database
139 Review Committee. The advisory committee and the review
140 committee shall elect a chair by majority vote. Members of the
141 advisory committee and the review committee may not be
142 compensated in their capacity as members but shall be
143 reimbursed for reasonable expenses incurred in the performance
144 of their duties.

(d) The board shall promulgate rules with advice and consent
146 of the advisory committee, in accordance with the provisions of
147 article three, chapter twenty-nine-a of this code. The legislative
148 rules must include, but shall not be limited to, the following
149 matters:

(1) Identifying parameters used in identifying abnormal or
150 unusual prescribing or dispensing patterns;

(2) Processing parameters and developing reports of
153 abnormal or unusual prescribing or dispensing patterns for
154 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; and

(4) 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) All practitioners, as that term is defined in section one hundred-one, article two of this chapter who prescribe or dispense schedule II, III, or IV controlled substances shall have online or other form of electronic access to the West Virginia Controlled Substances Monitoring Program database;

(f) 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, delegate appropriate personnel to have access to said database;

(g) 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; and

(h) 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 section four hundred ten, article four of this chapter, based on information obtained and reviewed from the controlled substances monitoring 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.
(i) 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 section five-a of this article.

(j) The board shall provide an annual report on the West Virginia Controlled Substance 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.

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-16. Expiration of enactments made during 2012 regular session.

The provisions of this article enacted during the 2012 regular legislative session establishing the Multi-State Real-Time Tracking System shall expire on June 30, 2017.

CHAPTER 68

(Com. Sub. for S. B. 352 - By Senator Walters)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §19-4-1, §19-4-2, §19-4-3, §19-4-4, §19-4-5, §19-4-13, §19-4-16 and §19-4-22 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24A-1-3 of said code, all relating to cooperative associations; clarifying definitions; expanding scope of cooperative associations to goods and services, including recycling; limiting scope of recycling cooperatives; expanding membership of cooperative associations;
and revising exemptions for motor carriers to allow nonprofit recycling cooperatives.

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

That §19-4-1, §19-4-2, §19-4-3, §19-4-4, §19-4-5, §19-4-13, §19-4-16 and §19-4-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24A-1-3 of said code be amended and reenacted, all to read as follows:

**ARTICLE 4. COOPERATIVE ASSOCIATIONS.**

§19-4-1. Definitions.

As used in this article:

(a) “Agricultural products” means horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any farm products in their natural form or processed.

(b) “Goods and services” means food and beverages, arts and crafts, woodworking and furniture-making, and recycling, composting and repurposing materials.

(c) “Member” means a member of an association without capital stock and a holder of common stock in an association organized with capital stock.

(d) “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.

Except within a thirty-five mile radius of a facility that has been permitted and classified by the West Virginia Department
of Environmental Protection as a mixed waste processing
resource recovery facility, a recycling cooperative association
may be organized as a nonprofit corporation pursuant to chapter
thirty-one-e of this code. Any such recycling cooperative
association is limited to owning or using one motor vehicle for
the collection and transportation of recyclable goods. The
recyclable goods must be generated by members of the recycling
cooperative association.

(e) “Qualified person” means a person who is engaged in the
producing, preserving, harvesting, drying, processing,
manufacturing, canning, packing, grading, storing, handling,
utilizing, marketing, financing, selling, distributing, shipping,
procuring or providing of agricultural products, or other goods
and services, or the by-products thereof.

(f) “Qualified activity” means those engaged in the
producing, preserving, harvesting, drying, processing,
manufacturing, canning, packing, grading, storing, handling,
utilizing, marketing, financing, selling, distributing, shipping,
procuring or providing of agricultural products, or other goods
and services, or the by-products thereof.

§19-4-2. Who may organize.

Three or more qualified persons engaged in the production
of agricultural products or the provision of goods and services
may form a cooperative association with or without capital
stock. Three or more cooperative associations may form an
agricultural credit association, with or without capital stock,
der under this article and in compliance with the credit union
provisions of chapter thirty-one-c of this code.

§19-4-3. Purposes.

A cooperative association may be organized to engage in one
or more qualified activities in connection with the marketing or
serving of agricultural products or the goods and services of its members or those purchased from other persons; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in securing and disseminating market information; or in the financing directly, through agricultural credit associations, and/or otherwise, the above-enumerated activities; or in any one or more of the activities specified herein. An agricultural credit association may be organized hereunder to finance qualified persons or to finance any cooperative association, or both, whether formed under the laws of this or any other state.

§19-4-4. Powers.

A cooperative association shall have the following powers:

(a) To engage in any qualified activity in connection with any agricultural products or goods and services provided; or any activity in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in securing and disseminating market information; or in the financing, directly, through agricultural credit associations any qualified activities. All transactions with nonmembers shall be on terms fixed by the association and nonmembers shall not otherwise participate in any benefits derived from such transactions;

(b) To borrow money without limitation as to amount of corporate indebtedness or liability, and to make advance payments and advances to members; to execute, issue, draw, make, accept, endorse and guarantee, without limitation, promissory notes, bills of exchange, drafts, warrants, certificates, mortgages, and any other form of obligation or negotiable or transferable bills of any kind; to become the surety, guarantor, maker, and/or endorser for accommodation or otherwise of bills, notes, securities and other evidences of debt of any association or person, anything in any other statutes or law of this state to the contrary notwithstanding;
(c) To act as the agent or representative of any member or members in any of the above-mentioned activities;

(d) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer or pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the warehousing or handling or marketing of any of the products handled by the association;

(e) To establish reserves and to invest the funds thereof in bonds or in such other property as may be provided in the bylaws;

(f) To buy, hold and exercise all privileges of ownership over real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto;

(g) To establish, secure, own and develop patents, trademarks and copyrights;

(h) To do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the subjects herein enumerated, or conducive to or not contrary to the interest or benefit of the association; and to contract accordingly; and, in addition, to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the purposes of this article; and to do any such thing anywhere. An agricultural credit association shall have all of the powers given to a cooperative association under the provisions
§19-4-5. Members.

(a) Under the terms and conditions prescribed in the bylaws adopted by it, a cooperative association may admit as members, or issue common stock to, only qualified persons, employees, volunteers and persons engaged in qualified activities, including the production, sale, creation, distribution, aggregation or cooperative marketing of the agricultural products or the goods and services to be handled by or through the association, and any lessor or landlord who receives as rent all or any part of a crop raised on the leased premises; and under the terms and conditions prescribed in the bylaws adopted by it, an agricultural credit association may admit any person as a member.

(b) If a member of a nonstock association be other than a natural person, the member may be represented by an individual, associate, officer or manager or member thereof, duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations organized under this article or similar laws of any state.

§19-4-13. Stock; membership certificate; voting; liability; limitations on transfer and ownership.

(a) When a member of an association established without capital stock has paid his or her membership fee in full, he or she shall receive a certificate of membership. An association shall have power to issue one or more classes of stock, or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par
value, with such voting powers, full or limited, or without voting
powers and in such series, and with such designations, preferences and relative, participating, optional or other special
rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation, or in any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation or of any amendment thereto.

(b) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note; but such retention as security shall not affect the member’s right to vote.

(c) No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or his or her subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

d) An association in its bylaws may limit the amount of common stock which one member may own. No member or stockholder shall be entitled to more than one vote, regardless of the number of shares of common stock owned by him or her.

e) Any association organized with stock under this article may issue preferred stock, with or without the right to vote. Such stock may be sold to any person, member or nonmember, and may be redeemable or retireable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate. The bylaws shall prohibit the transfer of the common stock of the
association to persons who are not qualified persons, or
or organizations that are not engaged in qualified activities handled
by the association, or to persons or organizations that are not
members of credit associations financing such products; and
such restrictions shall be printed upon every certificate of stock
subject thereto.

(f) Other kinds and classes of stock may be issued in
compliance with the provisions of the articles of incorporation,
the terms of the bylaws, or special resolutions of the board of
directors.

(g) The association may, at any time, as specified in the
bylaws, except when the debts of the association exceed fifty
percent of the assets thereof, buy in or purchase its common
stock at the book value thereof, as conclusively determined by
the board of directors, and pay for it in cash within one year
thereafter.

§19-4-16. Marketing contract.

The association and its members may take and execute
marketing contracts, requiring the members to sell, for any
period of time, not over twenty years, all or any specified part of
their agricultural products, goods and services or specified
commodities exclusively to or through the association, or any
facilities to be created by the association. If they contract a sale
to the association, it shall be conclusively held that title to the
products, goods and services passes absolutely and unreservedly,
except for recorded liens, to the association upon delivery, or at
any other specified time if expressly and definitely agreed in
such contract. The contract may provide, among other things,
that the association may sell or resell the products, goods and
services delivered by its members, with or without taking title
thereto, and pay over to its members the resale price, after
deducting all necessary selling, overhead and other costs and
§19-4-22. Interest in other corporations or associations; warehouse receipts as collateral.

(a) An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in qualified activities regarding the agricultural products, goods and services handled by the association, or the by-products thereof.

(b) If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association against the commodities, goods and services delivered by it, or to any other person, and such legal warehouse receipts shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this or any other state or the United States, its warehouse receipt delivered to the association on commodities of the association or its members, or delivered by the association or its members, shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

The provisions of this chapter, except where specifically otherwise provided, do not apply to:

(1) Motor vehicles operated exclusively in the transportation of United States mail or in the transportation of newspapers: Provided, That the vehicles and their operators are subject to the safety rules promulgated by the commission;
(2) Motor vehicles owned and operated by the United States of America, the state of West Virginia or any county, municipality or county board of education, urban mass transportation authority established and maintained pursuant to article twenty-seven, chapter eight of this code, or by any of their departments, and any motor vehicles operated under a contract with a county board of education exclusively for the transportation of children to and from school or other legitimate transportation for the schools as the commission may specifically authorize;

(3) Motor vehicles used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants, and in the transportation of agricultural or horticultural supplies to farms or orchards where they are to be used: Provided, That the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the safety and insurance rules promulgated by the commission;

(4) Motor vehicles used exclusively in the transportation of human or animal excreta;

(5) Motor vehicles used exclusively in ambulance service or duly chartered rescue squad service;

(6) Motor vehicles used exclusively for volunteer fire department service;

(7) Motor vehicles used exclusively in the transportation of coal from mining operations to loading facilities for further shipment by rail or water carriers: Provided, That the vehicles and their operators are subject to the safety rules promulgated by
the commission and the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the commission;

(8) Motor vehicles used by petroleum commission agents and oil distributors solely for the transportation of petroleum products and related automotive products when the transportation is incidental to the business of selling the products: Provided, That the vehicles and their operators are subject to the safety rules promulgated by the commission and the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the commission;

(9) Motor vehicles owned, leased by or leased to any person and used exclusively for the transportation of processed source-separated recycled materials, generated by commercial, institutional and industrial customers, transported free of charge or by a nonprofit recycling cooperative association in accordance with subdivision (1), subsection (d), section one, article four, chapter nineteen of this code from the customers to a facility for further processing: Provided, That the vehicles and their operators shall be subject to the safety rules promulgated by the commission and the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the commission;

(10) Motor vehicles specifically preempted from state economic regulation of intrastate motor carrier operations by the provisions of 49 U. S. C. §14501 as amended by Title I, Section 103 of the federal Interstate Commerce Commission Termination Act of 1995: Provided, That the vehicles and their
operators are subject to the safety regulations promulgated by the commission and the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the commission;

(11) Motor vehicles designated by the West Virginia Bureau of Senior Services for use and operation by local county aging programs: **Provided,** That the vehicles and their operators are subject to the safety rules promulgated by the commission;

(12) Motor vehicles designated by the West Virginia Division of Public Transit operated by organizations that receive federal grants from the Federal Transit Administration: **Provided,** That the vehicles and their operators are subject to the safety and insurance rules promulgated by the commission.

### CHAPTER 69

(S. B. 507 - By Senators Trump and Plymale)

[Passed March 6, 2015; in effect from passage.]
[Approved by the Governor on March 13, 2015.]

AN ACT to amend and reenact §31-20-5e of the Code of West Virginia, 1931, as amended, relating to allowing emails and other types of electronic communications to and from regional jail inmates be monitored, intercepted, recorded and disclosed; and providing exception for attorney-client privileged communications.

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

That §31-20-5e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-5e. Monitoring of inmate telephone calls and electronic communications; procedures and restrictions; attorney-client privilege protected and exempted.

(a) The executive director or his or her designee is authorized to monitor, intercept, record and disclose the content of telephone calls and, if available to inmates, emails and other forms of electronic communications to or from inmates housed in regional jails in accordance with the following provisions:

(1) All inmates housed in regional jails shall be notified in writing that their telephone conversations, emails and other forms of electronic communications may be monitored, intercepted, recorded and disclosed;

(2) Only the executive director and his or her designee shall have access to recordings of inmates’ telephone calls, emails and other forms of electronic communications unless disclosed pursuant to subdivision (4) of this subsection;

(3) Notice shall be prominently placed on or immediately near every telephone or other communication device that may be monitored;

(4) The contents of inmates’ telephone calls, emails and other forms of electronic communications may be disclosed to the appropriate law-enforcement agency only if the disclosure is:

(A) Necessary to safeguard the orderly operation of the regional jails;

(B) Necessary for the investigation of a crime;

(C) Necessary for the prevention of a crime;
24  (D) Necessary for the prosecution of a crime;
25  (E) Required by an order of a court of competent
26  jurisdiction; or
27  (F) Necessary to protect persons from physical harm or the
28  threat of physical harm;
29  (5) Recordings of telephone calls may be destroyed after
30  twelve months unless further retention is required for disclosure
31  pursuant to subdivision (4) of this subsection or, in the discretion
32  of the executive secretary, for other good cause.
33  (b) To safeguard the sanctity of the attorney-client privilege,
34  an adequate number of telephone lines that are not monitored
35  shall be made available for telephone calls between inmates and
36  their attorneys. Such calls shall not be monitored, intercepted,
37  recorded or disclosed in any matter. If inmates have access to
38  email or other forms of electronic communications, the
39  executive director shall develop a system that allows inmates to
40  confidentially communicate with their attorneys thereby
41  safeguarding the sanctity of the attorney-client privilege.

CHAPTER 70

(S. B. 518 - By Senators Blair, Carmichael,
Snyder, Trump and Unger)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §7-12-7 of the Code of West Virginia,
1931, as amended, relating generally to granting county and
municipal economic development authorities the authority to
invest funds received from the sale, lease or other disposition of real or personal property owned by such authority in a manner determined by the authority’s board of directors to be in the best interest of the authority under an investment policy adopted and maintained by the board that is consistent with the standards of the Uniform Prudent Investor Act; requiring that for short-term investments the board of directors shall consult with the State Treasurer prior to investing funds; and requiring that for long-term investments, the board shall consult with the Investment Management Board and compare the rate of return on investment for the previous three years and compare the expense loads for the past three years, and if the comparison for the Investment Management Board is more favorable, the board must invest the funds with the Investment Management Board.

Be it enacted by the Legislature of West Virginia:

That §7-12-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-7. Powers generally.

(a) The development authority is hereby given power and authority as follows: (1) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with laws; (2) to elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operation; (3) to enter into contracts with any person, agency, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the business prosperity and economic welfare of the county in which it is intended to operate, its
citizens and industrial complex, including, without limiting any
of the foregoing, the construction of any building or structure for
lease to the federal government or any of its agencies or
departments, and in connection therewith to prepare and submit
bids and negotiate with the federal government or such agencies
or departments in accordance with plans and specifications and
in the manner and on the terms and conditions and subject to any
requirements, regulations, rules and laws of the United States of
America for the construction of said buildings or structures and
the leasing thereof to the federal government or such agencies or
departments; (4) to amend or supplement any contracts or leases
or to enter into new, additional or further contracts or leases
upon such terms and conditions, for such consideration and for
such term of duration, with or without option of renewal, as may
be agreed upon by the authority and such person, agency,
governmental department, firm or corporation; (5) unless
otherwise provided for in, and subject to the provisions of, such
contracts, or leases, to operate, repair, manage and maintain such
buildings and structures and provide adequate insurance of all
types and in connection with the primary use thereof and
incidental thereto to provide such services, such as barber shops,
newsstands, drugstores and restaurants, and to effectuate such
incidental purposes, grant leases, permits, concessions or other
authorizations to any person or persons, upon such terms and
conditions, for such consideration and for such term of duration
as may be agreed upon by the authority and such person, agency,
governmental department, firm or corporation; (6) to delegate
any authority given to it by law to any of its officers,
committees, agents or employees; (7) to apply for, receive and
use grants-in-aid, donations and contributions from any source
or sources and to accept and use bequests, devises, gifts and
donations from any person, firm or corporation; (8) to acquire
real property by gift, purchase or construction, or in any other
lawful manner, and hold title thereto in its own name and to sell,
lease or otherwise dispose of all or part of such real property
which it may own, either by contract or at public auction, upon
the approval by the board of directors of the development
authority: *Provided*, That the funds received by the authority as
a result of selling, leasing or otherwise disposing of all or part of
such real property owned by the authority may be invested by
the authority in a manner determined by the authority’s board of
directors to be in the best interest of the authority under an
investment policy adopted and maintained by the board that is
consistent with the standards of the Uniform Prudent Investor
Act set forth in article six-c, chapter forty-four of this code:
*Provided, however*, That for short-term investments the board of
directors shall consult with the State Treasurer prior to investing
funds; for long-term investments, the board shall consult with
the Investment Management Board and compare the rate of
return on investment for the previous three years and compare
the expense loads for the past three years; if the comparison for
the Investment Management Board is more favorable, the Board
must invest the funds with the Investment Management Board;
(9) to purchase or otherwise acquire, own, hold, sell, lease and
dispose of all or part of any personal property which it may own,
either by contract or at public auction: *Provided further*, That the
funds received by the authority as a result of selling, leasing or
otherwise disposing of all or part of such personal property
owned by the authority may be invested by the authority in a
manner determined by the authority’s board of directors to be in
the best interest of the authority under an investment policy
adopted and maintained by the board that is consistent with the
standards of the Uniform Prudent Investor Act set forth in article
six-c, chapter forty-four of this code: *And provided further*, That
for short-term investments the board of directors shall consult
with the State Treasurer prior to investing funds; for long-term
investments, the board shall consult with the Investment
Management Board and compare the rate of return on investment
for the previous three years and compare the expense loads for
the past three years; if the comparison for the Investment
Management Board is more favorable, the board must invest the funds with the Investment Management Board; (10) pursuant to a determination by the board that there exists a continuing need for programs to alleviate and prevent unemployment within the county in which the authority is intended to operate or aid in the rehabilitation of areas in said county which are underdeveloped, decaying or otherwise economically depressed and that moneys or funds of the authority are necessary therefor, to borrow money and execute and deliver the authority’s negotiable notes, mortgage bonds, other bonds, debentures and other evidences of indebtedness therefor, on such terms as the authority shall determine and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its real or personal property and facilities in connection with the issuance of mortgage bonds; (11) to raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen, chapter eight of this code, it being hereby expressly provided that a development authority created under this article is a governing body within the definition of that term as used in article sixteen, chapter eight of this code; and (12) to expend its funds in the execution of the powers and authority herein given, which expenditures, by the means authorized herein, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest, and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) The amendment of this section enacted in the year 1998 is intended to clarify the intent of the Legislature as to the manner in which an authority may sell, lease or otherwise dispose of real and personal property owned by an authority and shall be retroactive to the date of the prior enactment of this section.
(c) Notwithstanding any provision of this code to the contrary, any development authority participating in the Appalachian Region Interstate Compact pursuant to chapter seven-a of this code may agree to a revenue and economic growth-sharing arrangement with respect to tax revenues and other income and revenues generated by any facility owned by an authority. Any development authority or member locality may be located in any jurisdiction participating in the Appalachian Region Interstate Compact or a similar agreement for interstate cooperation for economic and workforce development authorized by law. The obligations of the parties to any such agreement shall not be debt within the meaning of section eight, article X of the Constitution of West Virginia. Any such agreement shall be approved by a majority vote of the governing bodies of the member localities reaching such an agreement but does not require any other approval.

(d) “Member localities” means the counties, municipalities or combination thereof which are members of an authority.
Be it enacted by the Legislature of West Virginia:

That §7-5-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. FISCAL AFFAIRS.

§7-5-16. Preparation, publication and disposition of financial statements.

(a) The county commission of every county, by October 15 of each fiscal year, shall prepare on a form to be prescribed by the State Tax Commissioner, and cause to be published a statement revealing: (1) The receipts and expenditures of the county during the previous fiscal year arranged under descriptive headings; (2) the name of each firm, corporation, and person who received more than $50 from any fund during the previous fiscal year, together with the amount received and the purpose for which paid; and (3) all debts of the county, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid: Provided, That all salaries, receipts and expenditures to all county employees by office or department may be published in the aggregate.

(b) The county commission shall transmit to any resident of the county requesting a copy of the published statement for the fiscal year designated, supplemented by a list of the names of each firm, corporation and person who received less than $50 from any fund during the fiscal year showing the amount paid to each, the purpose for which paid and an itemization of the salaries, receipts and expenditures to all county employees by office or department otherwise published in the aggregate.

(c) If a county commission willfully fails or refuses to perform the duties required in this section, every member of the commission, concurring in the failure or refusal, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $100; and the prosecuting attorney
of any county shall, when the failure or refusal shall come to the
prosecuting attorney’s knowledge, immediately present the
evidence thereof to the grand jury if in session, and if not in
session, the prosecuting attorney shall institute proper criminal
proceedings before a magistrate against any offender, and cause
the failure or refusal to be investigated by the next succeeding
grand jury.

(d) Where in subsections (a) and (b), salaries, receipts and
expenditures are published in the aggregate, the county
commission shall, upon written request, provide to any resident
of the county an itemized accounting of the salaries, receipts and
expenditures.

(e) By October 15 of each fiscal year, each county
commission shall publish the financial statement as a Class I-0
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.

CHAPTER 72

(S. B. 581 - By Senators M. Hall, Walters, Blair,
Boley, Boso, Facemire, Kessler, Laird, Mullins, Plymale,
Stollings, Sypolt, Takubo, Unger and Yost)

[Passed March 13, 2015; in effect July 1, 2015.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend and reenact §5B-2-12 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §17-1-3 of
said code, all relating to transferring administration of the courtesy
patrol program and the Courtesy Patrol Fund from Division of
Tourism to Division of Highways; authorizing expenditures to
fund the courtesy patrol program to be made pursuant to appropriation of the Legislature from the State Road Fund; eliminating requirement that moneys be transferred from the Tourism Promotion Fund to the Courtesy Patrol Fund; providing for the disposition of balances in the fund upon transfer; providing sources of funding for the program; and providing for the uses of moneys in the fund.

Be it enacted by the Legislature of West Virginia:

That §5B-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17-1-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12. Tourism Promotion Fund created; use of funds.

(a) There is hereby continued in the State Treasury the special revenue fund known as the Tourism Promotion Fund created under prior enactment of section nine, article one of this chapter.

(b) Seventy-five percent of the moneys deposited in the fund each year shall be used solely for marketing, advertising and public relations efforts for building the brand identity of Wild, Wonderful, West Virginia and promoting travel and tourism within the state at the discretion and direction of the Commissioner of the Division of Tourism: Provided, That no less than one percent of these funds be expended, with the approval of the Secretary of Commerce, to effectively promote and market the state’s parks, state forests, state recreation areas and wildlife recreational resources. “Direct advertising” means advertising which includes, but is not limited to, television, radio, mailings, newspaper, magazines, digital marketing, including the Internet and social media, and outdoor billboards or any combination thereof.
(c) The balance of the moneys deposited in the fund shall be used for direct advertising within the state’s travel regions as defined by the commission. The funds shall be made available to these districts beginning July 1, 1995, according to legislative rules authorized for promulgation by the Tourism Commission.

(d) No member of the commission or of any committee created by the commission to evaluate applications for advertising or other grants may participate in the discussion of, or action upon, an application for or an award of any grant in which the member has a direct financial interest.

ARTICLE 1. DEFINITIONS.

§17-1-3. “Road”; “public road”; “highway”.

The words or terms “road”, “public road” or “highway” shall be deemed to include, but shall not be limited to, the right-of-way, roadbed and all necessary culverts, sluices, drains, ditches, waterways, embankments, slopes, retaining walls, bridges, tunnels and viaducts necessary for the maintenance of travel, dispatch of freight and communication between individuals and communities; and such public road or highway shall be taken to include any road to which the public has access and which it is not denied the right to use, or any road or way leading from any other public road over the land of another person, and which shall have been established pursuant to law. Any road shall be conclusively presumed to have been established when it has been used by the public for a period of ten years or more, and public moneys or labor have been expended thereon, whether there be any record of its conveyance, dedication or appropriation to public use or not. In the absence of any other mark or record, the center of the traveled way shall be taken as the center of the road and the right-of-way shall be designated therefrom an equal distance on each side, but a road may be constructed on any part of the located right-of-way when it is deemed advisable so to do.
The Legislature notes that there are public highways that run over the surface of this land, over and through the navigable streams, rivers and waterways on this earth and above the surface of this earth in the form of highways in the sky, commonly known as airways. The Legislature finds that each of these types of public highways are essential to the development of this state and that the health and safety of each of the citizens of this state are affected daily by the availability of each of these three types of public highways, and that it is the best interests of the people of this state that each of these be recognized and included within the meaning of public highways. The Legislature further recognizes that airports are an important and integral part of the public highways existing above the surface of this state, and that airports are necessary to access such highways, and therefore airports, including runways, taxiways, parking ramps, access roads and air traffic control facilities located at airports, are hereby declared to be part of the public highway system of this state.

The Legislature finds that a courtesy patrol program providing assistance to motorists on the state’s highways is one of a most beneficial public safety service to residents of the state using public highways and serves as a showing of the state’s hospitality and good will to tourists visiting the state. For that reason, on July 1, 2015:

(1) The administration of the courtesy patrol program shall be transferred to the Division of Highways and expenditures made by the division to fund the courtesy patrol program providing assistance to motorists on the state’s highways shall be made pursuant to appropriation of the Legislature from the State Road Fund or as otherwise provided by law; and

(2) The administration of the special revenue account in the State Treasury known as the Courtesy Patrol Fund shall be transferred to the Division of Highways: Provided, That any balances remaining in the Courtesy Patrol Fund at the end of
55 fiscal year 2015 shall be transferred and deposited into the
56 Tourism Promotion Fund. After the June 30, 2015, expenditures
57 from the Courtesy Patrol Fund shall be used solely to fund the
58 courtesy patrol program providing assistance to motorists on the
59 state’s highways. Amounts collected in the Courtesy Patrol Fund
60 which are found, from time to time, to exceed funds needed for
61 the purposes set forth in this subdivision may be transferred to
62 other accounts or funds and redesignated for other purposes by
63 appropriation of the Legislature. Moneys paid into the fund may
64 be derived from the following sources:

65 (A) Any gifts, grants, bequests, transfers, appropriations or
66 other donations which may be received from any governmental
67 entity or unit or any person, firm, foundation, corporation or
68 other private entity;

69 (B) Any appropriations by the Legislature which may be
70 made for the purposes of this section; and

71 (C) All interest or other return accruing to the fund.

72 Any moneys remaining in the fund at the end of a fiscal year
73 shall remain in the fund and be available for expenditure during
74 the ensuing fiscal year.

CHAPTER 73

(S. B. 415 - By Senator Trump)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §51-2-1 of the Code of West Virginia, 1931, as amended, relating to adding circuit judges to certain
judicial circuits; providing for currently serving circuit judges to remain in office until December 31, 2016; and providing for the terms of office of circuit judges elected in the year 2016.

Be it enacted by the Legislature of West Virginia:

That §51-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

(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 fifteen 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;

(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 74

(S. B. 479 - By Senators Trump, Carmichael, Maynard, Miller, Woelfel, Snyder, Ferns, Palumbo, Nohe, Beach, Gaunch, Karnes, D. Hall, Kirkendoll, Romano, Williams and Leonhardt)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §51-2A-3 of the Code of West Virginia, 1931, as amended, relating to adding family court judges to certain family court circuits of the state; providing for terms of office; and providing for election of new family court judges at the regular elections held in the year 2016.

Be it enacted by the Legislature of West Virginia:

That §51-2A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. FAMILY COURTS.

§51-2A-3. Number of family court judges; assignment of family court judges by family court circuits.

(a) Beginning on January 1, 2009, forty-five family court judges shall serve throughout the state, allocated among a total of twenty-seven family court circuits as follows:
(1) The counties of Brooke, Hancock and Ohio shall constitute the first family court circuit and have two family court judges;

(2) The counties of Marshall, Wetzel and Tyler shall constitute the second family court circuit and have one family court judge;

(3) The counties of Pleasants and Wood shall constitute the third family court circuit and have two family court judges;

(4) The counties of Roane, Calhoun, Gilmer and Ritchie shall constitute the fourth family court circuit and have one family court judge;

(5) The counties of Mason, Jackson and Wirt shall constitute the fifth family court circuit and have two family court judges;

(6) The county of Cabell shall constitute the sixth family court circuit and have two family court judges;

(7) The county of Wayne shall constitute the seventh family court circuit and have one family court judge;

(8) The county of Mingo shall constitute the eighth family court circuit and have one family court judge;

(9) The county of Logan shall constitute the ninth family court circuit and have two family court judges;

(10) The counties of Lincoln and Boone shall constitute the tenth family court circuit and have two family court judges;

(11) The county of Kanawha shall constitute the eleventh family court circuit and have five family court judges;

(12) The counties of McDowell and Mercer shall constitute the twelfth family court circuit and have three family court judges;
(13) The counties of Raleigh, Summers and Wyoming shall constitute the thirteenth family court circuit and have three family court judges;

(14) The county of Fayette shall constitute the fourteenth family court circuit and have one family court judge;

(15) The counties of Greenbrier and Monroe shall constitute the fifteenth family court circuit and have one family court judge;

(16) The counties of Clay and Nicholas shall constitute the sixteenth family court circuit and have one family court judge;

(17) The counties of Braxton, Lewis and Upshur shall constitute the seventeenth family court circuit and have one family court judge;

(18) The counties of Harrison and Doddridge shall constitute the eighteenth family court circuit and have two family court judges;

(19) The county of Marion shall constitute the nineteenth family court circuit and have one family court judge;

(20) The counties of Monongalia and Preston shall constitute the twentieth family court circuit and have two family court judges;

(21) The counties of Barbour and Taylor shall constitute the twenty-first family court circuit and have one family court judge;

(22) The counties of Tucker and Randolph shall constitute the twenty-second family court circuit and have one family court judge;

(23) The counties of Mineral, Hampshire and Morgan shall constitute the twenty-third family court circuit and have one family court judge;
(24) The counties of Berkeley and Jefferson shall constitute the twenty-fourth family court circuit and have three family court judges;

(25) The counties of Hardy, Pendleton and Grant shall constitute the twenty-fifth family court circuit and have one family court judge;

(26) The county of Putnam shall constitute the twenty-sixth family court circuit and have one family court judge; and

(27) The counties of Webster and Pocahontas shall constitute the twenty-seventh family court circuit and have one family court judge.

(b) Beginning on January 1, 2017, forty-seven family court judges shall serve throughout the state, allocated among a total of twenty-seven family court circuits as follows:

(1) The counties of Brooke, Hancock and Ohio shall constitute the first family court circuit and have two family court judges;

(2) The counties of Marshall, Wetzel and Tyler shall constitute the second family court circuit and have one family court judge;

(3) The counties of Pleasants and Wood shall constitute the third family court circuit and have two family court judges;

(4) The counties of Roane, Calhoun, Gilmer and Ritchie shall constitute the fourth family court circuit and have one family court judge;

(5) The counties of Mason, Jackson and Wirt shall constitute the fifth family court circuit and have two family court judges;

(6) The county of Cabell shall constitute the sixth family court circuit and have three family court judges;
(7) The county of Wayne shall constitute the seventh family court circuit and have one family court judge;

(8) The county of Mingo shall constitute the eighth family court circuit and have one family court judge;

(9) The county of Logan shall constitute the ninth family court circuit and have two family court judges;

(10) The counties of Lincoln and Boone shall constitute the tenth family court circuit and have two family court judges;

(11) The county of Kanawha shall constitute the eleventh family court circuit and have five family court judges;

(12) The counties of McDowell and Mercer shall constitute the twelfth family court circuit and have three family court judges;

(13) The counties of Raleigh, Summers and Wyoming shall constitute the thirteenth family court circuit and have three family court judges;

(14) The county of Fayette shall constitute the fourteenth family court circuit and have one family court judge;

(15) The counties of Greenbrier and Monroe shall constitute the fifteenth family court circuit and have one family court judge;

(16) The counties of Clay and Nicholas shall constitute the sixteenth family court circuit and have one family court judge;

(17) The counties of Braxton, Lewis and Upshur shall constitute the seventeenth family court circuit and have one family court judge;
(18) The counties of Harrison and Doddridge shall constitute the eighteenth family court circuit and have two family court judges;

(19) The county of Marion shall constitute the nineteenth family court circuit and have one family court judge;

(20) The counties of Monongalia and Preston shall constitute the twentieth family court circuit and have two family court judges;

(21) The counties of Barbour and Taylor shall constitute the twenty-first family court circuit and have one family court judge;

(22) The counties of Tucker and Randolph shall constitute the twenty-second family court circuit and have one family court judge;

(23) The counties of Mineral, Hampshire and Morgan shall constitute the twenty-third family court circuit and have two family court judges;

(24) The counties of Berkeley and Jefferson shall constitute the twenty-fourth family court circuit and have three family court judges;

(25) The counties of Hardy, Pendleton and Grant shall constitute the twenty-fifth family court circuit and have one family court judge;

(26) The county of Putnam shall constitute the twenty-sixth family court circuit and have one family court judge; and

(27) The counties of Webster and Pocahontas shall constitute the twenty-seventh family court circuit and have one family court judge.
(c) Family court judges taking office January 1, 2017, shall be elected at the regularly scheduled election(s) occurring in the year 2016 and shall serve for a term of eight years.

(d) The Legislature has the authority and may determine to realign the family court circuits and has the authority and may determine to increase or decrease the number of family court judges within a family court circuit, from time to time. Any person appointed or elected to the office of family court judge acknowledges the authority of the Legislature to realign family court circuits and the authority of the Legislature to increase or decrease the number of family court judges within a family court circuit.

CHAPTER 75

(Com. Sub. for S. B. 7 - By Senators Stollings, Boley, Ferns, Gaunch, D. Hall, M. Hall, Walters, Blair, Plymale, Unger, Kirkendoll, Kessler, Facemire, Cole (Mr. President), Takubo and Williams)

[Passed February 12, 2015; in effect July 1, 2015.]
[Approved by the Governor on February 24, 2015.]

AN ACT to amend and reenact §18-2-9 of the Code of West Virginia, 1931, as amended, relating to required instruction in cardiopulmonary resuscitation (CPR) and first aid in public school health education subjects; adding care for conscious choking first aid instruction; adding requirement for recognition of symptoms of drug and alcohol overdose in health curriculum; eliminating misdemeanor crime and penalties for violation of section; requiring minimum of thirty minutes instruction prior to graduation in cardiopulmonary resuscitation and psychomotor skills necessary to perform after certain date; defining
“psychomotor skills”; requiring CPR instruction be based on program established by American Heart Association or American Red Cross or other recognized guidelines; authorizing various persons and community members by whom instruction may be given; encouraging such community members to provide training and instructional resources; authorizing school districts to exceed minimum requirements; and requiring authorized CPR/automated external defibrillator instructor for instruction that results in certification being earned.

Be it enacted by the Legislature of West Virginia:

That §18-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-9. Required courses of instruction.

(a) In all public, private, parochial and denominational schools located within this state there shall be given prior to the completion of the eighth grade at least one year of instruction in the history of the State of West Virginia. The schools shall require regular courses of instruction by the completion of the twelfth grade in the history of the United States, in civics, in the Constitution of the United States and in the government of the State of West Virginia for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of political and economic democracy in America and increasing the knowledge of the organization and machinery of the government of the United States and of the State of West Virginia. The state board shall, with the advice of the state superintendent, prescribe the courses of study covering these subjects for the public schools. It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational
schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools. To further such study, every high school student eligible by age for voter registration shall be afforded the opportunity to register to vote pursuant to section twenty-two, article two, chapter three of this code.

(b) The state board shall cause to be taught in all of the public schools of this state the subject of health education, including instruction in any of the grades six through twelve as considered appropriate by the county board, on: (1) The prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases; (2) substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products and other potentially harmful drugs, with special instruction as to their effect upon the human system and upon society in general; (3) the importance of healthy eating and physical activity to maintaining healthy weight; and (4) education concerning cardiopulmonary resuscitation and first aid, including instruction in the care for conscious choking, and recognition of symptoms of drug or alcohol overdose. The course curriculum requirements and materials for the instruction shall be adopted by the state board by rule in consultation with the Department of Health and Human Resources. The state board shall prescribe a standardized health education assessment to be administered within health education classes to measure student health knowledge and program effectiveness.

(c) An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in the instruction. The parent or guardian may exempt the child from
participation in the instruction by giving notice to that effect in writing to the school principal.

(d) After July 1, 2015, the required instruction in cardiopulmonary resuscitation in subsection (b) of this section shall include at least thirty minutes of instruction for each student prior to graduation on the proper administration of cardiopulmonary resuscitation (CPR) and the psychomotor skills necessary to perform cardiopulmonary resuscitation. The term “psychomotor skills” means the use of hands-on practicing to support cognitive learning. Cognitive-only training does not qualify as “psychomotor skills”. The CPR instruction must be based on an instructional program established by the American Heart Association or the American Red Cross or another program which is nationally recognized and uses the most current national evidence-based Emergency Cardiovascular Care guidelines and incorporates psychomotor skills development into the instruction. A licensed teacher is not required to be a certified trainer of cardiopulmonary resuscitation to facilitate, provide or oversee such instruction. The instruction may be given by community members, such as emergency medical technicians, paramedics, police officers, firefighters, licensed nurses and representatives of the American Heart Association or the American Red Cross. These community members are encouraged to provide necessary training and instructional resources such as cardiopulmonary resuscitation kits and other material at no cost to the schools. The requirements of this subsection are minimum requirements. A local school district may offer CPR instruction for longer periods of time and may enhance the curriculum and training components, including, but not limited to, incorporating into the instruction the use of an automated external defibrillator (AED): Provided, That any instruction that results in a certification being earned must be taught by an authorized CPR/AED instructor.
**CHAPTER 76**

(H. B. 2607 - By Delegate(s) Sponaugle and Shott)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

*Note:* The title of this Act was amended, but the amended language was inadvertently omitted during the enrollment process. Therefore, the Governor not having received and signed a true and correct copy of the Act as passed by both houses, H. B. 2607 did not become law.

**CHAPTER 77**

(H. B. 2606 - By Delegate(s) Sponaugle and Shott)

[Passed March 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §61-6-1b of the Code of West Virginia, 1931, as amended, relating to clarifying the potential sentence for disorderly conduct.

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

That §61-6-1b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. CRIMES AGAINST THE PEACE.**

§61-6-1b. Disorderly conduct; penalty.

1 (a) Any person who, in a public place, any office or office
2 building of the State of West Virginia, or in the State Capitol
complex, or on any other property owned, leased, occupied or
controlled by the State of West Virginia, a mobile home park, a
public parking area, a common area of an apartment building or
dormitory, or a common area of a privately owned commercial
shopping center, mall or other group of commercial retail
establishments, disturbs the peace of others by violent, profane,
indecent or boisterous conduct or language or by the making of
unreasonably loud noise that is intended to cause annoyance or
alarm to another person, and who persists in such conduct after
being requested to desist by a law-enforcement officer acting in
his or her lawful capacity, is guilty of disorderly conduct, a
misdemeanor and, upon conviction thereof, may be confined in
jail for twenty-four hours or fined not more than $100: Provided,
That nothing in this subsection should be construed as a
deterrence to the lawful and orderly public right to demonstrate
in support or protest of public policy issues.

(b) For purposes of this section:

(1) “Mobile home park” means a privately owned residential
housing area or subdivision wherein the dwelling units are
comprised mainly of mobile homes and wherein the occupants
of such dwelling units share common elements for purposes of
ingress and egress, parking, recreation and other like residential
purposes.

(2) “Mobile home” means a moveable or portable unit,
designed and constructed to be towed on its own chassis
(comprised of frame and wheels) and designed to be connected
to utilities for year-round occupancy. The term includes: (A)
Units containing parts that may be folded, collapsed or
telescoped when being towed and that may be expanded to
provide additional cubic capacity; and (B) units composed of
two or more separately towable components designed to be
joined into one integral unit capable of being separated again
into the components for repeated towing.
“Public parking area” means an area, whether publicly or privately owned or maintained, open to the use of the public for parking motor vehicles.

CHAPTER 78

(Com. Sub. for H. B. 2502 - By Delegate(s) Espinosa, Upson, Gearheart, Cooper, Ambler, O’ Neal, Miller, Sobonya, Shott, Arvon and Blair)

[Passed March 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to persons possessing deadly weapons on school buses or on the premises of educational facilities; authorizing active law-enforcement officers in certain circumstances to possess a firearm or deadly weapon on a school bus, on school property or at school sponsored functions; authorizing retired law-enforcement officers in certain circumstances to carry deadly weapons on a school bus, on school property or at school sponsored functions when certain conditions are met; and establishing reporting requirements for the school principal.

Be it enacted by the Legislature of West Virginia:

That §61-7-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver’s license; possessing deadly weapons on
(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 subsections (b), (g) and (h) of this section are enacted as a reasonable regulation of the manner in which citizens may exercise the rights accorded to them pursuant to section twenty-two, article three of the Constitution of the State of West Virginia.

(b) (1) It is unlawful for a person to possess a firearm or other deadly weapon on a school bus as defined in section one, article one, chapter seventeen-a of this code, or in or on a public or private primary or secondary education building, structure, facility or grounds including a vocational education building, structure, facility or grounds where secondary vocational education programs are conducted or at a school-sponsored function.

(2) This subsection does not apply to:

(A) A law-enforcement officer employed by a federal, state, county or municipal law enforcement agency;

(B) A retired law-enforcement officer who:

(i) Is employed by a state, county or municipal law enforcement agency;

(ii) Is covered for liability purposes by his or her employer;

(iii) Is authorized by a county board of education and the school principal to serve as security for a school;
(iv) 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); and

(v) Meets all of the requirements for handling and using a firearm established by his or her employer, and has qualified with his or her firearm to those requirements;

(C) 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;

(D) 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;

(E) Programs or raffles conducted with the approval of the county board of education or school which include the display of unloaded firearms;

(F) The official mascot of West Virginia University, commonly known as the Mountaineer, acting in his or her official capacity; or

(G) The official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his or her official capacity.

(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 ten 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 subsection (b) of this section shall report the violation as soon as possible to:
60 (1) The State Superintendent of Schools. The State Board of
61 Education shall keep and maintain these reports and may
62 prescribe rules establishing policy and procedures for making
63 and delivering the reports as required by this subsection; and
64
65 (2) The appropriate local office of the Division of Public
66 Safety, county sheriff or municipal police agency.
67
68 (d) In addition to the methods of disposition provided by
69 article five, chapter forty-nine of this code, a court which
70 adjudicates a person who is fourteen years of age or older as
71 delinquent for a violation of subsection (b) of this section may
72 order the Division of Motor Vehicles to suspend a driver’s
73 license or instruction permit issued to the person for a period of
74 time as the court considers appropriate, not to extend beyond the
75 person’s nineteenth birthday. If the person has not been issued
76 a driver’s license or instruction permit by this state, a court may
77 order the Division of Motor Vehicles to deny the person’s
78 application for a license or permit for a period of time as the
79 court considers appropriate, not to extend beyond the person’s
80 nineteenth birthday. A suspension ordered by the court pursuant
81 to this subsection is effective upon the date of entry of the order.
82 Where the court orders the suspension of a driver’s license or
83 instruction permit pursuant to this subsection, the court shall
84 confiscate any driver’s license or instruction permit in the
85 adjudicated person’s possession and forward to the Division of
86 Motor Vehicles.
87
88 (e) (1) If a person eighteen years of age or older is convicted
89 of violating subsection (b) of this section, and if the person does
90 not act to appeal the conviction within the time periods described
91 in subdivision (2) of this subsection, the person’s license or
92 privilege to operate a motor vehicle in this state shall be revoked
93 in accordance with the provisions of this section.
94
95 (2) The clerk of the court in which the person is convicted as
96 described in subdivision (1) of this subsection 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 twenty 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 thirty 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 subdivision (1) of this subsection, 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
section two, article five-a, chapter seventeen-c 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 ten 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 eighteen years of age who knows that the person is in violation of subsection (b) of this section or has reasonable cause to believe that the person’s violation of subsection (b) 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.
155 (h) (1) It is unlawful for a person to possess a firearm or
156 other deadly weapon on the premises of a court of law, including
157 family courts, with the intent to commit a crime.

158 (2) A person violating this subsection is guilty of a felony
159 and, upon conviction thereof, shall be imprisoned in a state
160 correctional facility for a definite term of years of not less than
161 two years nor more than ten years, or fined not more than
162 $5,000, or both fined and imprisoned.

163 (i) Nothing in this section may be construed to be in conflict
164 with the provisions of federal law.

CHAPTER 79

(Com. Sub. for S. B. 284 - By Senators Nohe, Plymale, Sypolt,
Walters, Blair, Williams, Prezioso and D. Hall)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §61-7-16, relating to
dangerous weapons generally; requiring certification of
responsible persons seeking federal authorization to possess certain
firearms by a chief law-enforcement officer when person is not
legally proscribed therefrom; clarifying what criteria may be
considered when certification is sought from law enforcement that
applicant is not prohibited from securing or possessing firearms
covered by the National Firearms Act; defining terms; and
allowing circuit court appeals or adverse decisions.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by
adding thereto a new section, designated §61-7-16, to read as follows:
ARTICLE 7. DANGEROUS WEAPONS.

§61-7-16. Chief officer certification to transfer or make certain firearms; definitions; appeal.

(a) When certification of a chief law-enforcement officer is required by federal law or regulation for the making, transfer, receipt or possession of a firearm, the chief law-enforcement officer shall, within thirty days of receipt of such a request, provide such certification upon determining that to his or her knowledge the applicant is not prohibited by federal, state or local law from making, transferring, receiving or possessing the firearm for which application is being made and is not the subject of a proceeding that could result in the applicant being prohibited by law from receiving or possessing a firearm. If the chief law-enforcement officer is unable to make a certification as contemplated by this section, he or she shall provide the applicant written notification of the action setting forth the reasons therefor.

(b) For purposes of this section:

(1) “Chief law-enforcement officer” means any official, or his or her designee, that the Bureau of Alcohol, Tobacco, Firearms and Explosives, or any successor agency, identifies by regulation or otherwise as eligible to provide the required law-enforcement certification for the making, transfer, receipt or possession of a firearm.

(2) “Certification” means written confirmation by the chief law-enforcement officer necessary under federal law that the applicant seeking to make, transfer, receive or possess a firearm is not to the chief law-enforcement officer’s knowledge prohibited by federal, state or local law from making, transferring, receiving or possessing the designated firearm.
(3) “Firearm” has the same meaning as provided in the National Firearms Act, 26 U. S. C. §5845 (a).

(c) Chief law-enforcement officers and their designees who act in good faith are immune from liability arising from any act or omission related to certifying a responsible person.

(d) An applicant whose request for certification is denied may appeal the chief law-enforcement officer’s decision to the circuit court of the applicant’s county of residence. If the circuit court finds that the applicant is not prohibited by law from making, transferring, receiving or possessing a firearm and is not the subject of a proceeding that could result in prohibition, the circuit court shall order the chief law-enforcement officer to issue the certification and may award costs and reasonable attorney’s fees to the applicant.

(e) A generalized objection to persons or entities making, transferring, receiving or possessing firearms or particular types of firearms which may be lawfully made, transferred, received or possessed does not constitute a valid basis for refusing certification.

(f) In making the certification decision the chief law-enforcement officer shall require of the applicant only such information as is necessary to identify the applicant for purposes of this section or to determine the disposition of an arrest or proceeding relevant to the applicant’s eligibility to lawfully possess or receive a firearm.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-29; and to amend and reenact §62-12-26 of said code, relating to creating the offense of criminal loitering by persons on supervised release; prohibiting loitering by such persons within one thousand feet of a victim’s home, schools and facilities providing care and entertainment for children; defining terms; establishing penalties; and prohibiting certain sex offenders on supervised release from loitering within one thousand feet of a school, child care facility, or victim.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-8-29; and that §62-12-26 of said code be amended and reenacted, all to read as follows:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-29. Criminal loitering by persons on supervised release.

(a) Any person serving a period of supervised release of ten years or more pursuant to the provision of section twenty-six, article twelve, chapter sixty-two of this code who loiters within one thousand feet of the property line of the residence or
workplace of a victim of a sexually violent offense for which the
person was convicted shall be guilty of a misdemeanor and, upon
conviction thereof, shall be confined in jail for not more than
thirty days.

(b) Any person serving a period of supervised release of ten
years or more pursuant to the provisions of section twenty-six,
article twelve, chapter sixty-two of this code for an offense
where the victim was a minor who loiters within one thousand
feet of the property line of a facility or business the principal
purpose of which is the education, entertainment or care of
minor children, playground, athletic facility or school bus stop
shall be guilty of a misdemeanor and, upon conviction thereof,
shall be confined in jail for a period of not more than thirty days.

(c) A person does not violate the provisions of subsection (a)
or (b) of this section unless he or she has previously been asked
to leave the proscribed location by an authorized person and
thereafter refuses to leave or leaves and thereafter returns to the
proscribed location.

(d) As used in this section:

(1) “Authorized person” means:

(A) A law-enforcement officer acting in his or her official
capacity;

(B) A security officer employed by a business or facility to
protect persons or property acting in his or her employment
capacity;

(C) An owner, manager or employee of a facility or business
having a principal purpose the caring for, education or
entertainment of minors;

(D) A victim or parent, guardian or lawful temporary or
permanent custodian thereof;
(E) An employee of a county Board of Education acting in his or her employment capacity.

(2) “Facility or business, the principal purpose of which is the education, entertainment or care of minor children” means:

(A) A pre-school, primary, intermediate, middle or high school, either public or private;

(B) A childcare facility;

(C) A park;

(D) An athletic facility used by minors;

(E) A school bus stop.

(3) “Loitering” means to enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose.

(e) Nothing in this section shall be construed to prohibit or limit a person’s presence within one thousand feet of a location or facility referenced in this section if the person is there present for the purposes of supervision, counseling or other activity in which the person is directed to participate as a condition of supervision or where the person has the express permission of his supervising officer to be present.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

(a) Notwithstanding any other provision of this code to the contrary, any defendant convicted after the effective date of this
section of a violation of section twelve, article eight, chapter
sixty-one of this code or a felony violation of the provisions of
article eight-b, eight-c or eight-d of said chapter shall, as part of
the sentence imposed at final disposition, be required to serve, in
addition to any other penalty or condition imposed by the court,
a period of supervised release of up to fifty years: Provided, That
the period of supervised release imposed by the court pursuant
to this section for a defendant convicted after the effective date
of this section as amended and reenacted during the first
extraordinary session of the Legislature, 2006, of a violation of
section three or seven, article eight-b, chapter sixty-one of this
code and sentenced pursuant to section nine-a of said article,
shall be no less than ten years: Provided, however, That a
defendant designated after the effective date of this section as
amended and reenacted during the first extraordinary session of
the Legislature, 2006, as a sexually violent predator pursuant to
the provisions of section two-a, article twelve, chapter fifteen of
this code shall be subject, in addition to any other penalty or
condition imposed by the court, to supervised release for life:
Provided further, That pursuant to the provisions of subsection
(g) of this section, a court may modify, terminate or revoke any
term of supervised release imposed pursuant to subsection (a) of
this section.

(b) Any person required to be on supervised release between
the minimum term of ten years and life pursuant to the provisos
of subsection (a) of this section also shall be further prohibited
from:

(1) Establishing a residence or accepting employment within
one thousand feet of a school or child care facility or within one
thousand feet of the residence of a victim or victims of any
sexually violent offenses for which the person was convicted;

(2) Loitering within one thousand feet of a school or child
care facility or within one thousand feet of the residence of a
victim or victims of any sexually violent offenses for which the
person was convicted: *Provided*, That the imposition of this
prohibition shall apply to a defendant convicted after the
effective date of this section as amended and reenacted during
the regular session of the Legislature, 2015: *Provided, however*,
That as used herein “loitering” means to enter or remain on
property while having no legitimate purpose or, if a legitimate
purpose exists, remaining on that property beyond the time
necessary to fulfill that purpose: *Provided further*, That nothing
in this subdivision shall be construed to prohibit or limit a
person’s presence within one thousand feet of a location or
facility referenced in this subdivision if the person is present for
the purposes of supervision, counseling or other activity in
which the person is directed to participate as a condition of
supervision or where the person has the express permission of
his supervising officer to be present;

(3) Establishing a residence or any other living
accommodation in a household in which a child under sixteen
resides if the person has been convicted of a sexually violent
offense against a child, unless the person is one of the following:

(i) The child’s parent;

(ii) The child’s grandparent; or

(iii) The child’s stepparent and the person was the stepparent
of the child prior to being convicted of a sexually violent
offense, the person’s parental rights to any children in the home
have not been terminated, the child is not a victim of a sexually
violent offense perpetrated by the person, and the court
determines that the person is not likely to cause harm to the child
or children with whom such person will reside: *Provided*, That
nothing in this subsection shall preclude a court from imposing
residency or employment restrictions as a condition of
supervised release on defendants other than those subject to the
provision of this subsection.
(c) The period of supervised release imposed by the provisions of this section shall begin upon the expiration of any period of probation, the expiration of any sentence of incarceration or the expiration of any period of parole supervision imposed or required of the person so convicted, whichever expires later.

(d) Any person sentenced to a period of supervised release pursuant to the provisions of this section shall be supervised by a multijudicial circuit probation officer, if available. Until such time as a multijudicial circuit probation officer is available, the offender shall be supervised by the probation office of the sentencing court or of the circuit in which he or she resides.

(e) A defendant sentenced to a period of supervised release shall be subject to any or all of the conditions applicable to a person placed upon probation pursuant to the provisions of section nine of this article: Provided, That any defendant sentenced to a period of supervised release pursuant to this section shall be required to participate in appropriate offender treatment programs or counseling during the period of supervised release unless the court deems the offender treatment programs or counseling to no longer be appropriate or necessary and makes express findings in support thereof.

Within ninety days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, the Secretary of the Department of Health and Human Resources shall propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) The sentencing court may, based upon defendant’s ability to pay, impose a supervision fee to offset the cost of supervision.
Said fee shall not exceed $50 per month. Said fee may be modified periodically based upon the defendant’s ability to pay.

(g) Modification of conditions or revocation. — The court may:

(1) Terminate a term of supervised release and discharge the defendant released at any time after the expiration of two years of supervised release, pursuant to the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interests of justice;

(2) Extend a period of supervised release if less than the maximum authorized period was previously imposed or modify, reduce or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, consistent with the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on supervised release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to revocation of probation, finds by clear and convincing evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this subdivision may not be required to serve more than the period of supervised release;

(4) Order the defendant to remain at his or her place of residence during nonworking hours and, if the court so directs,
to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(h) Written statement of conditions. — The court shall direct that the probation officer provide the defendant with a written statement at the defendant’s sentencing hearing that sets forth all the conditions to which the term of supervised release is subject and that it is sufficiently clear and specific to serve as a guide for the defendant’s conduct and for such supervision as is required.

(i) Supervised release following revocation. — When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of supervised release authorized under subsection (a) of this section, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such term of supervised release shall not exceed the term of supervised release authorized by this section less any term of imprisonment that was imposed upon revocation of supervised release.

(j) Delayed revocation. — The power of the court to revoke a term of supervised release for violation of a condition of supervised release and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (i) of this section, a further term of supervised release extends beyond the expiration of the term of supervised release for any period necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.
AN ACT to amend and reenact §15-9-1, §15-9-2, §15-9-3 and §15-9-5 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §15-9-6; to amend and reenact §15-9A-1, §15-9A-2 and §15-9A-3 of said code; to amend and reenact §15-9B-1 and §15-9B-2 of said code; to amend and reenact §30-29-2, §30-29-3, §30-29-4, §30-29-5, §30-29-6 and §30-29-7 of said code; and to amend and reenact §62-11C-2, §62-11C-3, §62-11C-4, §62-11C-6 and §62-11C-8 of said code, all relating to codifying provisions relating to the Governor’s Committee on Crime, Delinquency and Correction and its subcommittees; reorganizing the committee and certain subcommittees; continuing the Governor’s Committee on Crime, Delinquency and Correction and providing for membership, terms and authority of the chair; requiring facility inspection in accordance with the Prison Rape Elimination Act; granting authority to the Governor’s Committee on Crime, Delinquency and Correction to establish bylaws, policies and procedures; establishing responsibilities of the Governor’s Committee on Crime, Delinquency and Correction; stating legislative findings; designating a staffing agency for the Governor’s Committee on Crime, Delinquency and Correction and providing authority and responsibilities; establishing duties of the Director of the Governor’s Committee on Crime, Delinquency and Correction; establishing membership criteria and subcommittee status of the Sexual Assault Forensic Examination Commission; establishing powers and duties of the Sexual Assault Forensic Examination Commission; and for other purposes.

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2015.]
Commission; establishing membership criteria and subcommittee status of the Law-Enforcement Professional Standards Subcommittee; establishing powers and duties of the Law-Enforcement Professional Standards Subcommittee; providing for uses of fees collected for the Law-Enforcement Professional Standards Subcommittee and authorizing adjustments of such fees by legislative rule; establishing the Community Corrections Subcommittee, membership and authority; and making technical edits.

Be it enacted by the Legislature of West Virginia:

That §15-9-1, §15-9-2, §15-9-3 and §15-9-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §15-9-6; that §15-9A-1, §15-9A-2 and §15-9A-3 of said code be amended and reenacted; that §15-9B-1 and §15-9B-2 of said code by amended and reenacted; that §30-29-2, §30-29-3, §30-29-4, §30-29-5, §30-29-6 and §30-29-7 of said code be amended and reenacted; and that §62-11C-2, §62-11C-3, §62-11C-4, §62-11C-6 and §62-11C-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 9. GOVERNOR’S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.

§15-9-1. Governor’s Committee on Crime, Delinquency and Correction established; Committee designated as state planning.

(a) The Legislature hereby continues and reconstitutes the Governor’s Committee on Crime, Delinquency and Correction.

(b) The committee is composed of the following members:

(1) The Secretary of the Department of Military Affairs and Public Safety, who shall serve as chair;
(2) The chair of the juvenile justice subcommittee;

(3) The chair of the community corrections subcommittee created by section two, article eleven-c, chapter sixty-two of this code;

(4) The chair of the law-enforcement professional standards subcommittee created by section two, article twenty-nine, chapter thirty of this code;

(5) The chair of the sexual assault forensic examination commission created by section one, article nine-b, chapter fifteen of this code;

(6) The Superintendent of the State Board of Education;

(7) A representative of a post-secondary education system in this state to be appointed by the Governor. This person shall be appointed on or before July 1, 2015, for an initial term of two years and then shall be appointed for subsequent terms of four years;

(8) A representative of a faith-based organization to be appointed by the Governor. This person shall be appointed on or before July 1, 2015, for an initial term of two years and then shall be appointed for subsequent terms of four years;

(9) The Administrative Director of the Supreme Court of Appeals who shall serve as an ex officio, nonvoting member;

(10) The Executive Director of the West Virginia Prosecuting Attorneys Institute, established pursuant to section six, article four, chapter seven of this code; and

(11) The Executive Director of the West Virginia Public Defender Services, established pursuant to section three, article twenty-one, chapter twenty-nine of this code.
(c) After initial appointment, members appointed by the Governor pursuant to subsection (b) of this section shall serve for a term of four years from his or her appointment and are eligible for reappointment to that position. A person may not be appointed to the committee who is already a member of the committee by virtue of his or her title or occupation.

(d) All members appointed to the committee shall serve until his or her successor has been duly appointed.

(e) The Legislature hereby designates the Governor’s Committee on Crime, Delinquency and Correction as the state planning agency required for participation by the State of West Virginia in programs provided by the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 United States Code, sections 3701 through 3796c, inclusive) and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 United States Code, section 5601).

(f) The chair of the Governor’s Committee on Crime, Delinquency and Corrections shall:

   (1) Appoint members and fill vacancies in the membership of the subcommittees in accordance with the statutory provisions governing such appointments.

   (2) Call meetings of the committee at least quarterly, and at such other times as he or she may direct, or upon request of a majority of the members of the committee.

(g) The Director of the Division of Justice and Community Services shall serve as the Executive Director of the Governor’s Committee on Crime, Delinquency and Correction and of its subcommittees and the Division of Justice and Community Services shall provide staff support.

The Governor’s Committee on Crime, Delinquency and Correction or its designee shall annually visit and inspect jails, detention facilities, correctional facilities, facilities which may hold juveniles involuntarily or any other juvenile facility which may temporarily house juveniles on a voluntary or involuntary basis for the purpose of compliance with standards promulgated by the juvenile facilities standards commission, pursuant to section nine-a, article twenty, chapter thirty-one of this code and with the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and compliance with the Prison Rape Elimination Act, pursuant to 42 U. S. C §15601, and related statutes or regulations.

§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 section two, article five-e, chapter forty-nine 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 section nine-a, article twenty, chapter thirty-one of this code: Provided, That such review shall not include educational programs in such facilities.

§15-9-5. Authorization to adopt bylaws, policies and procedures, and to promulgate legislative rules.

The Governor’s Committee on Crime, Delinquency and Correction may adopt and modify bylaws, policies and procedures for the conduct of its meetings and the operation of the committee. The Governor’s Committee on Crime,
Delinquency and Correction may propose legislative rules, for legislative approval, pursuant to article three, chapter twenty-nine-a of this code, for purposes consistent with this act and any responsibilities assigned to it.

§15-9-6. Other responsibilities of the committee.

(a) The committee shall receive reports from the subcommittees and direct those reports to be filed with the Governor and the Joint Committee on Government and Finance on or before September 30 of each year.

(b) The committee may direct by vote its executive director, staff or any subcommittee to perform tasks related to the purposes of this article, including seeking funding for programs and grants, implementing criminal justice programs authorized by this code or rule, administering funding and grants, researching findings and recommendations, coordinating resources, and any other task or responsibility related to the purposes of this article.

ARTICLE 9A. DIVISION OF JUSTICE AND COMMUNITY SERVICES.

§15-9A-1. Legislative findings.

The West Virginia Division of Justice and Community Services is required to perform certain administrative and executive functions related to the improvement of the criminal justice and juvenile justice systems and various component agencies of state and local government with research and performance data, planning, funding and managing programs supported by federal and state-granted funds, and through its staff activities on behalf of the Governor’s Committee on Crime, Delinquency and Correction, to provide regulatory oversight of law enforcement training and certification, community corrections programs established under the provisions of article
eleven-c, chapter sixty-two of this code, the monitoring of
facilities for compliance with juvenile detention facilities
standards established by state and federal law, and the Sexual
Assault Forensic Examination Commission created by article
nine-b, chapter fifteen of this code. These administrative and
executive staffing functions are necessary to provide for
planning and coordination of services among the components of
the criminal and juvenile justice systems, community corrections
and sexual assault forensic examinations; program development
and implementation; and administration of grant-funded
programs emphasizing safety, prevention, coordination and the
general enhancement of the criminal justice system as a whole,
as well as such other federal grant-funded activities as the
Governor may from time to time designate for administration by
the division.

§15-9A-2. Division established; appointment of director.

(a) The Division of Justice and Community Services is
created. The purpose of the division is to provide executive and
administrative support to the Governor’s Committee on Crime
Delinquency and Correction in the coordination of planning for
the criminal justice system, to administer federal and state grant
programs assigned to it by the actions of the Governor or
Legislature and to perform such other duties as the Legislature
may from time to time assign to the division. The division is the
designated staffing agency for the Governor’s Committee on
Crime, Delinquency and Correction, and all of its
subcommittees. The division may apply for grants and other
funding from federal or state programs, foundations,
corporations and organizations which funding is consistent with
its responsibilities and the purposes assigned to it or the
subcommittees it staffs. The Division of Justice and Community
Services is hereby designated as the state administrative agency
responsible for criminal justice and juvenile justice systems, and
various component agencies of state and local government, for
the planning and development of state programs and grants
which may be funded by federal, state or other allocations in the
areas of community corrections, law-enforcement training and
compliance, sexual assault forensic examinations, victim
services and juvenile justice.

(b) The director of the division shall be named by the
Governor to serve at his will and pleasure.

(c) The director of the division shall take and subscribe to an
oath of office in conformity with article IV, section five of the
Constitution of the State of West Virginia.


(a) The director is responsible for the control and
supervision of the division.

(b) The director shall be charged with executive and
administrative responsibility to: (i) Carry out the specific duties
imposed on the Governor’s Committee on Crime, Delinquency
and Correction under the provisions of article nine, chapter
fifteen; article twenty-nine, chapter thirty; and article eleven-c,
chapter sixty-two of this code; (ii) maintain appropriate liaison
with federal, state and local agencies and units of government,
or combinations thereof, in order that all programs, projects and
activities for strengthening and improving law enforcement and
the administration of criminal justice may function effectively at
all levels of government;(iii) seek sources of federal grant
assistance programs that may benefit the state when authorized
by the Governor and manage the dispersal of those funds through
grant contracts to subgrantees in a manner consistent with state
and federal law, and with sound and accountable management
practices for the efficient and effective use of public funds; (iv)
seek sources of program or grant assistance from foundations,
corporations and organizations which funding is consistent with
its responsibilities and the purposes assigned to the director, the
Governor’s Committee on Crime, Delinquency and Correction, and any of its subcommittees; and (v) serve as the Executive Director of the Governor’s Committee on Crime, Delinquency and Correction and its subcommittees.

(c) The director may:

(1) Employ necessary personnel, assign them the duties necessary for the efficient management and operation of the division;

(2) Work to bridge gaps between federal, state and local units of government, as well as private/nonprofit organizations and the general public;

(3) Provide staff assistance in the coordination of all facets of the criminal and juvenile justice systems on behalf of the Governor’s Committee on Crime Delinquency and Correction, including, but not limited to, law enforcement, jails, corrections, community corrections, juvenile justice, sexual assault forensic examinations and victim services;

(4) Acquire criminal justice resources and coordinate the allocation of these resources to state, local and not-for-profit agencies;

(5) Maintain a web-based database for all community correction programs;

(6) Collect, compile and analyze crime and justice data in the state, generating statistical and analytical products for criminal justice professionals and policy makers to establish a basis for sound policy and practical considerations for the criminal justice system and make such recommendations for system improvement as may be warranted by such research and contract with other persons, firms, corporations or organizations to assist in these responsibilities;
(7) Receive and disburse federal and state grants and funding received from foundations, corporations or other entities;

(8) Propose legislative rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code which may be necessary to fulfill the functions and responsibilities of the Division of Justice and Community Services and the Governor’s Committee on Crime, Delinquency and Correction.

(d) Nothing in this chapter shall be construed as authorizing the division to undertake direct operational responsibilities in law enforcement or the administration of criminal justice.

ARTICLE 9B. SEXUAL ASSAULT EXAMINATION NETWORK.

§15-9B-1. Sexual Assault Forensic Examination Commission.

(a) The Sexual Assault Forensic Examination Commission is continued as a subcommittee of the Governor’s Committee on Crime, Delinquency and Correction. The purpose of the commission is to establish, manage and monitor a statewide system to facilitate the timely and efficient collection of forensic evidence in sexual assault cases. As used in this article, the word “commission” means the Sexual Assault Forensic Examination Commission.

(b) Membership on the commission shall consist of the following:

(1) A representative chosen from the membership of the West Virginia Prosecuting Attorneys Association who shall be chosen by the president of that organization;

(2) A representative chosen from the membership of the West Virginia Association of Counties who shall be chosen by the executive director of that organization;
(3) The Commissioner of the Bureau for Public Health, or his or her designee;

(4) A representative from the State Police Forensic Laboratory who shall be chosen by the Superintendent of the West Virginia State Police;

(5) A representative from the membership of the West Virginia Child Advocacy Network;

(6) The President of the West Virginia Hospital Association, or his or her designee;

(7) A representative from the membership of the West Virginia Foundation for Rape and Information Services who shall be chosen by the state coordinator of that organization;

(8) A representative of the West Virginia University Forensic and Investigative Sciences Program who shall be chosen by the director of that program; and

(9) A representative of the Marshall University Forensic Science Center who shall be chosen by the director of that organization.

(c) If any of the representative organizations listed in subsection (b) cease to exist, the director of the Division of Justice and Community Services may select a person from a similar organization.

(d) The director shall appoint the following additional members of the commission:

(1) An emergency room physician licensed to practice and practicing medicine in this state;

(2) A victim advocate from a rape crisis center employed in this state;
45 (3) A sexual assault nurse examiner who is engaged in an
active practice within this state;

47 (4) A law-enforcement officer in this state with experience
in sexual assault investigations;

49 (5) A health care provider with pediatric and child abuse
expertise licensed in this state; and

51 (6) A director of a child advocacy center licensed and
operating in this state.

(e) The commission shall establish mandatory statewide
protocols for conducting sexual assault forensic examinations,
including designating locations and providers to perform
forensic examinations, establishing minimum qualifications and
procedures for performing forensic examinations and
establishing protocols to assure the proper collection of
evidence.


1 (a) The commission shall facilitate the recruitment and
retention of qualified health care providers that are properly
qualified to conduct forensic examinations. The commission
shall work with county and regional officials to identify areas of
greatest need and develop and implement recruitment and
retention programs to help facilitate the effective collection of
evidence.

8 (b) The commission shall authorize minimum training
requirements for providers conducting exams and establish a
basic standard of care for victims of sexual assault. The
commission may adopt necessary and reasonable requirements
relating to establishment of a statewide training and forensic
examination system, including, but not limited to, developing a
data collection system to monitor adherence to established
standards, assisting exam providers to receive training and 
support services, advocating the fair and reasonable 
reimbursement to exam providers and facilitating transportation 
services for victims to get to and from designated exam 
locations.

(c) The commission shall approve local plans for each area 
of the state on a county or regional basis. If the commission 
deems necessary, it may add or remove a county or portion 
thereof from a region to assure that all areas of the state are 
included in an appropriate local plan. Upon the failure of any 
county or local region to propose a plan, the commission may 
implement a plan for that county or region.

(d) Once a plan is approved by the commission, it can only 
be amended or otherwise altered as provided by the rules 
authorized pursuant to subsection (e) of this section. Designated 
facilities and organizations providing services shall give the 
commission thirty days’ advance notice of their intent to 
withdraw from the plan. If there is a change of circumstances 
that would require a change in a county or regional plan, the 
members of the local board and the state commission shall be 
notified.

(e) The commission may adopt and modify bylaws, policies 
and procedures for the conduct of its meetings and the operation 
of the committee. The commission may propose rules for 
legislative approval, in accordance with article three, chapter 
twenty-nine-a of this code, as are necessary to implement this 
article.

(f) The commission shall elect a chair and a vice chair and 
such other officers as it deems necessary. Special meetings may 
be held upon the call of the chair, vice chair or a majority of the 
members of the commission. A majority of the members of the 
commission present in person, by proxy or designation, or by 
electronic means constitutes a quorum.
(g) Any member appointed to the commission who is a written designated representative has the full rights of a member, including the right to vote, serve on subcommittees or perform any other function.

(h) The commission may make recommendations to the Governor’s Committee on Crime, Delinquency and Correction for legislation related to the commission’s duties and responsibilities or for research or studies by the Division of Justice and Community Services on topics related to the commission’s duties and responsibilities.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-2. Law-enforcement professional standards subcommittee.

(a) The Law-Enforcement Professional Standards Subcommittee is continued as a subcommittee of the Governor’s Committee on Crime, Delinquency and Correction. The subcommittee has the following responsibilities:

(1) Review and administer programs for qualification, training and certification of law-enforcement officers in the state; and

(2) Consider applications by law-enforcement officers whose certification is deemed inactive as a result of his or her separation from employment with a law-enforcement agency.

(b) The subcommittee shall be comprised of eleven members, including one representative of each of the following:

(1) West Virginia State Police;

(2) Law-enforcement section of the Department of Natural Resources;
(c) The subcommittee shall elect a chairperson and a vice chairperson. Special meetings may be held upon the call of the chairperson, vice chairperson or a majority of the members of the subcommittee. A majority of the members of the subcommittee who are present in person, by proxy or designation, or by electronic means constitutes a quorum. Any member appointed to the subcommittee who is a written designated representative has the full rights of a member, including the right to vote, serve on subcommittees or perform any other function.

§30-29-3. Duties of the subcommittee.

(a) The subcommittee shall, by or pursuant to rules proposed for legislative approval in accordance with article three, chapter twenty-nine-a of this code:

(1) Provide funding for the establishment and support of law-enforcement training academies in the state;
(2) Establish standards governing the establishment and operation of the law-enforcement training academies, including regional locations throughout the state, in order to provide access to each law-enforcement agency in the state in accordance with available funds;

(3) Establish minimum law-enforcement instructor qualifications;

(4) Certify qualified law-enforcement instructors;

(5) Maintain a list of approved law-enforcement instructors;

(6) Promulgate standards governing the training, firearms qualification and initial and ongoing professional certification of law-enforcement officers and the entry-level law-enforcement training curricula. These standards shall require satisfactory completion of a minimum of four hundred classroom hours as promulgated by legislative rule, shall provide for credit to be given for relevant classroom hours earned pursuant to training other than training at an established law-enforcement training academy if earned within five years immediately preceding the date of application for certification, and shall provide that the required classroom hours can be accumulated on the basis of a part-time curricula spanning no more than twelve months or a full-time curricula;

(7) Establish standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula;

(8) Certify organized criminal enterprise investigation techniques with a qualified anti-racial profiling training course or module;

(9) Establish standards governing mandatory training to effectively investigate organized criminal enterprises as defined
in article thirteen, chapter sixty-one of this code while
preventing racial profiling, as defined in section ten of this
article, for entry level training curricula and for law-enforcement
officers who have not received such training as certified by the
subcommittee as required in this section;

(10) Establish procedures for implementation of a course in
investigation of organized criminal enterprises which includes an
anti-racial training module to be available on the Internet or
otherwise to all law-enforcement officers. The procedures shall
include the frequency with which a law-enforcement officer
shall receive training in investigation of organized criminal
enterprises and anti-racial profiling and a time frame for which
all law-enforcement officers must receive such training:
Provided, That all law-enforcement officers in this state shall
receive such training no later than July 1, 2012. In order to
implement and carry out the intent of this section, the
subcommittee may promulgate emergency rules pursuant to
section fifteen, article three, chapter twenty-nine-a of this code;

(11) Certify or decertify or reactivate law-enforcement
officers, as provided in sections five and eleven of this article;

(12) Establish standards and procedures for the reporting of
complaints and certain disciplinary matters concerning
law-enforcement officers and for reviewing the certification of
law-enforcement officers. These standards and procedures shall
provide for preservation of records and access to records by
law-enforcement agencies and conditions as to how the
information in those records is to be used regarding an officer’s
law-enforcement employment by another law-enforcement
agency;

(A) The subcommittee shall establish and manage a database
that is available to all law-enforcement agencies in the state
concerning the status of any person’s certification.
(B) Personnel or personal information not resulting in a criminal conviction is exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code.

(13) Seek supplemental funding for law-enforcement training academies from sources other than the fees collected pursuant to section four of this article;

(14) Any responsibilities and duties as the Legislature may, from time to time, see fit to direct to the subcommittee;

(15) Submit, on or before September 30 of each year, to the Governor, the Speaker of the House, the President of the Senate and, upon request, to any individual member of the Legislature a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established pursuant to section four of this article;

(16) Develop and promulgate rules for state, county and municipal law-enforcement officers, law-enforcement agencies, and communications and emergency operations centers that dispatch law-enforcement officers with regard to the identification, investigation, reporting and prosecution of suspected child abuse and neglect: Provided, That such rules and procedures must be consistent with the priority criteria prescribed by generally applicable department procedures; and

(17) Make recommendations to the Governor’s Committee on Crime, Delinquency and Correction for legislation related to the subcommittee’s duties and responsibilities, or for research or studies by the Division of Justice and Community Services on topics related to the subcommittee’s duties and responsibilities.

(b) In addition to the duties authorized and established by this section, the subcommittee may:
(1) Establish training to effectively investigate human trafficking offenses as defined in article two, chapter sixty-one of this code for entry level training curricula and for law-enforcement officers who have not received such training as certified by the committee as required by this section; and

(2) Establish procedures for the implementation of a course in investigation of human trafficking offenses. The course may include methods of identifying and investigating human trafficking and methods for assisting trafficking victims. In order to implement and carry out the intent of this subdivision, the committee may promulgate emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

§30-29-4. Special revenue account — Collections; disbursements; administrative expenses.

(a) A $2 fee shall be added to the usual court costs of all criminal court proceedings involving violation of any criminal law of the state or any county or municipality thereof, excluding violations of municipal parking ordinances, unless such fee is later modified pursuant to legislative rule.

(b) A $2 fee shall be added to the amount of any cash or property bond posted for violation of any criminal law of the state or any county or municipality thereof, excluding bonds posted solely for violation of municipal parking ordinances, unless such fee is later modified pursuant to legislative rule. Upon forfeiture of such bond, the $2 fee shall be deposited as provided in subsection (c) of this section.

(c) All fees collected pursuant to subsections (a) and (b) of this section shall be deposited in a separate account by the collecting agency. Within ten calendar days following the beginning of each calendar month, the collecting agency shall forward the amount deposited to the State Treasurer. The
Treasurer shall deposit all fees so received to a special revenue account. Funds in the account shall be disbursed by the subcommittee for the funding of law-enforcement entry level training programs, professional development programs, the certification of law-enforcement officers and to pay expenses of the Governor’s Committee on Crime, Delinquency and Correction or the subcommittee in administering the provisions of this article, which expenses may not in any fiscal year exceed fifteen percent of the funds deposited to said special revenue account during that fiscal year.

(d) The fees established by this section may be modified by legislative rule as provided in section three of this article.

§30-29-5. Certification requirements and power to decertify or reinstate.

(a) Except as provided in subsections (b) and (g) of this section, a person may not be employed as a law-enforcement officer by any West Virginia law-enforcement agency or by any state institution of higher education or by the Public Service Commission of West Virginia on or after the effective date of this article unless the person is certified, or is certifiable in one of the manners specified in subsections (c) through (e), inclusive, of this section, by the subcommittee as having met the minimum entry level law-enforcement qualification and training program requirements promulgated pursuant to this article: Provided, That the provisions of this section do not apply to persons hired by the Public Service Commission as motor carrier inspectors and weight enforcement officers before July 1, 2007.

(b) Except as provided in subsection (g) of this section, a person who is not certified, or certifiable in one of the manners specified in subsections (c) through (e), inclusive, of this section, may be conditionally employed as a law-enforcement officer until certified: Provided, That within ninety calendar days of the
commencement of employment or the effective date of this article if the person is already employed on the effective date, he or she makes a written application to attend an approved law-enforcement training academy. The person’s employer shall provide notice, in writing, of the ninety-day deadline to file a written application to the academy within thirty calendar days of that person’s commencement of employment. The employer shall provide full disclosure as to the consequences of failing to file a timely written application. The academy shall notify the applicant in writing of the receipt of the application and of the tentative date of the applicant’s enrollment. Any applicant who, as the result of extenuating circumstances acceptable to his or her law-enforcement official, is unable to attend the scheduled training program to which he or she was admitted may reapply and shall be admitted to the next regularly scheduled training program. An applicant who satisfactorily completes the program shall, within thirty days of completion, make written application to the subcommittee requesting certification as having met the minimum entry level law-enforcement qualification and training program requirements. Upon determining that an applicant has met the requirements for certification, the subcommittee shall forward to the applicant documentation of certification. An applicant who fails to complete the training program to which he or she is first admitted, or was admitted upon reapplication, may not be certified by the subcommittee: Provided, however, That an applicant who has completed the minimum training required by the subcommittee may be certified as a law-enforcement officer, notwithstanding the applicant’s failure to complete additional training hours required in the training program to which he or she originally applied.

(c) Any person who is employed as a law-enforcement officer on the effective date of this article and is a graduate of the West Virginia basic police training course, the West Virginia State Police cadet training program, or other approved law-enforcement training academy, is certifiable as having met
the minimum entry level law-enforcement training program
requirements and is exempt from the requirement of attending a
law-enforcement training academy. To receive certification, the
person shall make written application within ninety calendar
days of the effective date of this article to the subcommittee
requesting certification. The subcommittee shall review the
applicant’s relevant scholastic records and, upon determining
that the applicant has met the requirements for certification, shall
forward to the applicant documentation of certification.

(d) Any person who is employed as a law-enforcement
officer on the effective date of this article and is not a graduate
of the West Virginia basic police training course, the West
Virginia State Police Cadet Training Program or other approved
law-enforcement training academy, is certifiable as having met
the minimum entry level law-enforcement training program
requirements and is exempt from the requirement of attending a
law-enforcement training academy if the person has been
employed as a law-enforcement officer for a period of not less
than five consecutive years immediately preceding the date of
application for certification. To receive certification, the person
shall make written application within ninety calendar days
following the effective date of this article to the subcommittee
requesting certification. The application shall include notarized
statements as to the applicant’s years of employment as a
law-enforcement officer. The subcommittee shall review the
application and, upon determining that the applicant has met the
requirements for certification, shall forward to the applicant
documentation of certification.

(e) Any person who begins employment on or after the
effective date of this article as a law-enforcement officer is
certifiable as having met the minimum entry level
law-enforcement training program requirements and is exempt
from attending a law-enforcement training academy if the person
has satisfactorily completed a course of instruction in law
enforcement equivalent to or exceeding the minimum applicable
law-enforcement training curricula promulgated by the
subcommittee. To receive certification, the person shall make
written application within ninety calendar days following the
commencement of employment to the subcommittee requesting
certification. The application shall include a notarized statement
of the applicant’s satisfactory completion of the course of
instruction in law enforcement, a notarized transcript of the
applicant’s relevant scholastic records and a notarized copy of
the curriculum of the completed course of instruction. The
subcommittee shall review the application and, if it finds the
applicant has met the requirements for certification, shall
forward to the applicant documentation of certification. The
subcommittee may set the standards for required records to be
provided by or on behalf of the applicant officer to verify his or
her training, status, or certification as a law-enforcement officer.
The subcommittee may allow an applicant officer to participate
in the approved equivalent certification program to gain
certification as a law-enforcement officer in this state.

(f) Except as provided in subdivisions (1) through (3),
inclusive, of this subsection, any person who is employed as a
law-enforcement officer on or after the effective date of this
article and fails to be certified shall be automatically terminated
and no further emoluments shall be paid to such officer by his or
her employer. Any person terminated shall be entitled to reapply,
as a private citizen, to the subcommittee for training and
certification, and upon being certified may again be employed as
a law-enforcement officer in this state: Provided, That if a
person is terminated under this subsection because an application
was not timely filed to the academy, and the person’s employer
failed to provide notice or disclosure to that person as set forth
in subsection (b) of this section, the employer shall pay the full
cost of attending the academy if the person’s application to the
subcommittee as a private citizen is subsequently approved.
122 (1) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of hardship and/or circumstance beyond his or her control may apply to the director of a training academy for reentry to the next available academy.

127 (2) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of voluntary separation from an academy program shall be automatically terminated and no further emoluments may be paid to such officer by his or her employer. Any person terminated as a result of voluntary separation from an academy program may not be conditionally employed as a law-enforcement officer for a period of two years from the date of voluntary separation.

136 (3) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of dismissal from an academy program shall be automatically terminated and no further emoluments may be paid to such officer by his or her employer. Any person terminated as a result of dismissal from an academy program may not be conditionally employed as a law-enforcement officer for a period of five years from the date of dismissal and receiving approval from the subcommittee.

145 (g) Nothing in this article may be construed as prohibiting any governing body, Civil Service Commission or chief executive of any West Virginia law-enforcement agency from requiring their law-enforcement officers to meet qualifications and satisfactorily complete a course of law-enforcement instruction which exceeds the minimum entry level law-enforcement qualification and training curricula promulgated by the subcommittee.
(h) The subcommittee, or its designee, may decertify or reactivate a law-enforcement officer pursuant to the procedure contained in this article and legislative rules promulgated by the subcommittee.

(i) Any person aggrieved by a decision of the subcommittee made pursuant to this article may contest the decision in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(j) The subcommittee may issue subpoenas for the attendance of witnesses and the production of necessary evidence or documents in any proceeding, review or investigation relating to certification or hearing before the subcommittee.

§30-29-6. Review of certification.

Certification of each West Virginia law-enforcement officer shall be reviewed annually following the first certification and until such time as the officer may achieve exempt rank. Certification may be revoked, suspended or not renewed if any law-enforcement officer fails to attend annually an in-service approved law-enforcement training program, or if a law-enforcement officer achieving exempt rank fails to attend biennially an approved in-service supervisory level training program. When a law-enforcement officer is a member of the United States Air Force, Army, Coast Guard, Marines or Navy, or a member of the national guard or reserve military forces of any such armed forces, and has been called to active duty, resulting in separation from a law-enforcement agency for more than twelve months but less than twenty-four months, he or she shall attend and complete the mandated in-service training for the period and rank and qualify with his or her firearm within ninety days from his or her reappointment as a law-enforcement officer by a law-enforcement agency.
§30-29-7. Compliance.

1 The subcommittee and the executive of each West Virginia law-enforcement agency shall ensure employee compliance with this article.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.


1 (a) A Community Corrections Subcommittee of the Governor’s Committee on Crime, Delinquency and Correction is continued and continues to be assigned responsibility for screening community corrections programs for approval for funding by the subcommittee and for making disbursement of funds for approved community corrections programs.

7 (b) The subcommittee shall be comprised of the following members:

9 (1) A representative of the Division of Corrections;

10 (2) A representative of the Regional Jail and Correctional Facility Authority;

12 (3) A representative of the Bureau for Behavioral Health and Health Facilities;

14 (4) A person representing the interests of victims of crime;

15 (5) An attorney employed by a public defender corporation;

16 (6) An attorney who is licensed to practice and practicing criminal law in this state;
(7) A prosecuting attorney or assistant prosecuting attorney actively engaged as such in this state;

(8) A representative of the West Virginia Coalition Against Domestic Violence; and

(9) At the discretion of the Supreme Court of Appeals, the Administrator of the Supreme Court of Appeals, a probation officer and a circuit judge may serve on the subcommittee as ex officio, nonvoting members.

c) The subcommittee shall elect a chairperson and a vice chairperson. The subcommittee shall meet quarterly. Special meetings may be held upon the call of the chairperson, vice chairperson or a majority of the members of the subcommittee. A majority of the members of the subcommittee constitutes a quorum.

d) The subcommittee may adopt bylaws, policies and procedures for the operation of the subcommittee.

e) The subcommittee may propose legislative rules for legislative approval pursuant to article three, to chapter twenty-nine-a of this code for policies and procedures consistent with the duties and responsibilities which are or may be assigned to it.

(f) Any member appointed to the subcommittee who is a written designated representative has the full rights of a member, including the right to vote, serve on subcommittees or perform any other function.


(a) The subcommittee shall propose for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code legislative rules to:
(1) Establish standards for approval of community corrections programs submitted by community criminal justice boards or other entities authorized by the provisions of this article to do so;

(2) Establish minimum standards for community corrections programs to be funded, including requiring annual program evaluations;

(3) Make any necessary adjustments to the fees established in section four of this article;

(4) Establish reporting requirements for community corrections programs; and

(5) Carry out the purpose and intent of this article.

(b) The subcommittee shall:

(1) Maintain records of community corrections programs including the corresponding community criminal justice board or other entity contact information and annual program evaluations, when available;

(2) Seek funding for approved community corrections programs from sources other than the fees collected pursuant to section four of this article; and

(3) Provide funding for approved community corrections programs, as available.

(c) The subcommittee shall submit, on or before September 30 of each year, to the Governor, the Speaker of the House of Delegates, the President of the Senate and, upon request, to any individual member of the Legislature a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established
pursuant to section four of this article. The subcommittee may
make recommendations to the Governor’s Committee on Crime,
Delinquency and Correction for legislation related to the
subcommittee’s duties and responsibilities, or for research or
studies by the Division of Justice and Community Services on
topics related to the subcommittee’s duties and responsibilities.

(d) The subcommittee shall review the implementation of
evidence-based practices and conduct regular assessments for
quality assurance of all community-based criminal justice
services, including day report centers, probation, parole and
home confinement. In consultation with the affected agencies,
the subcommittee shall establish a process for reviewing
performance. The process shall include review of agency
performance measures and identification of new measures by the
subcommittee, if necessary, for measuring the implementation
of evidence-based practices or for quality assurance. After
providing an opportunity for the affected agencies to comment,
the subcommittee shall submit, on or before September 30 of
each year, to the Governor, the Speaker of the House of
Delegates, the President of the Senate and, upon request, to any
individual member of the Legislature a report on its activities
and results from assessments of performance during the previous
year.

§62-11C-4. Special revenue account.

(a) There is hereby created in the State Treasury a special
revenue account to be known as the West Virginia Community
Corrections Fund. Expenditures from the fund are for the
purposes set forth in subsection (e) of this section and are not
authorized from collections but are to be made only in
accordance with appropriation by the Legislature and in
accordance with the provisions of article three, chapter twelve of
this code and upon the fulfillment of the provisions set forth in
article two, chapter five-a of this code. The West Virginia
Community Corrections Fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund.

(b) In addition to the fee required in section nine, article twelve of this chapter, a fee not to exceed $35 per month, unless modified by legislative rule as provided in section three of this article, is also to be collected from those persons on probation. This fee is to be based upon the person’s ability to pay. The magistrate or circuit judge shall conduct a hearing prior to imposition of probation and make a determination on the record that the offender is able to pay the fee without undue hardship. The magistrate clerk, deputy magistrate clerk, magistrate assistant, circuit clerk or deputy circuit clerk shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the magistrate clerk or circuit clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(c) In addition to the fee required in section five, article eleven-b of this chapter, a fee of $2.50 per day, unless modified by legislative rule as provided in section three of this article, is to be collected from those persons on home incarceration. The circuit judge, magistrate or municipal court judge shall consider the person’s ability to pay in determining the imposition of the fee. The circuit clerk, magistrate clerk, municipal court clerk or his or her designee shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk, magistrate clerk or municipal court clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(d) In addition to the usual court costs in any criminal case taxed against any defendant convicted in a municipal, magistrate
or circuit court, excluding municipal parking ordinances, a $10
fee shall be added, unless the fee is modified by legislative rule
as provided in section three of this article. The circuit clerk,
magistrate clerk, municipal court clerk or his or her designee
shall collect all fees imposed pursuant to this subsection and
deposit them in a separate account. Within ten calendar days
following the beginning of the calendar month, the circuit clerk,
magistrate court clerk and the municipal court clerk shall
forward the amount deposited to the State Treasurer to be
credited to the West Virginia Community Corrections Fund.

(e) The moneys of the West Virginia Community
Corrections Fund are to be disbursed by the subcommittee for
the funding of community corrections programs and to pay
expenses of the subcommittee in administering the provisions of
this article, which expenses may not in any fiscal year exceed
fifteen percent of the funds deposited to the special revenue
account during that fiscal year.

(f) Any disbursements from the West Virginia Community
Corrections Fund allocated for community corrections programs
by the subcommittee may be made contingent upon local
appropriations or gifts in money or in kind for the support of the
programs. Any county commission of any county or the
governing body of a municipality may appropriate and expend
money for establishing and maintaining community corrections
programs.


(a) Each county or combination of counties or a county or
counties and a Class I or II municipality that seek to establish
community-based corrections services shall establish a
community criminal justice board. Any county which chooses to
operate without a community criminal justice board is subject to
the regulations and requirements established by the
subcommittee.
(b) A community criminal justice board shall consist of no more than fifteen voting members.

(c) All members of a community criminal justice board shall be residents of the county or counties represented.

(d) A community criminal justice board shall consist of the following members:

(1) The sheriff or chief of police or, if the board represents more than one county or municipality, at least one sheriff or chief of police from the counties represented;

(2) The prosecutor or, if the board represents more than one county, at least one prosecutor from the counties represented;

(3) If a public defender corporation exists in the county or counties represented, at least one attorney employed by any public defender corporation existing in the counties represented or, if no public defender office exists, one criminal defense attorney from the counties represented;

(4) One member to be appointed by the local board of education or, if the board represents more than one county, at least one member appointed by a board of education of the counties represented;

(5) One member with a background in mental health care and services to be appointed by the commission or commissions of the county or counties represented by the board;

(6) Two members who can represent organizations or programs advocating for the rights of victims of crimes with preference given to organizations or programs advocating for the rights of victims of the crimes of domestic violence or driving under the influence;
(7) One member with a background in substance abuse treatment and services to be appointed by the commission or commissions of the county or counties represented by the board; and

(8) Three at-large members to be appointed by the commission or commissions of the county or counties represented by the board.

(e) At the discretion of the Supreme Court of Appeals, any or all of the following people may serve on a community criminal justice board as ex officio, nonvoting members:

(1) A circuit judge from the county or counties represented;

(2) A magistrate from the county or counties represented; or

(3) A probation officer from the county or counties represented.

(f) Community criminal justice boards may:

(1) Provide for the purchase, development and operation of community corrections services;

(2) Coordinate with local probation departments in establishing and modifying programs and services for offenders;

(3) Evaluate and monitor community corrections programs, services and facilities to determine their impact on offenders; and

(4) Develop and apply for approval of community corrections programs by the Governor’s Committee on Crime, Delinquency and Correction.

(g) If a community criminal justice board represents more than one county, the appointed membership of the board,
excluding any ex officio members, shall include an equal number of members from each county, unless the county commission of each county agrees in writing otherwise.

(h) If a community criminal justice board represents more than one county, the board shall, in consultation with the county commission of each county represented, designate one county commission as the fiscal agent of the board.

(i) Any political subdivision of this state operating a community corrections program shall, regardless of whether or not the program has been approved by the Community Corrections Subcommittee of the Governor’s Committee on Crime, Delinquency and Correction, provide to the subcommittee required information regarding the program’s operations.


(a) The treasurer of the county designated as the fiscal agent for the board pursuant to section six of this article shall establish a separate fund designated the community criminal justice fund. He or she shall deposit all fees remitted by the municipal, magistrate and circuit clerks pursuant to section seven of this article and all funds appropriated by a county commission pursuant to section seven, article eleven-b of this chapter or any other provision of this code and all funds provided by the subcommittee for approved community corrections programs in the community criminal justice fund. Funds in the community criminal justice account are to be expended by order of the designated county’s commission upon recommendation of the community criminal justice board in furtherance of the operation of an approved community corrections program.

(b) A county commission representing the same county as a community criminal justice board may require the community criminal justice board to render an accounting, at intervals the
county commission may designate, of the use of money, property, goods and services made available to the board by the county commission and to make available at quarterly intervals an itemized statement of receipts and disbursements, and its books, records and accounts during the preceding quarter, for audit and examination pursuant to article nine, chapter six of this code.

CHAPTER 82

(S. B. 292 - By Senators Nohe and Gaunch)

[Passed March 10, 2015; in effect ninety days from passage.] [Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §32A-2-4 and §32A-2-13 of the Code of West Virginia, 1931, as amended, all relating to licenses for business of currency exchange, transportation or transmission; establishing expiration date of December 31 for those licensees; and requiring licensees to provide sixty days’ advance notice of any change in control or change in principals.

Be it enacted by the Legislature of West Virginia:

That §32A-2-4 and §32A-2-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-4. License application, issuance and renewal.

(a) An applicant for a license shall submit an application to the commissioner on a form prescribed by the commissioner.
The commissioner may direct an applicant to file a license application through the Nationwide Mortgage Licensing System and Registry operated by the State Regulatory Registry, LLC.

(b) Each application shall be accompanied by a nonrefundable application fee and a license fee. If the application is approved, the application fee is the license fee for the first year of licensure.

(c) The commissioner shall issue a license if the commissioner finds that the applicant meets the requirements of this article and the rules adopted under this article. The commissioner shall approve or deny every application for an original license within one hundred twenty days from the date a complete application is submitted, unless the commissioner extends the period for good cause. All licenses issued under this article expire on December 31 of the year issued, unless sooner suspended or revoked, and are subject to renewal for the following year.

(d) The licensee at each office it owns and operates in West Virginia shall prominently display, or maintain available for inspection, a copy of the license authorizing the conduct of a currency exchange business if the location offers and provides such services. Where the currency exchange business is conducted through a licensee’s authorized delegates in this state, each authorized delegate location offering such services shall maintain available for inspection proof of their appointment by the licensee to conduct such business.

(e) As a condition for renewal of a license, the licensee must submit to the commissioner an application for renewal on a form prescribed by the commissioner and an annual license renewal fee. The commissioner may direct an applicant to file a license renewal application through the Nationwide Mortgage Licensing System.
System and Registry operated by the State Regulatory Registry, LLC.

(f) A license issued under this article may not be transferred or assigned.

(g) An applicant for a license who is not located in this state shall file an irrevocable consent, duly acknowledged, that suits and actions may be commenced against the applicant in the courts of this state by service of process upon a person located within the state designated to accept service, or by service upon the Secretary of State, as well as by service as set forth in this chapter.


(a) A licensee shall notify the commissioner of any change in its principal place of business, or its headquarters office if different from its principal place of business, within fifteen days after the date of the change.

(b) A licensee shall notify the commissioner of any of the following significant developments within fifteen days after gaining actual notice of its occurrence:

(1) The filing of bankruptcy or for reorganization under the bankruptcy laws;

(2) The institution of any enforcement action including, but not limited to, a license revocation or suspension against the licensee by any other state or federal regulator;

(3) A felony indictment related to money transmission, currency exchange, fraud, failure to fulfill a fiduciary duty or other activities of the type regulated under this article of the licensee or its authorized delegates in this state, or of the
licensee’s or authorized delegate’s officers, directors or principals;

(4) A felony conviction or plea related to the money transmission, currency exchange, fraud, failure to fulfill a fiduciary duty or other activities of the type regulated under this article of the licensee or its authorized delegates in this state, or of the licensee’s or authorized delegate’s officers, directors or principals; and

(5) Any change in its business activities.

(c) A licensee shall notify the commissioner of any merger or acquisition which may result in a change of control or a change in principals of a licensee at least sixty days prior to the announcement or publication of the proposal, or its occurrence, whichever is earlier. Upon notice of these circumstances by a corporate licensee, the commissioner may require all information necessary to determine whether it results in a transfer or assignment of the license and thus if a new application is required in order for the company to continue doing business under this article. A licensee that is an entity other than a corporation shall in these circumstances submit a new application for licensure at the time of notice.

(d) The commissioner may direct that the reports required by this section and any other reports, data or information deemed necessary by the commissioner be filed directly with the Division of Financial Institutions on a date to be determined by the commissioner or through the Nationwide Mortgage Licensing System and Registry operated by the State Regulatory Registry, LLC.
CHAPTER 83

(Com. Sub. for S. B. 261 - By Senators D. Hall, Miller, Snyder, Beach and Facemire)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §22-14-3 of the Code of West Virginia, 1931, as amended, relating to dams; and clarifying definition of “owner” of dam.

Be it enacted by the Legislature of West Virginia:

That §22-14-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. DAM CONTROL ACT.

§22-14-3. Definition of terms used in article.

As used in this article, unless used in a context that clearly requires a different meaning, the term:

(a) “Alterations” or “repairs” means only those changes in the structure or integrity of a dam that may affect its safety to be determined by the secretary.

(b) “Application for a certificate of approval” means the written application provided to the secretary requesting that a person be issued a certificate of approval.

(c) “Appurtenant works” means any structure or facility that is an adjunct of, or connected, appended or annexed to, a dam, including, but not limited to, spillways, a reservoir and its rim,
(d) “Authority” means the Water Development Authority provided in section four, article one, chapter twenty-two-c of this code.

(e) “Certificate of approval” means the written approval issued by the secretary to a person who has applied to the secretary for a certificate of approval that authorizes the person to place, construct, enlarge, alter, repair or remove a dam and specifies the conditions or limitations under which the work is to be performed by that person.

(f)(1) “Dam” means an artificial barrier or obstruction, including any works appurtenant to it and any reservoir created by it, which is or will be placed, constructed, enlarged, altered or repaired so that it does or will impound or divert water and:

(A) Is or will be twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifteen acre-feet or more of water; or

(B) Is or will be six feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifty acre-feet or more of water;

(2) “Dam” does not mean:

(A) Any dam owned by the federal government;

(B) Any dam for which the operation and maintenance of the dam is the responsibility of the federal government;

(C) Farm ponds constructed and used primarily for agricultural purposes, including, but not limited to, livestock.
watering, irrigation, retention of animal wastes and fish culture
and that have no potential to cause loss of human life in the
event of embankment failure; or

(D) Road fill or other transportation structures that do not or
will not impound water under normal conditions and that have
a designed culvert or similar conveyance or capacity that would
be used under a state-designed highway at the same location:
Provided, That the secretary may apply the provisions of section
ten of this article for road fill or other transportation structures
that become a hazard to human life or property through the
frequent or continuous impoundment of water.

(g) “Deficient dam” means a noncoal-related dam that
exhibits one or more design, maintenance or operational
problems that may adversely affect the performance of the dam
over a period of time or during a major storm or other inclement
weather that may cause loss of life or property; or a
noncoal-related dam that otherwise fails to meet the
requirements of this article.

(h) “Department” means the Department of Environmental
Protection.

(i) “Enlargement” means any change in or addition to an
existing dam which: (1) Raises the height of the dam; (2) raises
or may raise the water storage elevation of the water impounded
by the dam; (3) increases or may increase the amount of water
impounded by the dam; or (4) increases or may increase the
watershed area from which water is impounded by the dam.

(j) “Noncompliant dam owner” means an owner who has
received two or more orders to repair or remove a deficient dam
without completion of the repairs or removal within time frames
established by the secretary.

(k) “Owner” means any person who:
(1) Holds legal possession, ownership or partial ownership of an interest in a dam, its appurtenant works or the real property the dam is situated upon;

(2) Has a lease, easement or right-of-way to construct, operate or maintain a dam; or

(3) Is a sponsoring organization with existing or prior agreement with the Natural Resources Conservation Service for a dam or its appurtenant works constructed with assistance from Public Law 78-534, Section 13 of the Flood Control Act of 1944; Public Law 83-566, the Watershed Protection and Flood Prevention Act of 1954; the pilot watershed program authorized under the heading “Flood Prevention” of the Department of Agriculture Appropriation Act of 1954, Public Law 156, 67 Stat. 214; or Subtitle H of Title XV of the Agriculture and Flood Act of 1981, commonly known as the Resource Conservation and Development Program, 16 U. S. C. §3451: Provided, That the owner of the land upon which a dam is owned, maintained or operated by a sponsoring agency, such as a conservation district or other political subdivision of the state, is not responsible for or liable for repairs, maintenance or damage arising from the regular operation, maintenance, deficiencies or ownership of the dam. The owner of the land shall not be cited as a noncompliant dam owner for any deficiencies of the dam, so long as the owner of the land does not intentionally damage or interfere with the regular operation and maintenance of the dam.

(1) “Person” means any public or private corporation, institution, association, society, firm, organization or company organized or existing under the laws of this or any other state or country; the State of West Virginia; any state governmental agency; any political subdivision of the state or of its counties or municipalities; a sanitary district; a public service district; a drainage district; a conservation district; a watershed improvement district; a partnership, trust or estate; a person or individual; a group of persons or individuals acting individually
or as a group; or any other legal entity. The term “person”, when
used in this article, includes and refers to any authorized agent,
lessee or trustee of any of the foregoing or receiver or trustee
appointed by any court for any of the foregoing.

(m) “Reservoir” means any basin which contains or will
contain impounded water.

(n) “Secretary” means the Secretary of the Department of
Environmental Protection.

(o) “Natural Resources Conservation Service” means the
Natural Resources Conservation Service of the United States
Department of Agriculture or any successor or predecessor
agency, including the Soil Conservation Service.

(p) “Water” means any liquid, including any solids or other
matter that may be contained in the liquid, which is or may be
impounded by a dam.

(q) “Water storage elevation” means the maximum elevation
that water can reach behind a dam without encroaching on the
freeboard approved for the dam under flood conditions.

CHAPTER 84

(Com. Sub. for H. B. 2053 - By Delegate Shott)

[Passed March 10, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §38-1-2 of the Code of West Virginia,
1931, as amended; and to amend and reenact §40-1-9 of said code,
all relating to deeds of trust; permitting the recording of a
memorandum of deed of trust in lieu of the deed of trust; setting
requirements for content of memorandum of deed of trust; and requiring recording of original deed of trust prior to commencement of foreclosure action or other execution thereof.

Be it enacted by the Legislature of West Virginia:

That §38-1-2 and §40-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

CHAPTER 38. LIENS.

ARTICLE 1. VENDOR’S AND TRUST DEED LIENS.

§38-1-2. Form of deed of trust; memorandum of deed of trust may be recorded.

A deed of trust to secure debts or indemnify sureties may be in the following form or to the same effect: “This deed made the ........... day of ................., in the year ........, between .................................. (the grantor) of the one part, and .................................. (the trustee) of the other part, witnesseth:

That the said ........................ (the grantor) doth (or do) grant unto the said ........................ (the trustee) the following property (here describe it). In trust to secure (here describe the debts to be secured or the sureties to be indemnified, and insert covenants, or any other provisions the parties may agree upon). Witness the following signature.”

In lieu of the recording of a deed of trust, there may be recorded with like effect a memorandum of the deed of trust, executed by all persons who are grantors under the deed of trust and acknowledged in the manner to entitle a conveyance to be recorded. A memorandum of deed of trust entitled to be recorded shall contain at least the following information with respect to the deed of trust: (1) The name and the address of each grantor, the name and the address of each trustee and the name and the address of each beneficiary as set forth in the deed of trust; (2)
a reference to the indebtedness secured by the deed of trust
including the amount of the indebtedness and the date the
indebtedness was incurred or if the indebtedness is evidenced by
a note or contract, the date the instrument was executed; (3) the
date of execution of the deed of trust if different than the date the
evidence of indebtedness was executed; (4) the date of maturity
of the indebtedness; (5) the description of the real estate against
which a lien is claimed to secure the indebtedness; (6) a title in
compliance with subsection (b), section fourteen, article one,
chapter thirty-eight of this code if the indebtedness is a line of
credit; (7) a statement of whether advances are obligatory if the
indebtedness is a line of credit; (8) provisions of the deed of trust
regarding substitution of a trustee; (9) a summary of the
applicable notice and publication requirements if there is a
default; (10) whether the loan was originated or serviced
pursuant to a program of the following agencies or
organizations, and if so, any form number actually used: (a)
Federal Housing Administration; (b) Veterans Administration;
(c) Federal National Mortgage Association; (d) Federal Home
Loan Administration; (e) United States Department of
Agriculture; or (f) West Virginia Housing Development Fund;
and (11) the name of the person from whom, upon written
request from any interested party, the original deed of trust, or a
copy thereof, may be obtained. The memorandum shall
constitute notice of only the information contained therein but,
as against creditors and purchasers, it is as valid as if the
complete deed of trust were recorded on the date the
memorandum is admitted to record. Prior to the commencement
of any foreclosure or other execution of the deed of trust, the
original deed of trust shall be recorded.

CHAPTER 40. ACTS VOID AS TO CREDITORS AND PURCHASERS.

ARTICLE 1. ACTS GENERALLY VOID AS TO CREDITORS
AND PURCHASERS.
§40-1-9. Contracts, deeds and mortgages invalid as to creditors and purchasers until recorded.

Every such contract, every deed conveying any such estate or term, and every deed of gift, or deed of trust or memorandum of deed of trust pursuant to section two, article one, chapter thirty-eight of this code, or mortgage, conveying real estate shall be void, as to creditors, and subsequent purchasers for valuable consideration without notice, until and except from the time that it is duly admitted to record in the county wherein the property embraced in such contract, deed, deed of trust or memorandum of deed of trust or mortgage may be.

CHAPTER 85

(Com. Sub. for H. B. 2902 - By Delegate(s) Campbell, Perry, Reynolds, Pasdon, Rodighiero, Ellington, Rowan, Rohrbach, Hamrick, E. Nelson and Ashley)

[Passed March 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2015.]

AN ACT to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-48-1, §16-48-2, §16-48-3, §16-48-4, §16-48-5, §16-48-6, §16-48-7 and §16-48-8, all relating to providing for the establishment of a program to allow savings accounts for individuals with a disability and their families to save private funds to support the individual with a disability, to be known as the West Virginia ABLE Act; definitions; implementation and administration of the program by the Treasurer; powers and responsibilities of the Treasurer; use of financial organizations as account depositories and managers; establishing procedures and requirements for establishment of an
ABLE savings account; limitations on deposits; provisions for change of a designated beneficiary; distributions from accounts; limiting liability of the Treasurer and the state; and establishment of the West Virginia ABLE savings program trust fund and the West Virginia ABLE Savings Expense Fund.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-48-1, §16-48-2, §16-48-3, §16-48-4, §16-48-5, §16-48-6, §16-48-7 and §16-48-8, all to read as follows:

ARTICLE 48. WEST VIRGINIA ABLE ACT.

§16-48-1. Short Title.

This article shall be known and may be cited as the “Achieving a Better Life Experience in West Virginia Act” or the “West Virginia ABLE Act”.

§16-48-2. Purpose.

The purpose of the West Virginia ABLE Act savings program is to authorize the establishment of savings accounts empowering individuals with a disability and their families to save private funds to support the individual with a disability and to provide guidelines for the maintenance of such accounts.


(a) “Account” or “ABLE savings account” means an individual savings account established in accordance with the provisions of this article.

(b) “Account owner” means the person who enters into an ABLE savings agreement pursuant to the provisions of this
article. The account owner must also be the designated beneficiary. A conservator or guardian may be appointed as an account owner for a designated beneficiary who is a minor or lacks capacity to enter into an agreement.

(c) “Conservator” means a person appointed by the court pursuant to article one, chapter forty-four-a of this code.

(d) “Designated beneficiary” means a West Virginia resident whose qualified disability expenses may be paid from the account. The designated beneficiary must be an eligible individual at the time the account is established. The account owner may change the designated beneficiary.

(e) “Eligible individual” means an individual who is entitled to benefits based on blindness or disability under 42 U.S.C. §401 et seq. or 42 U.S.C. § 1381 et seq., as amended, and such blindness or disability occurred before the date on which the individual attained age twenty-six, or an individual who filed a disability certification, to the satisfaction of the secretary, with the secretary for such taxable year.

(f) “Financial organization” means an organization authorized to do business in the State of West Virginia and is:

1. Licensed or chartered by the Insurance Commissioner;
2. Licensed or chartered by the Commissioner of the Division of Financial Institutions;
3. Chartered by an agency of the federal government; or
4. Subject to the jurisdiction and regulation of the securities and exchange commission of the federal government.

(g) “Guardian” means a person appointed by the court pursuant to article one, chapter forty-four-a of this code.
(h) “Management contract” means the contract executed by the Treasurer and a financial organization selected to act as a depository and manager of the program.

(i) “Member of the family” has the meaning contained in Section 529a of the federal Internal Revenue Code of 1986, as amended.

(j) “Nonqualified withdrawal” means a withdrawal from an account which is not:

(1) A qualified withdrawal; or

(2) A rollover distribution.

(k) “Program” means the West Virginia ABLE Act savings program established pursuant to this article.

(l) “Program manager” means a financial organization selected by the Treasurer to act as a depository and manager of the program.

(m) “Qualified disability expense” means any qualified disability expense included in Section 529a of the federal Internal Revenue Code of 1986, as amended.

(n) “Qualified withdrawal” means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(o) “Rollover distribution” means a rollover distribution as defined in Section 529a of the Federal Internal Revenue Code of 1986, as amended.

(p) “Savings agreement” means an agreement between the program manager or the Treasurer and the account owner.

(q) “Secretary” means the secretary of the United States Treasury.
(r) “Treasurer” means the State Treasurer.

§16-48-4. Implementation and administration of program; Treasurer’s powers and responsibilities.

(a) The Treasurer shall implement and administer the program under the terms and conditions established by this article. In order to implement and administer the program, the Treasurer may:

(1) Engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;

(2) Seek rulings and other guidance from the secretary and the federal Internal Revenue Service relating to the program;

(3) Make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by Section 529a of the federal Internal Revenue Code of 1986, as amended;

(4) Charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program;

(5) Develop marketing plans and promotion material;

(6) Establish the methods by which the funds held in accounts shall be dispersed;

(7) Establish the method by which funds shall be allocated to pay for administrative costs;

(8) Do all things necessary and proper to carry out the purposes of this act;

(9) Make an annual evaluation of the ABLE savings program and prepare and submit an annual report of such evaluation to the Governor and Legislature; and
(10) Notify the Secretary when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the Secretary.

(b) The Treasurer may enter into agreements with other states to either allow West Virginia residents to participate in a plan operated by another state or to allow residents of other states to participate in the West Virginia ABLE program.

(c) The Treasurer shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions of this article.

§16-48-5. Use of financial organizations as program depositories and managers.

(a) The Treasurer may implement the program through use of financial organizations as account depositories and managers. The Treasurer may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instruments which will be held in accounts. The Treasurer may select more than one financial organization and investment instrument for the program. The Treasurer shall select financial organizations to act as program depositories and managers from among the bidding financial organizations that demonstrate the most advantageous combination, both to potential program participants and this state of the following criteria:

(1) The financial stability and integrity of the financial organization;

(2) The safety of the investment instrument being offered;

(3) The ability of the financial organization to satisfy recordkeeping and reporting requirements;
(4) The financial organization’s plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) The fees, if any, proposed to be charged to the account owners;

(6) The minimum initial deposit and minimum contributions that the financial organization will require;

(7) The ability of the financial organization to accept electronic withdrawals, including payroll deduction plans; and

(8) Other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(b) The Treasurer may enter into any contracts with a financial organization necessary to effectuate the provisions of this article. Any management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of this article and any actions not contrary to its contract to manage the program to qualify as a “qualified ABLE program” as defined in Section 529a of the federal Internal Revenue Code of 1986, as amended;

(2) Keep adequate records of each account, keep each account segregated from each other account and provide the Treasurer with the information necessary to prepare the statements required by section six of this article, and amendments thereto;

(3) Compile and total information contained in statements required to be prepared under section six of this article, and amendments thereto, and provide such compilations to the Treasurer;
(4) If there is more than one program manager, provide the Treasurer with such information as is necessary to determine compliance with section six of this article;

(5) Provide the Treasurer with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this article and Section 529a of the federal Internal Revenue Code of 1986, as amended;

(6) Hold all accounts for the benefit of the account owner or owners;

(7) Be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of such audit to the Treasurer;

(8) Provide the Treasurer with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance or securities commission, except to the extent that such report or reports may not be disclosed under law; and

(9) Ensure that any description of the program, whether in writing or through the use of any media, is consistent with the marketing plan developed pursuant to the provisions of this article.

(c) The Treasurer may:

(1) Enter into such contracts as it deems necessary and proper for the implementation of the program;

(2) Require that an audit be conducted of the operations and financial position of the program depository and manager at any
time if the Treasurer has any reason to be concerned about the financial position, the record keeping practices or the status of accounts of such program depository and manager; and

(3) Terminate or not renew a management agreement. If the Treasurer terminates or does not renew a management agreement, the Treasurer shall take custody of accounts held by such program manager and shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

(d) The Treasurer and the Department of Health and Human Resources are authorized to exchange data regarding eligible individuals to carry out the purposes of this act.

§16-48-6. Establishment of ABLE savings account by beneficiary, conservator, or guardian.

(a) Any ABLE savings accounts established pursuant to the provisions of this article shall be opened by a designated beneficiary or a conservator or guardian of a designated beneficiary who lacks capacity to enter into a contract and each beneficiary may have only one account. The Treasurer may establish a nonrefundable application fee. An application for such account shall be in the form prescribed by the Treasurer and contain:

(1) The name, address and social security number of the account owner;

(2) The name, address and social security number of the designated beneficiary, if the account owner is the beneficiary’s trustee conservator or guardian;

(3) A certification relating to no excess contributions; and

(4) Any additional information as the Treasurer may require.
(b) Any person may make contributions to an ABLE savings account after the account is opened, subject to the limitations imposed by Section 529a of the federal Internal Revenue Code of 1986, as amended, or any rules and regulations promulgated by the Secretary pursuant to this article.

(c) Contributions to ABLE savings accounts may only be made in cash. The Treasurer or program manager shall reject or promptly withdraw:

(1) Contributions in excess of the limits established pursuant to subsection (b); or

(2) The total contributions if the:

(A) Value of the account is equal to or greater than the account maximum established by the Treasurer. Such account maximum must be equal to the account maximum for postsecondary education savings accounts established pursuant to article thirty, chapter eighteen of this code; or

(B) The designated beneficiary is not an eligible individual in the current calendar year.

(d) (1) An account owner may:

(A) Change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary in accordance with procedures established by the Treasurer; and

(B) Transfer all or a portion of an account to another ABLE savings account, the designated beneficiary of which is a member of the family as defined in Section 529a of the federal Internal Revenue Code of 1986, as amended.

(2) No account owner may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.
(e) (1) Distributions may be made from the account for payment of any qualified disability expense for the designated beneficiary of the account made in accordance with the provisions of this article.

(2) Any distribution from an account to any individual or for the benefit of any individual during a calendar year shall be reported to the federal Internal Revenue Service and each account owner, the designated beneficiary or the distributee to the extent required by state or federal law.

(3) Statements shall be provided to each account owner at least four times each year within thirty days after the end of the three-month period to which a statement relates. The statement shall identify the contributions made during the preceding three-month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period and any other information that the Treasurer requires to be reported to the account owner.

(4) Statements and information relating to accounts shall be prepared and filed to the extent required by this article and any other state or federal law.

(f) (1) The program shall provide separate accounting for each designated beneficiary. An annual fee may be imposed upon the account owner for the maintenance of an account.

(2) Moneys in an ABLE savings account:

(A) Are exempt from attachment, execution or garnishment;

and

(B) May be subject to any claim by the West Virginia Medicaid plan only after the death of the designated beneficiary, subject to limitations imposed by the secretary.
§16-48-7. Limitation on Liability.

(a) Nothing in this act creates any obligation of the Treasurer, the state or any agency or instrumentality of the state to guarantee for the benefit of any account owner or designated beneficiary with respect to the:

(1) Return of principal;

(2) Rate of interest or other return on any account; or

(3) Payment of interest or other return on any account.

(b) The Treasurer may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to provide that every contract, application or other similar document that may be used in connection with opening an account clearly indicates that the account is not insured by the state and that the principal deposited and the investment return are not guaranteed by the state.


(a) The West Virginia ABLE savings program trust fund is hereby established in the State Treasury. The fund shall be utilized if the Treasurer elects to accept deposits from contributors rather than have deposits sent directly to the program manager. Such fund shall consist of any moneys deposited by contributors in accordance with this article which are not deposited directly with the program manager. All interest derived from the deposit and investment of moneys in such savings trust fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in such savings trust fund may not be credited or transferred to the State General Fund or to any other fund.
(b) (1) The West Virginia ABLE Savings Expense Fund is hereby established in the State Treasury. The fund shall consist of moneys received from the ABLE savings program manager, or any governmental or private grants and any state general fund appropriations, if any, for the program.

(2) All expenses incurred by the Treasurer in developing and administering the ABLE savings program shall be payable from the West Virginia ABLE Savings Expense Fund.

CHAPTER 86


[Passed February 20, 2015; in effect from passage.]
[Approved by the Governor on February 25, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-6a, relating to an independent audit of the Division of Highways; establishing criteria for selection of the auditor; establishing terms of the audit; and providing for costs associated with the audit.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §17-2A-6a to read as follows:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

(a) Beginning May 1, 2015, the Division of Highways shall provide access to and make available all of the Division’s books, accounts, records and any other information requested by the independent qualified firm that may be selected by the Joint Committee on Government and Finance to conduct a performance audit of the Division of Highways and any one or more of the individual district within the state road system for the preceding three fiscal years, as determined by the Joint Committee on Government and Finance.

(b) The independent qualified firm selected to conduct the performance audit shall be selected by the Legislative Auditor under the oversight of the Joint Committee on Government and Finance on a competitive bid based upon price and qualifications. The performance audit shall be conducted in accordance with the generally accepted government auditing standards. The audit may include, but not be limited to examination of areas of inefficiency, best practices, the appropriateness of staffing across functions and locations, vehicles allocated within the agency, compensation levels including overtime and relation to employee turnover, procurement practices, existing or recommended system of performance benchmarks, organizational structure, and internal operating or management policies.

(c) The independent qualified firm shall submit the final report of the audit to the Joint Committee on Government and Finance, with a copy to the Governor, on or before December 31, 2015. The Joint Committee on Government and Finance may authorize extension of the reporting requirement or expansion of the terms of the audit. The Joint Committee on Government and Finance shall pay the costs associated with the performance audit prescribed by this section.
CHAPTER 87

(Com. Sub. for H. B. 2234 - By Delegate(s) Ashley, Shott, Lane, E. Nelson, Upson, Hanshaw, Mr. Speaker (Mr. Armstead), McCuskey, Manchin, Campbell and Rowe)

[Passed February 25, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 3, 2015.]

AN ACT to amend and reenact §48-5-613 of the Code of West Virginia, 1931, as amended, relating to requiring a court to permit a party in a divorce proceeding to resume using the name he or she used prior to the marriage.

Be it enacted by the Legislature of West Virginia:

That §48-5-613 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. DIVORCE.

§48-5-613. Former name of party; restoration.

1 The court, upon ordering a divorce, shall if requested to do so by either party, allow such party to resume the name used prior to his or her marriage without the necessity of filing a separate petition pursuant to section one hundred one, article twenty-five, chapter forty-eight of this code. If a name change is requested, the court shall also issue a certificate of divorce reflecting that change in name. The certificate shall be no longer than one page. For purpose of confidentiality, the certificate shall not be considered an order. The certificate shall include the style of the divorce case, the name on the birth certificate of the party.
requesting the name change, that party’s date of birth, that
party’s social security number, the date on which the name
change is effective, and the new name of that party. In order to
be valid, the certificate shall be certified by a clerk of the court.
The certified certificate may be used by that person for all lawful
purposes, including as a proof of legal name change for driver
licensing purposes or state identification card at the Division of
Motor Vehicles.

CHAPTER 88

(Com. Sub. for H. B. 2586 - By Delegate(s) Shott,
Lane, Miller, Frich, Rowan, Fleischauer, Sobonya, Border,
Pasdon, Waxman and Summers)
[By Request of the Supreme Court]

[Passed March 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §48-27-311 of the Code of West
Virginia, 1931, as amended, and to amend said code by adding
thereto a new section, designated §56-3-33a, all relating to service
of process; actions against nonresident persons by petitioners
seeking domestic violence or personal safety relief; and
authorizing the Secretary of State to receive process against
nonresidents.

Be it enacted by the Legislature of West Virginia:

That §48-27-311 of the Code of West Virginia, 1931, as amended,
be amended and reenacted and that said code be amended by adding
thereto a new section, designated §56-3-33a, all to read as follows:
CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.


1 A protective order may be served:

2 (1) On the respondent by means of a Class I legal advertisement published notice, with the publication area being the most current known county in which the respondent resides, published in accordance with the provisions of section two, article three, chapter fifty-nine of this code if personal service by law-enforcement has been unsuccessful. Simultaneously with the publication, the respondent shall be served with the protective order and the order of publication by first class mail to the respondent’s most current known residential address.

3 (2) Against nonresident persons by the manner prescribed in section thirty-three-a, article three, chapter fifty-six of this code.

Any protective order issued by the court of this state which is served in compliance with the provisions of Rule 4(f) of the West Virginia Rules of Civil Procedure served outside the boundaries of this state shall carry the same force and effect as if it had been personally served within this state’s boundaries.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-33a. Actions against nonresident persons by petitioners seeking domestic violence or personal safety relief; service of process; authorizing Secretary of State to receive process against nonresidents.

1 (a) Any person who is:
(1) Not a resident of this state; or

(2) A resident of this state who has left this state; or

(3) A person whose residence is unknown shall be considered to have submitted to the jurisdiction of the courts of this state as to any action arising from the conduct specified in subsection (b) of this section, if such conduct was:

(A) Committed in this state; or

(B) If such conduct was not committed in this state if the conduct was purposely directed at a resident and has an effect within this state.

(b) Conduct compelling application of this section consists of:

(1) Any act constituting domestic violence or abuse as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code; or

(2) Any act constituting a basis for seeking personal safety relief as defined in section four, article eight, chapter fifty-three of this code; or

(3) Any act or omission violating the provisions of a duly authorized protective or restraining order, whether issued by this state or another jurisdiction, for the protection of any person within this state.

(c) Any person subject to or considered to have submitted to the jurisdiction of the courts of this state who is made a respondent in an action may be served with the petition and order initiating such action either:

(1) By law-enforcement officers, wherever the respondent may be found, whether inside or outside the boundaries of this state; or
(2) If the respondent is alleged to have committed conduct specified in subsection (b) of this section, this shall be considered equivalent to an appointment by such nonresident of the Secretary of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him or her, in any court in this state, for a cause of action arising from or growing out of such conduct, and the engaging in such conduct is a signification of such nonresident’s agreement that any such process against him or her, which is served in the manner hereinafter provided, is of the same legal force and validity as though such nonresident were personally served within this state.

(A) Such service shall be made by leaving two copies of both the petition and order, with the Secretary of State, or in his or her office, and such service shall be sufficient upon such nonresident: Provided, That notice of such service and a copy of the petition and order shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the respondent at his or her nonresident address and the respondent’s return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States Postal Service that acceptance of the notice, petition and order has been signed, the Secretary of State shall notify the clerk’s office of the court from which the petition and order were issued by a means which may include electronic notification. If the notice, petition and order were refused or undeliverable by the United States Postal Service, the Secretary of State shall return refused or undeliverable mail to the clerk’s
office of the court from which the petition and order were issued. If any respondent served with a petition and order fails to appear and defend at the time and place set forth in the order, judgment may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford the respondent an opportunity to defend the action or proceeding.

(B) As provided in section three hundred eight, article twenty-seven, chapter forty-eight of this code regarding domestic violence proceedings and in section thirteen, article eight, chapter fifty-three of this code regarding personal safety proceedings, no fees may be charged for service of petitions or orders until the matter is brought before the appropriate court for final resolution. Any fees ordinarily remitted to the Secretary of State or to a law-enforcement agency at the time of service shall be deferred and taxed in the costs of the action or proceeding.

(C) Data and records regarding service maintained by law-enforcement agencies and by the office of the Secretary of State for purposes of fulfilling the obligations of this section are not public records subject to disclosure under the provisions of article one, chapter twenty-nine-b of this code.

(d) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) “Duly authorized agent” means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and includes among others a member of the family of such nonresident or a person who, at the residence, place of business
or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.

(2) “Nonresident” means any person who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such acts or acts covered by this section.

CHAPTER 89

(Com. Sub. for S. B. 430 - By Senator Trump)

[Passed March 13, 2015; in effect from passage.]
[Approved by the Governor on March 24, 2015.]

AN ACT to amend and reenact §48-27-507 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §51-2A-2a, all relating to exempting orders enjoining certain contact between parties to a domestic relations action from the prohibition against mutual protective orders; authorizing family courts of the state to enter standing orders enjoining certain contact between parties to a domestic relations action; providing for certain terms and effective length of such orders; authorizing family courts of the state to enter orders enjoining certain contact between parties to a domestic relations action when there has been a finding of misconduct by a party; authorizing family court to enforce its order through an order of contempt; and expressing intent of the Legislature.

Be it enacted by the Legislature of West Virginia:

That §48-27-507 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §51-2A-2a, all to read as follows:
CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.


Mutual protective orders are prohibited unless both parties have filed a petition under part three of this article and have proven the allegations of domestic violence by a preponderance of the evidence. This shall not prevent other persons, including the respondent, from filing a separate petition. The court may consolidate two or more petitions if he or she determines that consolidation will further the interest of justice and judicial economy. The court shall enter a separate order for each petition filed: Provided, That nothing in this section shall preclude the court from entering an order restricting contact pursuant to section two-a, article two-a, chapter fifty-one of this code.

CHAPTER 51. COURTS IN GENERAL.

ARTICLE 2A. FAMILY COURTS.

§ 51-2A-2a. Family court jurisdiction to restrict contact between parties.

(a) A family court in its discretion may, at any time during the pendency of any action prosecuted under chapter forty-eight of this code, restrict contact between the parties thereto without a finding of domestic violence under article twenty-seven of said chapter. This order shall not be considered a protective order for purposes of section five hundred seven, article twenty-seven, chapter forty-eight of this code. A court may enter a standing order regarding the conduct expected of the parties during the proceeding. Any standing order may restrict the parties from:
(1) Entering the home, school, business or place of employment of the other for the purpose of bothering or annoying the other;

(2) Contacting the other, in person, in writing, electronically or by telephone, for purposes not clearly necessary for the prosecution of the underlying action or any obligation related thereto or resulting therefrom.

(b) Upon a finding of misconduct by a party, the court shall enter an order against the offending party enjoining the conduct which disturbs or interferes with the peace or liberty of the other party so long as such conduct does not rise to the level of or constitute domestic violence as defined in article twenty-seven, chapter forty-eight of this code. The court shall not issue orders under this section in cases where the conduct of either party has previously risen to the level of domestic violence.

(c) Nothing in this section shall preclude the court from entering an emergency protective order, or final protective order, as provided in article twenty-seven, chapter forty-eight of this code.

(d) Notwithstanding the provisions of section five hundred five, article twenty-seven, chapter forty-eight of this code, an order entered pursuant to the provisions of this section shall remain in effect for a period of time as specified in the order.

(e) The court may enforce orders under this section against the offending party through its powers of contempt, pursuant to section nine of this article.

(f) It is the express intent of the Legislature that orders issued pursuant to this section are to restrict behavior which is not of sufficient severity to implicate the provisions of article twenty-seven, chapter forty-eight of this code and 18 U. S. C. §922(g)(8).
AN ACT to amend and reenact §48-27-903 of the Code of West Virginia, 1931, as amended, relating to misdemeanor offenses for violation of protective order; and cleaning up redundant language.

Be it enacted by the Legislature of West Virginia:

That §48-27-903 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-903. Misdemeanor offenses for violation of protective order; repeat offenses; penalties.

(a) A person is guilty of a misdemeanor if the person knowingly and willfully violates:

1. A provision of an emergency or final protective order entered pursuant to:

   (1) Subsection (a) or (b) of section five hundred two of this article;

   (B) If the court has ordered such relief; subsection (2), (7), (9), or (14) of section five hundred three of this article;
(C) Subsection (b) or (c) of section five hundred nine, article five of this chapter; or

(D) Subsection (b) or (c) of section six hundred eight, article five of this chapter;

(2) A condition of bail, probation or parole which has the express intent or effect of protecting the personal safety of a particular person or persons; or

(3) A restraining order entered pursuant to section nine-a, article two, chapter sixty-one of this code.

Upon conviction thereof the person shall be confined in jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than $250 nor more than $2,000.

(b) Any person who is convicted of a second offense under subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than thirty days, and fined not less than $500 nor more than $3,000.

(c) A respondent who is convicted of a third or subsequent offense under subsection (a) of this section when the violation occurs within ten years of a prior conviction of this offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six months nor more than one year, which jail term shall include actual confinement of not less than six months, and fined not less than $500 nor more than $4,000.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-22-7a, relating to sales tax increment financing; authorizing recalculation of the base tax revenue amount, subject to specified limitations; specifying that, upon written request of the county commission, filed not later than April 30, 2015, with the Development Office, base tax revenue amounts greater than $1 million for a given district may be recalculated; specifying limitations on changes to the base tax revenue amount; specifying that the recalculated base tax revenue amount shall be used to determine the net annual district tax revenue amount for the district beginning on July 1, 2015; specifying that decrease to base tax revenue amount upon recalculation is limited to $1 million dollars; specifying that no adjustment, refund, payment or repayment of special district excise tax, or consumers sales and service tax and use tax, or net annual district tax revenue amount, or accrual thereof, attributable to periods prior to July 1, 2015, shall change the base tax revenue amount as recalculated; providing for the sharing of certain information respecting the district; defining terms; specifying that, if tax revenues in a sales tax increment financing district are deficient, such that the amount withheld in any month is insufficient to fully recover the base tax revenue amount attributable to that month, that such deficit shall be carried forward to subsequent months until the base tax revenue amount deficit is
paid; and specifying that any unpaid deficit carried forward shall be discharged and set at zero on the first day of each fiscal year.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-22-7a, to read as follows:

**ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

§7-22-7a. **Base tax revenue amount.**

1. **(a) Recalculation of base tax revenue amount. —**

2. **(1) If the base tax revenue amount determined under section seven of this article is greater than $1 million for a given district, then, upon written request of the county commission that has established the economic opportunity development district pursuant to this article, filed with the Executive Director of the Development Office not later than April 30, 2015, the base tax revenue amount for that district shall be recalculated by the Tax Commissioner as the aggregate annual amount of special district excise tax due and owing and remitted to the Tax Commissioner by all business locations located in the district with respect to sales made and services rendered from business locations in the district, for the twelve full calendar months next succeeding the date the special district excise tax was first collected in the district.

3. **(2) Limitation —** If the base tax revenue amount determined under section seven of this article exceeds the amount determined under subdivision (1) of this subsection by more than $1 million, then the recalculated base tax revenue amount for purposes of this article is the base tax revenue amount previously determined under section seven of this article minus $1 million.
(3) **Effective date.** –

(A) The recalculated base tax revenue amount determined under this section shall be the amount used to determine the net annual district tax revenue amount for the district beginning on July 1, 2015. For purposes of this article, “net annual district tax revenue amount” means the gross annual district tax revenue amount minus the base tax revenue amount. For purposes of this article, “gross annual district tax revenue amount” means the amount of special district excise tax, net of refunds and adjustments, collected from the district before subtraction of the base tax revenue amount.

(B) The recalculated base tax revenue amount shall only be applicable to determine the net annual district tax revenue amount for periods beginning on and after July 1, 2015. The recalculated base tax revenue amount determined pursuant to this section is prospective in operation, and no adjustment, refund, payment or repayment of special district excise tax, or consumers sales and service tax and use tax, or net annual district tax revenue amount, or accrual thereof, attributable to periods prior to July 1, 2015, shall affect recalculation of the base tax revenue amount.

(b) **Base tax revenue amount carry forward, recovery, recovery limitation.**

(1) Notwithstanding any provision of section twelve of this article to the contrary, and notwithstanding the provisions of section eleven-a, article ten, chapter eleven of this code, if the amount of special district excise tax due and owing and collected in a calendar month is less than one-twelfth of the base tax revenue amount, the State Treasurer shall deposit the full amount of special district excise tax collections for that month into the General Revenue Fund of this state. In order to account for deficient special district excise tax collections in prior months
for an economic opportunity development district, the State Treasurer shall deposit the full amount of special district excise tax collections into the General Revenue Fund in subsequent months during the fiscal year in which the deficiencies occurred, in amounts that may exceed one-twelfth of the base tax revenue amount, until past monthly deficiencies for that fiscal year are satisfied in full. Upon payment in full of past monthly deficiencies for such fiscal year, only one-twelfth of the base tax revenue amount shall be transferred to the General Revenue Fund for each month. Any monthly deficiencies shall be carried forward and accounted for in subsequent months only during the fiscal year in which such deficiencies occurred. On the first day of each fiscal year, any monthly deficiencies for an economic opportunity development district remaining from the prior fiscal year shall be discharged and shall not be taken into consideration by the State Treasurer when the monthly deposits are made to the General Revenue Fund pursuant to this section. For purposes of this section, fiscal year refers to the July 1 to June 30 fiscal year for the State of West Virginia.

(2) Notwithstanding the provisions of subdivisions (2) and (3), subsection (d) section eleven-a, article ten, chapter eleven of this code, the provisions of this subsection apply to, and are limited to, the circumstance where the amount of special district excise tax due and owing and collected in a calendar month is less than one-twelfth of the base tax revenue amount. All other corrections of, or relating to, any erroneous distribution, transfer, allocation, overpayment or underpayment of moneys or any adjustments otherwise necessary with relation to erroneous distributions, transfers, allocations, overpayments or underpayments of moneys, deposits, collections, or payments of special district excise tax shall be made in accordance with the provisions of section twenty-six, article ten, chapter eleven of this code.

(c) Limitation on changes to base tax revenue amount.
Except pursuant to a lawful recalculation of the base tax revenue amount under this section, or a lawful modification of geographical area included in a district under this article, the base tax revenue amount may not be modified, increased or decreased by reason of any change in law or fact relating to the consumers sales and service tax and use tax or to the base tax revenue amount determined under this article. No current, retrospective or prospective tax reporting anomaly, permutation of tax filing configuration, failure of tax payment, failure of tax filing, tax adjustment, claim for a tax refund, issuance of a tax refund, entitlement to a tax refund, claim for a tax credit, issuance of a tax credit, or entitlement to a tax credit, relating to, or affecting, consumers sales and service tax or use tax paid or payable in the district or special district excise tax paid or payable in the district, either prior to the date upon which the base tax revenue amount was determined under this article or subsequent to the date upon which the base tax revenue amount was determined under this article, changes in any way the base tax revenue amount.

(d) Sharing of District Information.

(1) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this code:

(A) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall provide on a monthly basis to the trustee for bonds issued pursuant to this article information on or derived from special district excise tax returns submitted pursuant to this article; and

(B) The trustee may share the information so obtained with the county commission that established the economic opportunity development district that issued the bonds pursuant to this article, with financial advisors registered or licensed with the appropriate oversight agency to act in such capacity and with
underwriters and placement agents registered or licensed with
the appropriate oversight agency to act in such capacity, that
have been engaged by the county commission, and with the
bondholders and with bond counsel for bonds issued pursuant to
this article. The Tax Commissioner and the trustee may enter
into a written agreement in order to accomplish exchange of the
information.

(C) If bonds are not outstanding pursuant to this article, the
Tax Commissioner shall provide on a monthly basis to the
county commission that has established the economic
opportunity development district pursuant to this article,
information on or derived from special district excise tax returns
submitted pursuant to this article; and

(D) The county commission may share the information so
obtained with legal counsel for the county commission and with
financial advisors registered or licensed with the appropriate
oversight agency to act in such capacity and with underwriters
and placement agents registered or licensed with the appropriate
oversight agency to act in such capacity, that have been engaged
by the county commission. The Tax Commissioner and the
county commission may enter into a written agreement in order
to accomplish exchange of the information.

(2) Any confidential information provided pursuant to this
subsection shall be used solely for the protection and
enforcement of the rights and remedies of the bondholders of
bonds issued pursuant to this article, or, if there be none such,
then, the district board of the district, or, if there be none such,
then, the county commission that established the economic
opportunity development district pursuant to this article. Any
person or entity that is in possession of information disclosed by
the Tax Commissioner, including but not limited to, the trustee
and the county commission, and any person or entity that is in
possession of information disclosed by or shared by the trustee
pursuant to this subdivision, or disclosed by or shared by the
county commission pursuant to this subdivision, is subject to the
provisions of section five-d, article ten, chapter eleven of this
code with relation to further disclosure of such information, as
if the person or entity that is in possession of the tax information
is an officer, employee, agent or representative of this state or of
a local or municipal governmental entity or other governmental
subdivision. This section does not prohibit the publication or
release of statistics so classified as to prevent the identification
of particular returns and the items thereof and the identity of
specific taxpayers. For purposes of this article the term
“confidential information” means information subject to the
confidentiality restrictions of section five-d, article ten, chapter
eleven of this code.

CHAPTER 92

(Com. Sub. for H. B. 2377 - By Delegate(s) Pasdon, Statler,
Duke, Wagner, Romine, Ambler, Espinosa and Campbell)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2015.]

AN ACT to amend and reenact §18-2-5 of the Code of West Virginia,
1931, as amended, relating to authorizing State Board of Education
to approve certain alternatives with respect to instructional time
proposed by a county board or school that meet the spirit and intent
of affected statutes and are intended to optimize student learning;
removing outdated and conflicting provisions related to school
entrance and kindergarten; stating the purpose of subsection and
providing context; providing limitations on alternatives; and
making findings on learning time for consideration by state board.
Be it enacted by the Legislature of West Virginia:

That §18-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5. Powers and duties generally; specific powers and duties for alternatives that improve student learning.

(a) Subject to and in conformity with the Constitution and laws of this state, the State Board of Education shall exercise general supervision of the public schools of the state, and shall promulgate rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for carrying into effect the laws and policies of the state relating to education. The rules shall relate to the following:

(1) Standards for performance and measures of accountability;

(2) Physical welfare of students;

(3) Education of all children of school age;

(4) School attendance;

(5) Evening and continuation or part-time day schools;

(6) School extension work;

(7) Classification of schools;

(8) Issuing certificates based upon credentials;

(9) Distribution and care of instructional resources by county boards;
(10) General powers and duties of county boards, teachers, principals, supervisors and superintendents; and

(11) Such other matters pertaining to the public schools of the state as the state board considers necessary and expedient.

(b) The state board, in exercising its constitutional responsibility for the general supervision of public schools, must do so as provided by general law. Included within the general law is the process for improving education which has been recognized by the court as the method chosen by the Legislature to measure whether a thorough and efficient education is being provided. The court further recognized that the resulting student learning is the ultimate measure of a thorough education and that it must be achieved in an efficient manner. To achieve this result, the state board must have reasonable discretion to balance the local autonomy and flexibility needed by schools to deliver a thorough and efficient education with the letter of the laws as enacted for school operations.

(c) The purpose of this subsection is to authorize the state board to approve alternatives to the letter of the laws enacted for school operations in the areas enumerated in this subsection. The state board may approve such alternatives as proposed by a county board or school if, in the sole judgment of the state board, the alternatives meet the spirit and intent of the applicable statutes and are intended solely to optimize student learning.

(1) The Legislature finds that alternatives are warranted and may be approved by the state board on a case-by-case basis when a county board submits to the state board a comprehensive plan for optimizing student learning that:

(A) Achieves the spirit and intent of the laws for an instructional term that provide the instructional time necessary for students to meet or exceed the high quality standards for student performance adopted by the state board;
(B) Ensures sufficient time within the instructional term to promote the improvement of instruction and instructional practices;

(C) Incorporates a school calendar approved in accordance with the approval process required by section forty-five, article five of this chapter;

(D) Allows for school-level determination of alternatives affecting time within the school day that preserve the spirit and intent of providing teachers with: (i) Sufficient planning time to develop engaging, differentiated instruction for all students in all classes, which includes at least forty minutes in length for the elementary level and as required by section fourteen, article four, chapter eighteen-a of this code for the secondary level; and (ii) Collaborative time for teachers to undertake and sustain instructional improvement. This determination may be made only in the form of a school policy that is part of the school’s strategic improvement plan and is approved by a vote of the faculty senate; and

(E) Has the sole purpose of improving student learning and that improvement is evident within a reasonable period.

(2) The Legislature makes the following findings for consideration by the state board with respect to optimizing student learning:

(A) Maximizing learning time is a critical factor needed to improve student learning and requires multiple strategies and policies that support great teaching and learning;

(B) Learning time is that portion of instructional time in the school day during which a student is paying attention and receiving instruction that is appropriately leveled, and learning is taking place. Learning time must not be assumed to be the time that a student is seated at a desk, but may be achieved
through a variety of methods that actively engage students in learning;

(C) A student’s time engaged in learning is maximized when the student is allowed to progress and acquire competency at a pace which challenges his or her interest and intellect while receiving guidance and assistance when needed. Instructional strategies to help personalize student learning in this manner are frequently assisted by technology;

(D) Providing teachers with the resources and support needed to engage students in meaningful, appropriately leveled learning for as much time as is possible during the school day may be as important as facilities, equipment and staff development for maximizing learning time and improving student learning;

(E) Successful schools are distinguishable from unsuccessful schools by the frequency and extent to which teachers discuss professional practices, collectively design materials and inform and critique one another;

(F) Even successful schools must be self-renewing systems and learning organizations marked by deliberate effort to identify helpful knowledge and spread its use within the organization;

(G) Unless teachers are collectively involved in planning and implementing school improvement, it is unlikely to be sustained; and

(H) Given sufficient control over their own programs and supportive district leadership and policies, schools themselves may best be suited to determine the variety of methods through which time during the school day is allocated for teachers to plan individually and collectively to maximize learning time. Examples of methods used by successful schools include, but are
not limited to, scheduling, using special subject teachers and
guest presenters, dedicating time set aside for staff development,
implementing alternative staff utilization patterns, providing
opportunities for administrators to teach, and utilizing accrued
instructional time.

CHAPTER 93

(H. B. 2370 - By Delegate(s) Pasdon, Duke, Rowan,
Wagner, Upson, Ambler and Espinosa)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2015.]

AN ACT to amend and reenact §18-2-26 of the Code of West Virginia,
1931, as amended, relating to increasing the powers of regional
councils for governance of regional education service agencies;
providing for revision of state board rule; requiring selection of
executive director from nominations with certain limitations;
requiring consultation with councils on development of job
description, qualifications and procedures; requiring provisions for
annual performance evaluations with portion of rating determined
by council; expanding role of council; stating ability of agencies
to cooperate, share or combine services with each other; updating
references to computer programs and systems and removing
outdated provisions; removing prescriptive provisions for
computer installation, maintenance and repair; and removing
provisions relating to repealed section on professional
development.

Be it enacted by the Legislature of West Virginia:

That §18-2-26 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:
ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-26. Establishment of multicounty regional educational service agencies; purpose; authority of state board; governance; annual performance standards.

(a) Legislative intent. — The intent of the Legislature in providing for establishment of regional education service agencies, hereinafter referred to in this section as agency or agencies, is to provide for high quality, cost effective education programs and services to students, schools and school systems.

Since the first enactment of this section in 1972, the focus of public education has shifted from a reliance on input models to determine if education programs and services are providing to students a thorough and efficient education to a performance based accountability model which relies on the following:

(1) Development and implementation of standards which set forth the things that students should know and be able to do as the result of a thorough and efficient education including measurable criteria to evaluate student performance and progress;

(2) Development and implementation of assessments to measure student performance and progress toward meeting the standards;

(3) Development and implementation of a system for holding schools and school systems accountable for student performance and progress toward obtaining a high quality education which is delivered in an efficient manner; and

(4) Development and implementation of a method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress.
(b) *Purpose.* — In establishing the agencies the Legislature envisions certain areas of service in which the agencies can best assist the state board in implementing the standards based accountability model pursuant to subsection (a) of this section and, thereby, in providing high quality education programs. These areas of service include the following:

1. Providing technical assistance to low performing schools and school systems;
2. Providing high quality, targeted staff development designed to enhance the performance and progress of students in state public education;
3. Facilitating coordination and cooperation among the county boards within their respective regions in such areas as cooperative purchasing; sharing of specialized personnel, communications and technology; curriculum development; and operation of specialized programs for exceptional children;
4. Installing, maintaining and/or repairing education related technology equipment and software with special attention to the state level technology learning tools for public schools program;
5. Receiving and administering grants under the provisions of federal and/or state law; and
6. Developing and/or implementing any other programs or services as directed by law, the state board or the regional council.

(c) *State board rule.* — The state board shall reexamine the powers and duties of the agencies in light of the changes in state level education policy that have occurred and shall establish multicounty regional education service agencies by rule, promulgated in accordance with the provisions of article three-b, chapter twenty-nine-a of this code.
The rule shall contain all information necessary for the effective administration and operation of the agencies. In developing the rule, the state board may not delegate its Constitutional authority for the general supervision of schools to the agencies, however, it may allow the agencies greater latitude in the development and implementation of programs in the service areas outlined in subsection (b) of this section with the exceptions of providing technical assistance to low performing schools and school systems and providing high quality, targeted staff development designed to enhance the performance and progress of students in state public education. These two areas constitute the most important responsibilities for the agencies.

The rule establishing the agencies shall be promulgated before November 1, 2015, and shall be consistent with the provisions of this section. It shall include, but is not limited to, the following procedures:

1. Providing for a uniform governance structure for the agencies containing at least these elements:

   A. Selection by the state board of an executive director who shall be responsible for the administration of his or her respective agency. The rule shall provide for the state board to select the executive director only upon the nomination of one or more candidates by the regional council of the agency. In case the board refuses to select any of the candidates nominated, the regional council shall nominate others and submit them to the board. All candidates nominated must meet the qualifications for the position established by the state board. Nothing shall prohibit the timely employment of persons to perform necessary duties;

   B. Development of a job description and qualifications for the position of executive director, together with procedures for informing the public of position openings, for taking and evaluating applications, for making nominations for these
positions, and for annually evaluating the performance of
persons employed as executive director. The state board shall
consult with the regional councils on the development of the job
description, qualifications and procedures;

(C) Provisions for the annual performance evaluation of the
executive director that provide for one half of the evaluation
rating to be determined by the regional council;

(D) Provisions for the agencies to employ other staff, as
necessary, with the approval of the state board and upon the
recommendation of the executive director: Provided, That prior
to July 1, 2003, no person who is an employee of an agency on
the effective date of this section may be terminated or have his
or her salary and benefit levels reduced as the sole result of the
changes made to this section or by state board rule;

(E) Appointment by the county boards of a regional council
in each agency area consisting of representatives of county
boards and county superintendents from within that area for the
purpose of advising, assisting and informing the executive
director in carrying out his or her duties to achieve the purposes
of this section and provide educational services to the county
school systems within the region. The state board may provide
for membership on the regional council for representatives from
other agencies and institutions who have interest or expertise in
the development or implementation of regional education
programs; and

(F) Selection by the state superintendent of a representative
from the state Department of Education to serve on each regional
council. These representatives shall meet with their respective
regional councils at least quarterly;

(2) Establishing statewide standards by the state board for
service delivery by the agencies. These standards may be revised
annually and shall include, but are not limited to, programs and services to fulfill the purposes set forth in subsection (b) of this section;

(3) Establishing procedures for developing and adopting an annual basic operating budget for each agency and for other budgeting and accounting procedures as the state board may require;

(4) Establishing procedures clarifying that agencies may acquire and hold real property;

(5) Dividing the state into appropriate, contiguous geographical areas and designating an agency to serve each area. The rule shall provide that each of the state’s counties is contained within a single service area and that all counties located within the boundaries of each agency, as determined by the state board, shall be members of that agency; and

(6) Such other standards or procedures as the state board finds necessary or convenient.

(d) Regional services. — In furtherance of the purposes provided for in this section, the state board and the regional council of each agency shall continually explore possibilities for the delivery of services on a regional basis which will facilitate equality in the education offerings among counties in its service area, permit the delivery of high quality education programs at a lower per student cost, strengthen the cost effectiveness of education funding resources, reduce administrative and/or operational costs, including the consolidation of administrative, coordinating and other county level functions into region level functions, and promote the efficient administration and operation of the public school systems generally.

Technical, operational, programmatic or professional services are among the types of services appropriate for delivery
on a regional basis. Nothing in this section prohibits regional 
education service agencies from cooperating, sharing or 
combining services or programs with each other, at their 
discretion, to further the purposes of this section.

(e) Virtual education. — The state board, in conjunction 
with the various agencies, shall develop an effective model for 
the regional delivery of instruction in subjects where there exists 
low student enrollment or a shortage of certified teachers or 
where the delivery method substantially improves the quality of 
an instructional program. The model shall incorporate an 
interactive electronic classroom approach to instruction. To the 
extent funds are appropriated or otherwise available, county 
boards or regional education service agencies may adopt and 
utilize the model for the delivery of the instruction.

(f) Computer information system. — Each county board of 
education shall use the statewide electronic information system 
established by the state board for data collection and reporting to 
the state Department of Education.

(g) Reports and evaluations. — Each agency shall submit to 
the state superintendent on such date and in such form as 
specified in the rules adopted by the state board a report and 
evaluation of the technical assistance and other services provided 
and utilized by the schools within each respective region and 
their effectiveness. Additionally, any school may submit an 
evaluation of the services provided by the agency to the state 
superintendent at any time. This report shall include an 
evaluation of the agency program, suggestions on methods to 
 improve utilization and suggestions on the development of new 
programs and the enhancement of existing programs. The reports 
and evaluations submitted pursuant to this subsection shall be 
submitted to the state board and shall be made available upon 
request to the standing committees on education of the West
Virginia Senate and House of Delegates and to the secretary of education and the arts.

(h) Funding sources. — An agency may receive and disburse funds from the state and federal governments, from member counties, or from gifts and grants.

(i) Employee expenses. — Notwithstanding any other provision of this code to the contrary, employees of agencies shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the Department of Administration.

A county board member may not be an employee of an agency.

(j) Meetings and compensation. —

(1) Agencies shall hold at least one half of their regular meetings during hours other than those of a regular school day. The executive director of each agency shall attend at least one meeting of each of the member county boards of education each year to explain the agency’s services, garner suggestions for program improvement and provide any other information as may be requested by the county board.

(2) Notwithstanding any other provision of this code to the contrary, county board members serving on regional councils may receive compensation at a rate not to exceed $100 per meeting attended, not to exceed fifteen meetings per year. County board members serving on regional councils may be reimbursed for travel at the same rate as state employees under the rules of the travel management office of the Department of Administration.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-32, relating to providing for awarding posthumous high school diplomas under certain circumstances; and designating provisions as “Todd’s Law”.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-32, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-32. Posthumous high school diplomas.

1   (a) This section shall be known as “Todd’s Law”.

2   (b) Notwithstanding any provision of this code to the contrary, the state board shall provide for the awarding of a high school diploma to a deceased student, at the request of the parent, guardian or custodian, if the student:

6   (1) Was enrolled in a public school in this state at the time of death;

8   (2) Was academically eligible, or on track to complete the requirements for graduation at the time of death; and
(3) Died after the completion of the eleventh grade school year.

CHAPTER 95

(H. B. 2140 - By Delegate(s) Perry, Pasdon, Hamrick, Rowan, Ambler, Cooper, Romine, Moye, Hartman and Williams)

[Passed March 13, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating to building governance and leadership capacity of county board during period of state intervention; providing flexibility on strategic plans; authorizing removal, subject to reemployment, of will and pleasure employees of the county superintendent during intervention in operation of school system; requiring during periods of intervention, county board goals and action plans for improvement and sustained success to end intervention in not more than five years; specifying minimum components of goals and action plans; requiring annual assessment and report of readiness of county to accept return and sustain improvement; requiring public hearing if determination made at fifth annual assessment the county board not ready; continued intervention allowed only after hearing; requiring continued supports as needed for three years following end of intervention; and requiring public hearing for another intervention within this three years.

Be it enacted by the Legislature of West Virginia:

That §18-2E-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.

(a) Legislative findings, purpose and intent. — The Legislature makes the following findings with respect to the process for improving education and its purpose and intent in the enactment of this section:

(1) The process for improving education includes four primary elements, these being:

(A) Standards which set forth the knowledge and skills that students should know and be able to perform as the result of a thorough and efficient education that prepares them for the twenty-first century, including measurable criteria to evaluate student performance and progress;

(B) Assessments of student performance and progress toward meeting the standards;

(C) A system of accountability for continuous improvement defined by high-quality standards for schools and school systems articulated by a rule promulgated by the state board and outlined in subsection (c) of this section that will build capacity in schools and districts to meet rigorous outcomes that assure student performance and progress toward obtaining the knowledge and skills intrinsic to a high-quality education rather than monitoring for compliance with specific laws and regulations; and

(D) A method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress;
(2) As the constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority and the responsibility to establish the standards, assess the performance and progress of students against the standards, hold schools and school systems accountable and assist schools and school systems to build capacity and improve efficiency so that the standards are met, including, when necessary, seeking additional resources in consultation with the Legislature and the Governor;

(3) As the constitutional body charged with providing for a thorough and efficient system of schools, the Legislature has the authority and the responsibility to establish and be engaged constructively in the determination of the knowledge and skills that students should know and be able to do as the result of a thorough and efficient education. This determination is made by using the process for improving education to determine when school improvement is needed, by evaluating the results and the efficiency of the system of schools, by ensuring accountability and by providing for the necessary capacity and its efficient use;

(4) In consideration of these findings, the purpose of this section is to establish a process for improving education that includes the four primary elements as set forth in subdivision (1) of this subsection to provide assurances that the high-quality standards are, at a minimum, being met and that a thorough and efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis; and

(5) The intent of the Legislature in enacting this section and section five-c of this article is to establish a process through which the Legislature, the Governor and the state board can work in the spirit of cooperation and collaboration intended in the process for improving education to consult and examine the performance and progress of students, schools and school
systems and, when necessary, to consider alternative measures
to ensure that all students continue to receive the thorough and
efficient education to which they are entitled. However, nothing
in this section requires any specific level of funding by the
Legislature.

(b) *Electronic county and school strategic improvement plans.* — The state board shall promulgate a rule consistent with
the provisions of this section and in accordance with article
three-b, chapter twenty-nine-a of this code establishing an
electronic county strategic improvement plan for each county
board and an electronic school strategic improvement plan for
each public school in this state. Each respective plan shall be for
a period of no more than five years and shall include the mission
and goals of the school or school system to improve student,
school or school system performance and progress, as
applicable. The strategic plan shall be revised annually in each
area in which the school or system is below the standard on the
annual performance measures. The plan shall be revised when
required pursuant to this section to include each annual
performance measure upon which the school or school system
fails to meet the standard for performance and progress, the
action to be taken to meet each measure, a separate time line and
a date certain for meeting each measure, a cost estimate and,
when applicable, the assistance to be provided by the department
and other education agencies to improve student, school or
school system performance and progress to meet the annual
performance measure.

The department shall make available to all public schools
through its website or the West Virginia Education Information
System an electronic school strategic improvement plan
boilerplate designed for use by all schools to develop an
electronic school strategic improvement plan which incorporates
all required aspects and satisfies all improvement plan
requirements of the No Child Left Behind Act.
(c) **High-quality education standards and efficiency standards.** — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt and periodically review and update high-quality education standards for student, school and school system performance and processes in the following areas:

1. Curriculum;
2. Workplace readiness skills;
3. Finance;
4. Transportation;
5. Special education;
6. Facilities;
7. Administrative practices;
8. Training of county board members and administrators;
9. Personnel qualifications;
10. Professional development and evaluation;
11. Student performance, progress and attendance;
12. Professional personnel, including principals and central office administrators, and service personnel attendance;
13. School and school system performance and progress;
14. A code of conduct for students and employees;
15. Indicators of efficiency; and
16. Any other areas determined by the state board.
(d) Comprehensive statewide student assessment program. — The state board shall establish a comprehensive statewide student assessment program to assess student performance and progress in grades three through twelve. The assessment program is subject to the following:

(1) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student assessment program;

(2) Prior to the 2014-2015 school year, the state board shall align the comprehensive statewide student assessment for all grade levels in which the test is given with the college-readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop other aligned tests to be required at each grade level so that progress toward college readiness in English/language arts and math can be measured;

(3) The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;

(4) The state board may require that student proficiencies be measured through the West Virginia writing assessment at any grade levels determined by the state board to be appropriate; and

(5) The state board may provide through the statewide assessment program other optional testing or assessment instruments applicable to grade levels kindergarten through grade twelve which may be used by each school to promote student achievement. The state board annually shall publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments.
(e) State annual performance measures for school and school system accreditation.—

The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that establishes a system to assess and weigh annual performance measures for state accreditation of schools and school systems. The state board also may establish performance incentives for schools and school systems as part of the state accreditation system. On or before December 1, 2013, the state board shall report to the Governor and to the Legislative Oversight Commission on Education Accountability the proposed rule for establishing the measures and incentives of accreditation and the estimated cost therefore, if any. Thereafter, the state board shall provide an annual report to the Governor and to the Legislative Oversight Commission on Education Accountability on the impact and effectiveness of the accreditation system. The rule for school and school system accreditation proposed by the board may include, but is not limited to, the following measures:

(1) Student proficiency in English and language arts, math, science and other subjects determined by the board;

(2) Graduation and attendance rate;

(3) Students taking and passing AP tests;

(4) Students completing a career and technical education class;

(5) Closing achievement gaps within subgroups of a school’s student population; and

(6) Students scoring at or above average attainment on SAT or ACT tests.
(f) **Indicators of efficiency.** — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt by rule and periodically review and update indicators of efficiency for use by the appropriate divisions within the department to ensure efficient management and use of resources in the public schools in the following areas:

(1) Curriculum delivery including, but not limited to, the use of distance learning;

(2) Transportation;

(3) Facilities;

(4) Administrative practices;

(5) Personnel;

(6) Use of regional educational service agency programs and services, including programs and services that may be established by their assigned regional educational service agency or other regional services that may be initiated between and among participating county boards; and

(7) Any other indicators as determined by the state board.

(g) **Assessment and accountability of school and school system performance and processes.** — In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall establish by rule a system of education performance audits which measures the quality of education and the preparation of students based on the annual measures of student, school and school system performance and progress. The system of education performance audits shall provide information to the state board, the Legislature and the Governor, upon which they may determine whether a thorough and efficient system of schools is being provided. The system of education performance audits shall include:
(1) The assessment of student, school and school system performance and progress based on the annual measures established pursuant to subsection (e) of this section;

(2) The evaluation of records, reports and other information collected by the Office of Education Performance Audits upon which the quality of education and compliance with statutes, policies and standards may be determined;

(3) The review of school and school system electronic strategic improvement plans; and

(4) The on-site review of the processes in place in schools and school systems to enable school and school system performance and progress and compliance with the standards.

(h) Uses of school and school system assessment information. — The state board shall use information from the system of education performance audits to assist it in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance and progress. Information from the system of education performance audits further shall be used by the state board for these purposes, including, but not limited to, the following:

(1) Determining school accreditation and school system approval status;

(2) Holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and

(3) Targeting additional resources when necessary to improve performance and progress.

The state board shall make accreditation information available to the Legislature, the Governor, the general public and
to any individual who requests the information, subject to the provisions of any act or rule restricting the release of information.

(i) *Early detection and intervention programs.* — Based on the assessment of student, school and school system performance and progress, the state board shall establish early detection and intervention programs using the available resources of the Department of Education, the regional educational service agencies, the Center for Professional Development and the Principals Academy, or other resources as appropriate, to assist underachieving schools and school systems to improve performance before conditions become so grave as to warrant more substantive state intervention. Assistance shall include, but is not limited to, providing additional technical assistance and programmatic, professional staff development, providing monetary, staffing and other resources where appropriate.

(j) *Office of Education Performance Audits.* —

(1) To assist the state board in the operation of a system of education performance audits, the state board shall establish an Office of Education Performance Audits consistent with the provisions of this section. The Office of Education Performance Audits shall be operated under the direction of the state board independently of the functions and supervision of the State Department of Education and state superintendent. The Office of Education Performance Audits shall report directly to and be responsible to the state board in carrying out its duties under the provisions of this section.

(2) The office shall be headed by a director who shall be appointed by the state board and who serves at the will and pleasure of the state board. The annual salary of the director shall be set by the state board and may not exceed eighty percent of the salary of the State Superintendent of Schools.
(3) The state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by law and by the state board. Employees of the State Department of Education who are transferred to the Office of Education Performance Audits shall retain their benefits and seniority status with the Department of Education.

(4) Under the direction of the state board, the Office of Education Performance Audits shall receive from the West Virginia education information system staff research and analysis data on the performance and progress of students, schools and school systems, and shall receive assistance, as determined by the state board, from staff at the State Department of Education, the regional education service agencies, the Center for Professional Development, the Principals Academy and the School Building Authority to carry out the duties assigned to the office.

(5) In addition to other duties which may be assigned to it by the state board or by statute, the Office of Education Performance Audits also shall:

(A) Assure that all statewide assessments of student performance used as annual performance measures are secure as required in section one-a of this article;

(B) Administer all accountability measures as assigned by the state board, including, but not limited to, the following:

(i) Processes for the accreditation of schools and the approval of school systems; and

(ii) Recommendations to the state board on appropriate action, including, but not limited to, accreditation and approval action;

(C) Determine, in conjunction with the assessment and accountability processes, what capacity may be needed by
298 schools and school systems to meet the standards established by
299 the state board and recommend to the state board plans to
300 establish those needed capacities;

301 (D) Determine, in conjunction with the assessment and
302 accountability processes, whether statewide system deficiencies
303 exist in the capacity of schools and school systems to meet the
304 standards established by the state board, including the
305 identification of trends and the need for continuing
306 improvements in education, and report those deficiencies and
307 trends to the state board;

308 (E) Determine, in conjunction with the assessment and
309 accountability processes, staff development needs of schools and
310 school systems to meet the standards established by the state
311 board and make recommendations to the state board, the Center
312 for Professional Development, the regional educational service
313 agencies, the Higher Education Policy Commission and the
314 county boards;

315 (F) Identify, in conjunction with the assessment and
316 accountability processes, school systems and best practices that
317 improve student, school and school system performance and
318 communicate those to the state board for promoting the use of
319 best practices. The state board shall provide information on best
320 practices to county school systems; and

321 (G) Develop reporting formats, such as check lists, which
322 shall be used by the appropriate administrative personnel in
323 schools and school systems to document compliance with
324 applicable laws, policies and process standards as considered
325 appropriate and approved by the state board, which may include,
326 but is not limited to, the following:

327 (i) The use of a policy for the evaluation of all school
328 personnel that meets the requirements of sections twelve and
329 twelve-a, article two, chapter eighteen-a of this code;
(ii) The participation of students in appropriate physical assessments as determined by the state board, which assessment may not be used as a part of the assessment and accountability system;

(iii) The appropriate licensure of school personnel; and

(iv) The appropriate provision of multicultural activities.

Information contained in the reporting formats is subject to examination during an on-site review to determine compliance with laws, policies and standards. Intentional and grossly negligent reporting of false information are grounds for dismissal of any employee.

(k) **On-site reviews.** —

(1) The system of education performance audits shall include on-site reviews of schools and school systems which shall be conducted only at the specific direction of the state board upon its determination that circumstances exist that warrant an on-site review. Any discussion by the state board of schools to be subject to an on-site review or dates for which on-site reviews will be conducted may be held in executive session and is not subject to the provisions of article nine-a, chapter six of this code relating to open governmental proceedings. An on-site review shall be conducted by the Office of Education Performance Audits of a school or school system for the purpose of making recommendations to the school and school system, as appropriate, and to the state board on such measures as it considers necessary. The investigation may include, but is not limited to, the following:

(A) Verifying data reported by the school or county board;

(B) Examining compliance with the laws and policies affecting student, school and school system performance and progress;
(C) Evaluating the effectiveness and implementation status of school and school system electronic strategic improvement plans;

(D) Investigating official complaints submitted to the state board that allege serious impairments in the quality of education in schools or school systems;

(E) Investigating official complaints submitted to the state board that allege that a school or county board is in violation of policies or laws under which schools and county boards operate; and

(F) Determining and reporting whether required reviews and inspections have been conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the Health Department, the School Building Authority and the responsible divisions within the Department of Education, and whether noted deficiencies have been or are in the process of being corrected.

(2) The Director of the Office of Education Performance Audits shall notify the county superintendent of schools five school days prior to commencing an on-site review of the county school system and shall notify both the county superintendent and the principal five school days before commencing an on-site review of an individual school: Provided, That the state board may direct the Office of Education Performance Audits to conduct an unannounced on-site review of a school or school system if the state board believes circumstances warrant an unannounced on-site review.

(3) The Office of Education Performance Audits shall conduct on-site reviews which are limited in scope to specific areas in which performance and progress are persistently below standard as determined by the state board unless specifically directed by the state board to conduct a review which covers additional areas.
(4) The Office of Education Performance Audits shall reimburse a county board for the costs of substitutes required to replace county board employees who serve on a review team.

(5) At the conclusion of an on-site review of a school system, the director and team leaders shall hold an exit conference with the superintendent and shall provide an opportunity for principals to be present for at least the portion of the conference pertaining to their respective schools. In the case of an on-site review of a school, the exit conference shall be held with the principal and curriculum team of the school and the superintendent shall be provided the opportunity to be present. The purpose of the exit conference is to review the initial findings of the on-site review, clarify and correct any inaccuracies and allow the opportunity for dialogue between the reviewers and the school or school system to promote a better understanding of the findings.

(6) The Office of Education Performance Audits shall report the findings of an on-site review to the county superintendent and the principals whose schools were reviewed within thirty days following the conclusion of the on-site review. The Office of Education Performance Audits shall report the findings of the on-site review to the state board within forty-five days after the conclusion of the on-site review. A school or county that believes one or more findings of a review are clearly inaccurate, incomplete or misleading, misrepresent or fail to reflect the true quality of education in the school or county or address issues unrelated to the health, safety and welfare of students and the quality of education, may appeal to the state board for removal of the findings. The state board shall establish a process for it to receive, review and act upon the appeals. The state board shall report to the Legislative Oversight Commission on Education Accountability during its July interim meetings, or as soon thereafter as practical, on each appeal during the preceding school year.
The Legislature finds that the accountability and oversight of some activities and programmatic areas in the public schools are controlled through other mechanisms and agencies and that additional accountability and oversight may be unnecessary, counterproductive and impair necessary resources for teaching and learning. Therefore, the Office of Education Performance Audits may rely on other agencies and mechanisms in its review of schools and school systems.

(1) School accreditation. —

(1) The state board shall establish levels of accreditation to be assigned to schools. The establishment of levels of accreditation and the levels shall be subject to the following:

(A) The levels will be designed to demonstrate school performance in all the areas outlined in this section and also those established by the state board;

(B) The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code to establish the performance and standards required for a school to be assigned a particular level of accreditation; and

(C) The state board will establish the levels of accreditation in such a manner as to minimize the number of systems of school recognition, both state and federal, that are employed to recognize and accredit schools.

(2) The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school a level of accreditation as designated and determined by the state board.

(3) The state board, in its exercise of general supervision of the schools and school systems of West Virginia, may exercise any or all of the following powers and actions:
(A) To require a school to revise its electronic strategic plan;

(B) To define extraordinary circumstances under which the state board may intervene directly or indirectly in the operation of a school;

(C) To appoint monitors to work with the principal and staff of a school where extraordinary circumstances are found to exist, and to appoint monitors to assist the school principal after intervention in the operation of a school is completed;

(D) To direct a county board to target resources to assist a school where extraordinary circumstances are found to exist;

(E) To intervene directly in the operation of a school and declare the position of principal vacant and assign a principal for the school who will serve at the will and pleasure of the state board. If the principal who was removed elects not to remain an employee of the county board, then the principal assigned by the state board shall be paid by the county board. If the principal who was removed elects to remain an employee of the county board, then the following procedure applies:

(i) The principal assigned by the state board shall be paid by the state board until the next school term, at which time the principal assigned by the state board shall be paid by the county board;

(ii) The principal who was removed is eligible for all positions in the county, including teaching positions, for which the principal is certified, by either being placed on the transfer list in accordance with section seven, article two, chapter eighteen-a of this code, or by being placed on the preferred recall list in accordance with section seven-a, article four, chapter eighteen-a of this code; and
(iii) The principal who was removed shall be paid by the county board and may be assigned to administrative duties, without the county board being required to post that position until the end of the school term; and

(F) Other powers and actions the state board determines necessary to fulfill its duties of general supervision of the schools and school systems of West Virginia.

(4) The county board may take no action nor refuse any action if the effect would be to impair further the school in which the state board has intervened.

(m) School system approval. — The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following approval levels to each county board: Full approval, temporary approval, conditional approval or nonapproval.

(1) Full approval shall be given to a county board whose schools have all been given full, temporary or conditional accreditation status and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A fully approved school system in which other deficiencies are discovered shall remain on full accreditation status for the remainder of the approval period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its electronic county strategic improvement plan in accordance with subsection (b) of
this section to increase the performance and progress of the school system to a full approval status level. The revised plan shall be submitted to the state board for approval.

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose electronic county strategic improvement plan meets the following criteria:

(A) The plan has been revised in accordance with subsection (b) of this section;

(B) The plan has been approved by the state board; and

(C) The county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its electronic county strategic improvement plan or revised electronic county strategic improvement plan within a reasonable time period as defined by the state board or which fails to meet the objectives and time line of its revised electronic county strategic improvement plan or fails to achieve full approval by the date specified in the revised plan.

(A) The state board shall establish and adopt additional standards to identify school systems in which the program may be nonapproved and the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board.

(B) Whenever a county board has more than a casual deficit, as defined in section one, article one of this chapter, the county board shall submit a plan to the state board specifying the county board’s strategy for eliminating the casual deficit. The state board either shall approve or reject the plan. If the plan is
rejected, the state board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval for the plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having nonapproval status.

(C) Whenever nonapproval status is given to a school system, the state board shall declare a state of emergency in the school system and shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correcting the emergency. When the state board approves the recommendations, they shall be communicated to the county board. If progress in correcting the emergency, as determined by the state board, is not made within six months from the time the county board receives the recommendations, the state board shall intervene in the operation of the school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, the following:

(i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and any other areas designated by the state board by rule, which may include delegating decision-making authority regarding these matters to the state superintendent;

(ii) Declaring that the office of the county superintendent is vacant;
(iii) Declaring that the positions of personnel who serve at the will and pleasure of the county superintendent as provided in section one, article two, chapter eighteen-a of this code, are vacant, subject to application and reemployment;

(iv) Delegating to the state superintendent both the authority to conduct hearings on personnel matters and school closure or consolidation matters and, subsequently, to render the resulting decisions and the authority to appoint a designee for the limited purpose of conducting hearings while reserving to the state superintendent the authority to render the resulting decisions;

(v) Functioning in lieu of the county board of education in a transfer, sale, purchase or other transaction regarding real property; and

(vi) Taking any direct action necessary to correct the emergency including, but not limited to, the following:

(I) Delegating to the state superintendent the authority to replace administrators and principals in low performing schools and to transfer them into alternate professional positions within the county at his or her discretion; and

(II) Delegating to the state superintendent the authority to fill positions of administrators and principals with individuals determined by the state superintendent to be the most qualified for the positions. Any authority related to intervention in the operation of a county board granted under this paragraph is not subject to the provisions of article four, chapter eighteen-a of this code.

(n) Notwithstanding any other provision of this section, the state board may intervene immediately in the operation of the county school system with all the powers, duties and responsibilities contained in subsection (m) of this section, if the state board finds the following:
(1) That the conditions precedent to intervention exist as provided in this section; and that delaying intervention for any period of time would not be in the best interests of the students of the county school system; or

(2) That the conditions precedent to intervention exist as provided in this section and that the state board had previously intervened in the operation of the same school system and had concluded that intervention within the preceding five years.

(o) **Capacity.** — The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of electronic school and school system strategic improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system electronic strategic improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall take one or more of the following actions:

(1) Work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the Governor;

(2) Recommend to the appropriate body including, but not limited to, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and
accountability processes. When making determinations on recommendations, the state board shall include, but is not limited to, the following methods:

(A) Examining reports and electronic strategic improvement plans regarding the performance and progress of students, schools and school systems relative to the standards and identifying the areas in which improvement is needed;

(B) Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance and progress of students or the deficiencies of the school or school system and requiring the school or school system to work collaboratively with the West Virginia Department of Education State System of Support to correct the deficiencies;

(C) Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and progress and promoting their emulation throughout the system;

(D) Requesting technical assistance from the School Building Authority in assessing or designing comprehensive educational facilities plans;

(E) Recommending priority funding from the School Building Authority based on identified needs;

(F) Requesting special staff development programs from the Center for Professional Development, the Principals Academy, higher education, regional educational service agencies and county boards based on identified needs;

(G) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;
(H) Directing county boards to target their funds strategically toward alleviating deficiencies;

(I) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;

(J) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and

(K) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

(p) Building leadership capacity – To help build the governance and leadership capacity of a county board during an intervention in the operation of its school system by the state board, and to help assure sustained success following return of control to the county board, the state board shall require the county board to establish goals and action plans, subject to approval of the state board, to improve performance sufficiently to end the intervention within a period of not more than five years. The state superintendent shall maintain oversight and provide assistance and feedback to the county board on development and implementation of the goals and action plans. At a minimum, the goals and action plans shall include:

(A) An analysis of the training and development activities needed by the county board and leadership of the school system and schools for effective governance and school improvement;

(B) Support for the training and development activities identified which may include those made available through the state superintendent, regional education service agencies, Center for Professional Development, West Virginia School Board Association, Office of Education Performance Audits, West Virginia Education Information System and other sources
identified in the goals and action plans. Attendance at these activities included in the goals and action plans is mandatory as specified in the goals and action plans; and

(C) Active involvement by the county board in the improvement process, working in tandem with the county superintendent to gather, analyze and interpret data, write time-specific goals to correct deficiencies, prepare and implement action plans and allocate or request from the state board of education the resources, including board development training and coaching, necessary to achieve approved goals and action plans and sustain system and school improvement.

At least once each year during the period of intervention, the Office of Education Performance Audits shall assess the readiness of the county board to accept the return of control of the system or school from the state board and sustain the improvements, and shall make a report and recommendations to the state board supported by documented evidence of the progress made on the goals and action plans. The state board may end the intervention or return any portion of control of the operations of the school system or school that was previously removed at its sole determination. If the state board determines at the fifth annual assessment that the county board is still not ready to accept return of control by the state board and sustain the improvements, the state board shall hold a public hearing in the affected county at which the attendance by all members of the county board is requested so that the reasons for continued intervention and the concerns of the citizens of the county may be heard. The state board may continue the intervention only after it holds the public hearing and may require revision of the goals and action plans.

Following the termination of an intervention in the operation of a school system and return of full control by the state board, the support for governance education and development shall
continue as needed for up to three years. If at any time within
this three years, the state board determines that intervention in
the operation of the school system is again necessary, the state
board shall again hold a public hearing in the affected county so
that the reasons for the intervention and the concerns of the
citizens of the county may be heard.

CHAPTER 96
(Com. Sub. for H. B. 2755 - By Delegate(s) Boggs,
Hanshaw, D. Evans, Perry, Ashley, Pasdon, Pethtel,
Duke and Williams)

[Passed March 9, 2015; in effect from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §18-5-11a of the Code of West
Virginia, 1931, as amended, relating to service and professional
employee positions at jointly established schools.

Be it enacted by the Legislature of West Virginia:

That §18-5-11a of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-11a. Joint governing partnership board pilot initiative.

1 (a) The Legislature finds that many examples exist across
2 the state of students who reside in one county, but who attend the
3 public schools in an adjoining county.

4 (1) These arrangements have been accommodated by the
5 boards of the adjoining counties and applicable statutes to serve
best the interests of the students by enabling them to attend a
school closer to their homes.

(2) Typically, these arrangements have evolved because
school closures or construction of new schools in the student’s
county of residence have made a cross-county transfer to an
existing school in an adjoining county a more convenient,
practical and educationally sound option.

(b) The Legislature further finds that as population changes
continue to occur, the boards of adjoining counties may best
serve the interests of their students and families by establishing
a new school in partnership to be attended by students residing
in each of the counties. Particularly in the case of elementary
grade level schools established in partnership between adjoining
counties, the Legislature finds that each of the county boards, as
well as the parents of students from each of the counties
attending the school, have an interest in the operation of the
school and the preparation of the students for success as they
transition to the higher grade levels in the other schools of their
respective home counties. Therefore, in the absence of a well
defined governance structure that accommodates these interests,
the purpose of this section is to provide for a joint governing
partnership board pilot initiative.

(c) The pilot initiative is limited to the joint establishment by
two adjoining counties of a school including elementary grade
levels for which a memorandum of understanding on the
governance and operation of the school has been signed. The
pilot initiative is subject to amendment of the agreement as may
be necessary to incorporate at least the following features of a
joint governing partnership board:

(1) The joint governing partnership board is comprised of the
county superintendent of each county, the president of the county
board of each county or his or her designee, and a designee of
the state superintendent;
(2) The board shall elect a chair from among its membership for a two-year term and may meet monthly or at the call of the chair.

(A) Meetings of the board are subject to the open governmental proceedings laws applicable to county boards.

(B) The boards of the respective counties are responsible for the expenses of its members and shall apportion other operational expenses of the board upon mutual agreement.

(C) Once the jointly established school is opened, the meetings of the board shall be held at the school.

(3) All provisions of law applicable to the establishment, operation and management of an inter-county school including, but not limited to, section eleven, article five and section fourteen, article nine-a of this chapter and article eight-i, article four, chapter eighteen-a of this code apply, except that the joint governing partnership board may exercise governing authority for operation and management of the school in the following areas:

(A) Personnel.

(1) Notwithstanding any other laws for employment, evaluation, mentoring, professional development, suspension and dismissal of public school employees, the powers and duties of the county superintendent are vested in the joint governing partnership board with respect to the employees employed by the county in which the school is located or assigned to the school from the partner county. Pursuant to the provisions of section eight-i, article four, chapter eighteen-a of this code, employees who are hired by the county board of the receiving county shall accrue seniority in both the sending and receiving counties during the time in which they continue to be employed at the jointly established school. Upon losing a position at the jointly established school due to reduction in force or involuntary
transfer, an employee shall displace a less senior employee in the
county of employment which immediately preceded employment
at the jointly established school. Once an employee from the
sending county voluntarily transfers or resigns from a position
at the jointly established school and is no longer employed in the
receiving county, the employee’s seniority and any other
statutory rights in the receiving county cease.

(2) When initially filling service and professional employee
positions at the jointly established school, the counties shall
follow the procedures established in section eight-i, article four,
chapter eighteen-a of this code. For the initial school year of the
jointly established school’s opening only, the receiving county
may not fill any vacancies created by the retirement or voluntary
transfer of employees of the receiving county school from
February 1 of the school year immediately preceding the opening
of the school until January 1 following the opening of the jointly
established school until the receiving county has received the list
of employees created pursuant to the provisions of subsection
(c), section eight-i, article four, chapter eighteen-a of this code.
The receiving county may not fill any of the vacancies
referenced in this subsection until the vacancies have been
offered to qualified individuals from the certified list.

(3) The employees of the jointly established school are the
employees of the employing county board and the partnership
board may make recommendations concerning these
employment matters to the employing board it considers
necessary and appropriate.

(B) Curriculum.

(1) The joint governing partnership board is responsible for
the formulation and execution of the school’s strategic
improvement plan and technology plan to meet the goals for
student and school performance and progress.
In its formulation of these plans, the partnership board shall consider the curriculum and plans of the respective county boards to ensure preparation of the students at the school for their successful transition into the higher grade level schools of the respective counties;

(C) **Finances.** The joint governing partnership board shall control and may approve the expenditure of all funds allocated to the school for the school budget from either county and may solicit and receive donations, apply for and receive grants and conduct fund raisers to supplement the budget; and

(D) **Facilities.** Consistent with the policies in effect concerning liability insurance coverage, maintenance and appropriate uses of school facilities for the schools of the county in which the school is located, the joint governing partnership board governs the use of the school facility and ensures equitable opportunities for access and use by organizations and groups from both counties.

(d) The joint governing partnership board may adopt policies for the school that are separate from the policies of the respective counties and, working in concert with its local school improvement council, may propose alternatives to the operation of the school which require the request of a waiver of policy, interpretation or statute from either or both county boards, the state board or the Legislature as appropriate.

(e) The superintendents and presidents of county boards of adjoining counties that have in effect on the effective date of this section a memorandum of understanding on the governance and operation of a jointly established school shall report to the Legislative Oversight Commission on Education Accountability on or before November 1, 2013, on the status of implementation of this section.
(1) Once established, the joint governing partnership board established under this pilot initiative shall remain in effect for five consecutive school years unless authority for the pilot initiative is repealed.

(2) The Legislative Oversight Commission on Education Accountability may request the superintendents and the presidents of the county boards to provide periodic updates on this pilot initiative. Also, at the conclusion of the five-year pilot initiative, they shall report their recommendations on the viability of the joint governing partnership board approach and any recommended changes to the Legislative Oversight Commission on Education Accountability.

(A) When the five-year period is concluded, by affirmative vote of both boards, the joint governing partnership board shall remain in effect; or

(B) The agreement between the boards for the governance and operation of the school shall revert to the terms in effect on the effective date of this section, subject to amendment by agreement of the boards.

CHAPTER 97

(S. B. 238 - By Senators D. Hall, Nohe and Stollings)

[Passed February 25, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2015.]

AN ACT to amend and reenact §18-5-19 and §18-5-19d of the Code of West Virginia, 1931, as amended, all relating to limiting the liability of county boards of education for loss or injury from the use of school property made available for unorganized recreation.
Be it enacted by the Legislature of West Virginia:

That §18-5-19 and §18-5-19d of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-19. Night schools and other school extension activities; use of school property for public meetings, etc.

County boards may establish and maintain evening classes or night schools, continuation or part-time day schools, alternative schools and vocational schools, wherever practicable to do so, and shall admit adult persons and all other persons, including persons of foreign birth. County boards may admit school-age children and youth to these classes or schools under the circumstances prescribed by a State Board of Education policy governing alternative education programs. County boards may use school funds for the financial support of such schools and to use the schoolhouses and their equipment for these purposes. Any such classes of schools shall be conducted in accordance with the rules of the state board.

County boards may provide for the free, comfortable and convenient use of any school property to promote and facilitate frequent meetings and associations of the people for discussion, study, recreation and other community activities, and may secure, assemble and house material for use in the study of farm, home and community problems, and may provide facilities for the dissemination of information useful on the farm, in the home or in the community.

In addition to the liability protection for organized use outlined in section nineteen-d of this article, county boards are not liable for any loss or injury arising from the use of school property made available for unorganized recreation. County boards are liable for their acts or omissions which constitute
26 gross negligence or willful and wanton conduct which is the
27 proximate cause of injury or property damage.

§18-5-19d. Conditional immunity from liability for community
activities; liability insurance; authority of State
Board of Risk and Insurance Management.

1 (a)(1) If the requirements of this subsection are met, the
2 board of education is not liable under any theory of vicarious or
3 imputed liability for the acts or omissions of:

4 (A) Any person, organization or association using school
5 property for a community activity described in section nineteen
6 of this article;

7 (B) Any member, employee or agent of such person,
8 organization or association; or

9 (C) Any person attending or participating in the community
10 activity other than an employee of the board while acting within
11 the scope of employment.

12 (2) The limitation of liability extended the board of
13 education pursuant to this subsection does not apply unless:

14 (A) The person, organization or association using school
15 property for a community activity has in effect, at the time of the
16 act or omission described in subdivision (1) of this subsection,
17 a contract of insurance which provides general comprehensive
18 liability coverage of any claim, demand, action, suit or judgment
19 by reason of alleged negligence or other acts resulting in bodily
20 injury or property damage to any person arising out of the use of
21 school property for a community activity described in
22 subdivision (1) of this subsection;

23 (B) The contract of insurance provides for the payment of
24 any attorney fees, court costs and other litigation expenses
incurred by the board in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act; and

(C) The insurance coverage is in the amounts specified in the provisions of section five-a, article twelve, chapter twenty-nine of this code.

(3)(A) The insurance described in subdivision (2) of this subsection may be obtained privately or may be obtained pursuant to the provisions of this subdivision. If requested by any person, organization or association seeking such insurance coverage, the State Board of Risk and Insurance Management is authorized to provide such insurance and to enter into any necessary contract of insurance to further the intent of this subdivision.

(B) Where provided by the State Board of Risk and Insurance Management, the cost of the insurance, as determined by the such board, shall be paid by the person, organization or association and may include administrative expenses. All funds received by such board shall be deposited with the West Virginia Board of Investments for investment purposes.

(C) The State Board of Risk and Insurance Management is hereby authorized and empowered to negotiate and effect settlement of any and all claims covered by the insurance provided by such board pursuant to this subdivision to the extent the board is authorized and empowered to negotiate and effect settlement of claims described in section five, article twelve, chapter twenty-nine of this code.

(4) As used in this subsection, "organization" or "association" means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, eleemosynary, incorporated or unincorporated association or
organization or a rescue unit or other similar volunteer
community service organization or association, but does not
include any nonprofit association or organization, whether
incorporated or not, which is organized primarily for the
purposes of influencing legislation or advocating or opposing the
nomination, election or defeat of any candidate, or the passage
or defeat of any issue, thing or item to be voted upon.

(b) In addition to the liability protection for organized use
outlined in this section, county boards are not liable for any loss
or injury arising from the use of school property made available
for unorganized recreation. County boards are liable for their
acts or omissions which constitute gross negligence or willful
and wanton conduct which is the proximate cause of injury or
property damage.

(c) Nothing in this section shall affect the rights, duties,
defenses, immunities or causes of action under other statutes or
the common law of this state which may be applicable to boards
of education.

CHAPTER 98

(Com. Sub. for H. B. 2550 - By Delegate(s) Cowles, Miller,
Householder, Moffatt, McGeehan, Sponaugle, H. White,
Campbell, Skinner, Rowe and Perry)

[Passed March 12, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §18-8-4 of the Code of West Virginia,
1931, as amended, relating to truancy intervention; defining
excused and unexcused absences; providing that notice of a
student’s three unexcused absences be given to parent, guardian or
custodian; providing that a parent, guardian or custodian have a mandatory conference with the principal or other designated representative of the school when the student has five unexcused absences; and increasing number of unexcused absences by a student before a complaint must be made against the parent, guardian or custodian of the student.

Be it enacted by the Legislature of West Virginia:

That §18-8-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

(a) The county attendance director and the assistants shall diligently promote regular school attendance. The director and assistants shall:

(1) Ascertain reasons for unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age as defined under section one-a of this article;

(2) Take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents and guardians the importance of attendance and the seriousness of failing to do so; and

(3) For the purposes of this article, the following definitions shall apply:

(A) “Excused absence” shall be defined to include:

(i) Personal illness or injury of the student or in the family;
(ii) Medical or dental appointment with written excuse from physician or dentist;

(iii) Chronic medical condition or disability that impacts attendance;

(iv) Participation in home or hospital instruction due to an illness or injury or other extraordinary circumstance that warrants home or hospital confinement;

(v) Calamity, such as a fire or flood;

(vi) Death in the family;

(vii) School-approved or county-approved curricular or extra-curricular activities;

(viii) Judicial obligation or court appearance involving the student;

(ix) Military requirement for students enlisted or enlisting in the military;

(x) Personal or academic circumstances approved by the principal; and

(xi) Such other situations as may be further determined by the county board: Provided, That absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith.

(B) “Unexcused absence” shall be any absence not specifically included in the definition of “excused absence”.

(b) In the case of three total unexcused absences of a student during a school year, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of the
student that the attendance of the student at school is required
and that if the student has five unexcused absences, a conference
with the principal or other designated representative will be
required.

(c) In the case of five total unexcused absences, the
attendance director or assistant shall serve written notice to the
parent, guardian or custodian of the student that within five days
of receipt of the notice the parent, guardian or custodian,
accompanyied by the student, shall report in person to the school
the student attends for a conference with the principal or other
designated representative of the school in order to discuss and
correct the circumstances causing the unexcused absences of the
student, including the adjustment of unexcused absences based
upon such meeting.

(d) In the case of ten total unexcused absences of a student
during a school year, the attendance director or assistant shall
make complaint against the parent, guardian or custodian before
a magistrate of the county. If it appears from the complaint that
there is probable cause to believe that an offense has been
committed and that the accused has committed it, a summons or
a warrant for the arrest of the accused shall issue to any officer
authorized by law to serve the summons or to arrest persons
charged with offenses against the state. More than one parent,
guardian or custodian may be charged in a complaint. Initial
service of a summons or warrant issued pursuant to the
provisions of this section shall be attempted within ten calendar
days of receipt of the summons or warrant and subsequent
attempts at service shall continue until the summons or warrant
is executed or until the end of the school term during which the
complaint is made, whichever is later.

(e) The magistrate court clerk, or the clerk of the circuit
court performing the duties of the magistrate court as authorized
in section eight, article one, chapter fifty of this code, shall
assign the case to a magistrate within ten days of execution of
the summons or warrant. The hearing shall be held within twenty
days of the assignment to the magistrate, subject to lawful
continuance. The magistrate shall provide to the accused at least
ten days’ advance notice of the date, time and place of the
hearing.

(f) When any doubt exists as to the age of a student absent
from school, the attendance director and assistants have authority
to require a properly attested birth certificate or an affidavit from
the parent, guardian or custodian of the student, stating age of
the student. In the performance of his or her duties, the county
attendance director and assistants have authority to take without
warrant any student absent from school in violation of the
provisions of this article and to place the student in the school in
which he or she is or should be enrolled.

(g) The county attendance director and assistants shall
devote such time as is required by section three of this article to
the duties of attendance director in accordance with this section
during the instructional term and at such other times as the duties
of an attendance director are required. All attendance directors
and assistants hired for more than two hundred days may be
assigned other duties determined by the superintendent during
the period in excess of two hundred days. The county attendance
director is responsible under direction of the county
superintendent for efficiently administering school attendance in
the county.

(h) In addition to those duties directly relating to the
administration of attendance, the county attendance director and
assistant directors also shall perform the following duties:

(1) Assist in directing the taking of the school census to see
that it is taken at the time and in the manner provided by law;
(2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

(3) Cooperate with existing state and federal agencies charged with enforcing child labor laws;

(4) Prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter twenty-nine-a of this code that sets forth student absences that are excluded for accountability purposes. The absences that are excluded by the rule include, but are not limited to, excused student absences, students not in attendance due to disciplinary measures and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and county board at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(5) Promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(6) Participate in school teachers’ conferences with parents and students;

(7) Assist in such other ways as the county superintendent may direct for improving school attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal or assistant principal; and

(9) Serve as the liaison for homeless children and youth.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-8-12, relating to allowing administrator of secondary education program at public, private or home school to issue diploma or other appropriate credential; establishing legal sufficiency of diploma or credential; prohibiting discrimination by state agency or institution of higher learning; and reserving to state agency and institution of higher learning authority to inquire about program content for certain purposes.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-8-12, to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-12. Issuance of a diploma or other appropriate credential by public, private or home school administrator.

A person who administers a program of secondary education at a public, private or home school that meets the requirements of this chapter may issue a diploma or other appropriate credential to a person who has completed the program of secondary education. Such diploma or credential is legally sufficient to demonstrate that the person meets the definition of having a high school diploma or its equivalent. No state agency or institution of higher learning in this state may reject or
otherwise treat a person differently solely on the grounds of the source of such a diploma or credential. Nothing in this section prevents any agency or institution of higher learning from inquiring into the substance or content of the program to assess the content thereof for the purposes of determining whether a person meets other specific requirements.

CHAPTER 100

(Com. Sub. for H. B. 2478 - By Mr. Speaker, (Mr. Armstead) and Delegate Miley)
[By Request of the Executive]

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

AN ACT to amend and reenact §18-9A-7 of the Code of West Virginia, 1931, as amended, relating to the foundation allowance for public education transportation cost; including propane as an eligible fuel for the ten percent additional percentage allowance for school bus systems using alternative fuels; and fixing the amount to be used for the replacement of buses for the school years beginning July 1, 2015, and July 1, 2016.

Be in enacted by the Legislature of West Virginia:

That §18-9A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


(a) The allowance in the foundation school program for each county for transportation shall be the sum of the following computations:
(1) A percentage of the transportation costs incurred by the county for maintenance, operation and related costs exclusive of all salaries, including the costs incurred for contracted transportation services and public utility transportation, as follows:

(A) For each high-density county, eighty-seven and one-half percent;

(B) For each medium-density county, ninety percent;

(C) For each low-density county, ninety-two and one-half percent;

(D) For each sparse-density county, ninety-five percent;

(E) For any county for the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent; and

(F) For any county for that portion of its school bus system that uses as an alternative fuel compressed natural gas or propane, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent: Provided, That for any county receiving an additional ten percent for that portion of their bus system using bio-diesel as an alternative fuel during the school year 2012-2013, bio-diesel shall continue to qualify as an alternative fuel under this paragraph to the extent that the additional percentage applicable to that portion of the bus system using bio-diesel shall be decreased by two and one-half percent per year for four consecutive school years beginning in school year 2014-2015: Provided, however, That any county using an alternative fuel and qualifying for the additional allowance under this subdivision shall submit a plan regarding the intended future use of alternatively fueled school buses;
(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation;

(3) An amount equal to eight and one-third percent of the current replacement value of the bus fleet within each county as determined by the state board: Provided, That the amount for the school year beginning July 1, 2015, will be $15,000,000 and the amount for the school year beginning July 1, 2016, will be $18,000,000. The amount shall only be used for the replacement of buses. Buses purchased after July 1, 1999 that are driven one hundred eighty thousand miles, regardless of year model, will be subject to the replacement value of eight and one-third percent as determined by the state board. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus or buses. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district’s net enrollment history and transportation needs: Provided, That the superintendent shall not consider any application which fails to document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year; and

(4) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county.

(b) The total state share for this purpose is the sum of the county shares: Provided, That no county shall receive an allowance which is greater than one-third above the computed state average allowance per transportation mile multiplied by the
total transportation mileage in the county exclusive of the allowance for the purchase of additional buses.

c (c) One half of one percent of the transportation allowance distributed to each county shall be for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. Any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. The state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

CHAPTER 101

(H. B. 2598 - By Delegate(s) Campbell, Perry, Cowles, Ambler, Cooper, Reynolds, Rowan, Moye, Pasdon and Marcum)

[Passed March 14, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §18-20-2 of the Code of West Virginia, 1931, as amended, relating to school accommodations for exceptional children; and requiring that teachers receive instruction relating to the school’s plan of accommodations for students with disabilities.

Be it enacted by the Legislature of West Virginia:

That §18-20-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
§18-20-2. Providing suitable educational facilities, equipment and services.

(a) Each county board shall provide suitable educational facilities, special equipment and special services that are necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type, diagnosis by appropriate specialists who will certify the child’s need and eligibility for special education and make recommendations for treatment and prosthesis as may alleviate the disability, special teaching by qualified and specially trained teachers, transportation, lunches and remedial therapeutic services. Qualifications of teachers and therapists shall be in accordance with standards prescribed or approved by the state board.

(b) A county board may provide for educating resident exceptional children by contracting with other counties or other educational agencies which maintain special education facilities. Fiscal matters shall follow policies approved by the state board.

(c) The county board shall provide a four-clock-hour program of training for any teacher aide employed to assist teachers in providing services to exceptional children under this article prior to the assignment. The program shall consist of training in areas specifically related to the education of exceptional children, pursuant to rules of the state board. The training shall occur during normal working hours and an opportunity to be trained shall be provided to a service person prior to filling a vacancy in accordance with the provisions of section eight-b, article four, chapter eighteen-a of this code.

(d) The county board annually shall make available during normal working hours to all regularly employed teachers’ aides
twelve hours of training that satisfies the continuing education
requirements for the aides regarding:

(1) Providing services to children who have displayed
violent behavior or have demonstrated the potential for violent
behavior; and

(2) Providing services to children diagnosed as autistic or
with autism spectrum disorder. This training shall be structured
to permit the employee to qualify as an autism mentor after a
minimum of four years of training. The county board shall:

(A) Notify in writing all teachers’ aides of the location, date
and time when training will be offered for qualification as an
autism mentor; and

(B) Reimburse any regularly employed or substitute
teacher’s aide who elects to attend this training for one half of
the cost of the tuition.

(e) For any student whose individualized education plan
(IEP) or education plan established pursuant to Section 504 of
the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794,
requires the services of a sign support specialist or an
educational sign language interpreter I or II:

(1) Any educational sign language interpreter I or II assigned
to assist that student is a related service provider member of the
education team who participates in IEP meetings and works with
the team to implement the IEP;

(2) A sign support specialist may be assigned to a student
with an exceptionality other than deaf or hard of hearing if it is
determined that the student needs signs to support his or her
expressive communication; and

(3) A sign support specialist may be assigned to a student
who is deaf or hard of hearing in lieu of an interpreter only if an
59 educational sign language interpreter I or II is unavailable, and
60 the sign support specialist is executing a professional
development plan while actively seeking certification as an
61 educational sign language interpreter I or II. After two years the
62 sign support specialist may remain in the assignment only if an
63 educational sign language interpreter I or II remains unavailable,
64 and with an approved waiver by the West Virginia Department
65 of Education. An employee in this situation is entitled to full
66 payment of the costs of certification acquisition or renewal
67 pursuant to the certification renewal provisions of section four,
68 article two, chapter eighteen-a of this code.

70 (f) Every teacher of a student for whom a school or county
71 board of education prepares a plan of accommodation pursuant
72 to Section 504 of the Rehabilitation Act of 1973, as amended, 29
73 U.S.C. §794, shall receive specific instruction from the school
74 regarding the contents and requirements of the plan and, if the
75 plan is prepared in writing, the teacher shall receive a copy of the
76 written plan and every update thereto and the teacher shall sign
77 an acknowledgment of receipt of each plan and update.

CHAPTER 102

(Com. Sub. for H. B. 2381 - By Delegate(s) Ambler,
Cooper, D. Evans, Perry, Duke, Rohrbach, Espinosa,
Upson, Rowan and Romine)

[Passed March 11, 2015; in effect July 1, 2015.]
[Approved by the Governor on March 26, 2015.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §18A-4-2c, relating to
providing a teacher mentoring increment for classroom teachers
with national board certification who teach and mentor at persistently low performing schools; defining persistently low performing schools; defining mentoring; specifying method of payment; and specifying eligibility.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18A-4-2c, read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2c. Teacher mentoring increment for classroom teachers with national board certification who teach and mentor at persistently low performing schools.

1 (a) An additional $2,000 shall be paid annually to each classroom teacher who:

3 (1) Holds a valid certificate issued by the National Board for Professional Teaching Standards;

5 (2) Is employed to teach at a school designated as a persistently low performing school by the West Virginia Department of Education; and

8 (3) Is also assigned as part of their regular employment, to serve in a mentoring capacity for other teachers at the school.

10 (b) The additional payment:

11 (1) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule;

13 (2) Shall be paid in equal monthly installments; and

14 (3) Shall be considered a part of the state minimum salaries for teachers.
(c) For the purposes of this section:

(1) “Persistently low performing school” means a school identified by the department as being among the lowest twenty percent of schools in the state in three-year aggregate mathematics and reading/language arts scores on the statewide summative assessment; and

(2) “Mentoring” means working under the direction of the principal to improve the professional practice knowledge and skills of other teachers employed at the school through on-site embedded professional development and other appropriate school building level approaches. Mentoring includes, but is not limited to, an assigned role in the comprehensive system for teacher induction and professional growth pursuant to section three, article three-c of this chapter, and may include working with other teachers to improve instruction at the school.

(d) A national board certified teacher who becomes eligible for an additional payment under this section remains eligible for five consecutive years of employment at the same school in the same assignment regardless of a subsequent change in the designation of the school as a persistently low performing school. The teacher may become eligible again at the same school if it continues to be persistently low performing or at a different persistently low performing school, but not sooner than five years from the beginning of a previous eligibility.

(e) Nothing in this section permits continued eligibility if the certificate issued by the National Board for Professional Teaching Standards is no longer valid.

(f) Notwithstanding any other provision of this chapter to the contrary, a county may use other funds, including federal and local funds, available to them to increase or provide other incentives for highly qualified teachers to teach at persistently low performing schools.
AN ACT to amend and reenact §3-1-16 and §3-1-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4A-11a of said code; to amend and reenact §3-5-4 of said code; to amend said code by adding thereto four new sections, designated §3-5-6a, §3-5-6b, §3-5-6c and §3-5-6d; to amend and reenact §3-5-7, §3-5-13 and §3-5-13a of said code; to amend and reenact §3-10-3 of said code; to amend and reenact §3-12-3, §3-12-6, §3-12-10, §3-12-11, §3-12-12 and §3-12-14 of said code; to amend and reenact §6-5-1 of said code; to amend and reenact §50-1-1 and §50-1-6 of said code; to amend and reenact §51-1-1 of said code; and to amend and reenact §51-2A-5 of said code, all relating to electoral reforms of the West Virginia judiciary generally; requiring the election of justices of the Supreme Court of Appeals, circuit court judges, family court judges and magistrates be on a nonpartisan basis; requiring that elections to certain offices be on a division basis when more than one justice of the Supreme Court of Appeals, circuit judge, family court judge or magistrate is to be elected; providing for the timing and frequency of election; providing for the commencement of terms of office; establishing ballot design and printing; providing that elections for justice of the Supreme Court of Appeals, circuit judge, family court judge or magistrate are to be held on the same date as the primary election; requiring nonpartisan ballots be used; establishing filing announcement of candidacies, including the timing, location and information
necessary thereto; providing for the order of appearance of offices on the ballot; establishing ballot content; providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate; providing occasions for special elections to be held to fill vacancies; providing that unsuccessful nonpartisan candidates can be selected to fill ballot vacancies in a general election; providing for the continuing applicability of the West Virginia Supreme Court of Appeals Public Campaign Financing Program; modifying the amount of public campaign financing available to qualifying candidates in a contested election; and removing public campaign financing from qualifying candidates in an uncontested election.

Be it enacted by the Legislature of West Virginia:

That §3-1-16 and §3-1-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4A-11a of said code be amended and reenacted; that §3-5-4 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §3-5-6a, §3-5-6b, §3-5-6c and §3-5-6d; that §3-5-7, §3-5-13 and §3-5-13a of said code be amended and reenacted; that §3-10-3 of said code be amended and reenacted; that §3-12-3, §3-12-6, §3-12-10, §3-12-11, §3-12-12 and §3-12-14 of said code be amended and reenacted; that §6-5-1 of said code be amended and reenacted; that §50-1-1 and §50-1-6 of said code be amended and reenacted; that §51-1-1 of said code be amended and reenacted; and that §51-2A-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-16. Election of state officers.

(a) At the general election to be held in 1968, and every fourth year thereafter, there shall be elected a Governor, Secretary of State, Treasurer, Auditor, Attorney General and
Commissioner of Agriculture. At the general election in 1968, and every second year thereafter, there shall be elected a member of the State Senate for each senatorial district, and a member or members of the House of Delegates of the state from each county or each delegate district.

(b) At the time of the primary election to be held in the year 2016, and every twelfth year thereafter, there shall be elected one justice of the Supreme Court of Appeals, and at the time of the primary election to be held in 2020, and every twelfth year thereafter, two justices of the Supreme Court of Appeals and at the time of the primary election to be held in 2024, and every twelfth year thereafter, two justices of the Supreme Court of Appeals. Effective with the primary election held in the year 2016, the election of justices of the Supreme Court of Appeals shall be on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

§3-1-17. Election of circuit judges; county and district officers; magistrates.

(a) There shall be elected, at the time of the primary election to be held in 2016, and every eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to one judge, and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to two or more circuit judges; and at the time of the primary election to be held in 2016, and in every fourth year thereafter, the number of magistrates prescribed by law for the county. Beginning with the election held in the year 2016, an election for the purpose of electing judges of the circuit court, or an election for the purpose of electing magistrates, shall be upon a nonpartisan ballot printed for the purpose.

(b) There shall be elected, at the general election to be held in 1992, and every fourth year thereafter, a sheriff, prosecuting attorney, surveyor of lands, and the number of assessors
prescribed by law for the county; and at the general election to be held in 1990, and every second year thereafter, a commissioner of the county commission for each county; and at the general election to be held in 1992, and every sixth year thereafter, a clerk of the county commission and a clerk of the circuit court for each county.

(c) Effective with the primary election of 2016, all elections for judge of the circuit courts in the respective circuits and magistrates in each county will be elected on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

*§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to sections thirteen and thirteen-a, article five of this chapter.

(2) For the general election, the heading of the ballot, the straight ticket positions, the instructions to straight ticket voters, the type faces, the names and arrangement of offices and the

*NOTE: This section was also amended by S. B. 249 (Chapter 104), which passed subsequent to this act.*
printing of names and the arrangement of candidates within each office are to conform as nearly as possible to section two, article six of this chapter, except as otherwise provided in this article.

(3) Effective with the primary election held in 2016, and thereafter, the following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the circuit court;

(iii) Family court judge; and

(iv) Magistrate;

(B) Nonpartisan elections for Board of Education; and

(C) Any question to be voted upon;

(4) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(5) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided
below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words “WRITE-IN, IF ANY” are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in section thirteen, article five of this chapter, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-4. Nomination of candidates in primary elections.

(a) At each primary election, the candidate or candidates of each political party for all offices to be filled at the ensuing
general election by the voters of the entire state, of each congressional district, of each state senatorial district, of each delegate district, and of each county in the state shall be nominated by the voters of the different political parties, except that no presidential elector shall be nominated at a primary election.

(b) In primary elections a plurality of the votes cast shall be sufficient for the nomination of candidates for office. Where only one candidate of a political party for any office in a political division, including party committeemen and delegates to national conventions, is to be chosen the candidate receiving the highest number of votes therefor in the primary election shall be declared the party nominee for such office. Where two or more such candidates are to be chosen in the primary election, the candidates constituting the proper number to be so chosen who shall receive the highest number of votes cast in the political division in which they are candidates shall be declared the party nominees and choices for such offices, except that:

(1) Candidates for the office of commissioner of the county commission shall be nominated and elected in accordance with the provisions of section ten, article nine of the Constitution of the State of West Virginia and the requirements of section one-b, article one, chapter seven of this code;

(2) Members of county boards of education shall be elected at primary elections in accordance with the provisions of sections five and six of this article;

(3) Candidates for the House of Delegates shall be nominated and elected in accordance with the residence restrictions provided in section two, article two, chapter one of this code.

(c) In case of tie votes between candidates for party nominations or elections in primary elections, the choice of the
political party shall be determined by the executive committee
of the party for the political division in which such persons are
candidates.

§3-5-6a. Election of justices of the Supreme Court of Appeals.

(a) An election for the purpose of electing a justice or
justices of the Supreme Court of Appeals shall be held on the
same date as the primary election, as provided by law, upon a
nonpartisan ballot by division printed for this purpose. For
election purposes, in each election at which shall be elected more
than one justice of the Supreme Court of Appeals, the election
shall be by numbered division corresponding to the number of
justices being elected. Each justice shall be elected at large from
the entire state.

(b) In each nonpartisan election by division for a justice of
the Supreme Court of Appeals, the candidates for election in
each numbered division shall be tallied separately, and the board
of canvassers shall declare and certify the election of the eligible
candidate receiving the highest numbers of votes cast within a
numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve,
article six of this chapter controls in breaking the tie vote.

§3-5-6b. Election of circuit judges.

(a) An election for the purpose of electing a circuit court
judge or judges shall be held on the same date as the primary
election in their respective circuits, as provided by law, upon a
nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a circuit
court judge, the candidates for election in each numbered
division shall be tallied separately, and the board of canvassers
shall declare and certify the election of the eligible candidate
§3-5-6c. Election of family court judges.

(a) An election for the purpose of electing a family court judge or judges shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a family court judge, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

§3-5-6d. Election of magistrates.

(a) An election for the purpose of electing a magistrate or magistrates by division shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a magistrate, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.
(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.

(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.

(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 section thirteen, article five of this chapter;

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
section three, article nine of this chapter.

(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 section eleven, article five of this chapter, 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.

§3-5-13. Form and contents of ballots.

The following provisions apply to the form and contents of
election ballots:

(1) The face of every primary election ballot shall conform
as nearly as practicable to that used at the general election.

(2) The heading of every ballot is to be printed in display
type. The heading is to contain a ballot title, the name of the
county, the state, the words “Primary Election” and the month,
day and year of the election. The ballot title of the political party
ballots is to contain the words “Official Ballot of the (Name) Party” and the official symbol of the political party may be included in the heading.

(A) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judicial officer shall commence with the words “Nonpartisan Ballot of Election of Judicial Officers” and each such office shall be listed in the following order:

(i) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all justices of the Supreme Court of Appeals shall contain the words “Nonpartisan Ballot of Election of Justice(s) of the Supreme Court of Appeals of West Virginia”. The names of the candidates for the Supreme Court of Appeals shall be printed by division without references to political party affiliation or registration.

(ii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all circuit court judges in the respective circuits shall contain the words “Nonpartisan Ballot of Election of Circuit Court Judge(s)”. The names of the candidates for the respective circuit court judge office shall be printed by division without references to political party affiliation or registration.

(iii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all family court judges in the respective circuits shall contain the words “Nonpartisan Ballot of Election of Family Court Judge(s)”. The names of the candidates for the respective family court judge office shall be printed by division without references to political party affiliation or registration.

(iv) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all magistrates in the
The names of the candidates for
the respective magistrate office shall be printed by division
without references to political party affiliation or registration.

(B) The ballot title of any separate paper ballot or portion of
any electronic or voting machine ballot for the Board of
Education is to contain the words “Nonpartisan Ballot of
Election of Members of the ____________ County Board of
Education”. The districts for which less than two candidates may
be elected and the number of available seats are to be specified
and the names of the candidates are to be printed without
reference to political party affiliation and without designation as
to a particular term of office.

(C) Any other ballot or portion of a ballot on a question is to
have a heading which clearly states the purpose of the election
according to the statutory requirements for that question.

(3) (A) For paper ballots, the heading of the ballot is to be
separated from the rest of the ballot by heavy lines and the
offices shall be arranged in columns with the following
headings, from left to right across the ballot: “National Ticket”,
“State Ticket”, “County Ticket” and, in a presidential election
year, “National Convention” or, in a nonpresidential election
year, “District Ticket”. The columns are to be separated by
heavy lines. Within the columns, the offices are to be arranged
in the order prescribed in section thirteen-a of this article.

(B) For voting machines, electronic voting devices and any
ballot tabulated by electronic means, the offices are to appear in
the same sequence as prescribed in section thirteen-a of this
article and under the same headings as prescribed in paragraph
(A) of this subdivision. The number of pages, columns or rows,
where applicable, may be modified to meet the limitations of
ballot size and composition requirements subject to approval by
the Secretary of State.
(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words “Vote for ________” with the number to be nominated or elected or “Vote For Not More Than ________” in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the Secretary of State, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words “Vote for One” printed below the name of the office: Provided, That the office title and applicable instructions may span the width of the ballot so as it is centered among the respective columns.

(D) The location for indicating the voter’s choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(4) (A) The name of every candidate certified by the Secretary of State or the board of ballot commissioners is to be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the name of each
candidate is to appear in the form set out by the candidate on the
certificate of announcement, but in no case may the name
misrepresent the identity of the candidate nor may the name
include any title, position, rank, degree or nickname implying or
inferring any status as a member of a class or group or affiliation
with any system of belief.

(B) The city of residence of every candidate, the state of
residence of every candidate residing outside the state, the
county of residence of every candidate for an office on the ballot
in more than one county and the magisterial district of residence
of every candidate for an office subject to magisterial district
limitations are to be printed in lower case letters beneath the
names of the candidates.

(C) The arrangement of names within each office must be
determined as prescribed in section thirteen-a of this article.

(D) If the number of candidates for an office exceeds the
space available on a column or ballot page and requires that
candidates for a single office be separated, to the extent possible,
the number of candidates for the office on separate columns or
pages are to be nearly equal and clear instructions given the
voter that the candidates for the office are continued on the
following column or page.

(5) When an insufficient number of candidates has filed for
a party to make the number of nominations allowed for the office
or for the voters to elect sufficient members to the Board of
Education or to executive committees, the vacant positions on
the ballot shall be filled with the words “No Candidate Filed”:
Provided, That in paper ballot systems which allow for write-ins
to be made directly on the ballot, a blank line shall be placed in
any vacant position in the office of Board of Education or for
election to any party executive committee. A line shall separate
each candidate from every other candidate for the same office.
Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words “No Candidate Filed” may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(6) In presidential election years, the words “For election in accordance with the plan adopted by the party and filed with the Secretary of State” is to be printed following the names of all candidates for delegate to national convention.

(7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back: Provided, That no paper ballot voted pursuant to the provisions of 42 U. S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

(8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(9) On the back of every official ballot or ballot card the words “Official Ballot” with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words “Poll Clerks”.
(10) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word “sample” is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word “sample” may be printed in red ink. No printing may be placed on the back of the sample.

§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

(a) The order of offices for state and county elections on all ballots within the state shall be as prescribed herein. When the office does not appear on the ballot in an election, then it shall be omitted from the sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

NATIONAL TICKET: President (and Vice President in the general election), United States Senator, member of the United States House of Representatives.

STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, State Senator, member of the House of Delegates, any other multicounty office, state executive committee.

COUNTY TICKET: Clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, surveyor, congressional district executive committee, senatorial district executive committee in multicounty districts, delegate district executive committee in multicounty districts.

NATIONAL CONVENTION: Delegate to the national convention — at-large, delegate to the national convention — congressional district.
DISTRICT TICKET: County executive committee.

(b) Except for office divisions in which no more than one person has filed a certificate of announcement, the arrangement of names for all offices shall be determined by lot according to the following provisions:

(1) On the fourth Tuesday following the close of the candidate filing, beginning at nine o’clock a.m., a drawing by lot shall be conducted in the office of the clerk of the county commission in each county. Notice of the drawing shall be given on the form for the certificate of announcement and no further notice shall be required. The clerk of the county commission shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the Secretary of State.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: Provided, That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

(3) Candidates for delegate to national convention who have filed a commitment to a candidate for president shall be listed alphabetically within the group of candidates committed to the same candidate for president and uncommitted candidates shall be listed alphabetically in an uncommitted category. The position of each group of committed candidates and uncommitted candidates shall be determined by lot by drawing the names of the presidential candidates and for an uncommitted category.

(4) A candidate or the candidate’s representative may attend the drawings.
ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, United States Senators and judges.

(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 section one of this article.

(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 subsequent election to fill the remainder of the term, as required by subsection (d) of this section. If an election is required under subsection (d) of this section, the Governor, circuit court or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by section one of this article.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of section six, article one, chapter fifty of this code, and subsequent election to fill the remainder of the term, as required by subsection (d) of this section.

(d) (1) When the vacancy in Justice of the Supreme Court of Appeals, judge of the circuit court, judge of a family court or magistrate occurs after the eighty-fourth day before a general election, and the affected term of office ends on the thirty-first day of December following the next election, 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, 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 eighty-four days before the general election, 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 subsection (d) of this section, 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 seventy-seven days before the general election.

ARTICLE 12. WEST VIRGINIA SUPREME COURT OF APPEALS PUBLIC CAMPAIGN FINANCING PILOT PROGRAM.

§3-12-3. Definitions.

As used in this article, the following terms and phrases have the following meanings:

(1) “Candidate’s committee” means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall
be considered one committee for the purpose of contribution limits.

(2) “Certified candidate” means an individual seeking election to the West Virginia Supreme Court of Appeals who has been certified in accordance with section ten of this article as having met all of the requirements for receiving public campaign financing from the fund.

(3) “Contribution” means a gift subscription, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: Provided, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

(4) “Exploratory contribution” means a contribution of no more than $1,000 made by an individual adult, including a participating candidate and members of his or her immediate family, during the exploratory period but prior to filing the declaration of intent. Exploratory contributions may not exceed $20,000 in the aggregate.

(5) “Exploratory period” means the period during which a participating candidate may raise and spend exploratory contributions to examine his or her chances of election and to qualify for public campaign financing under this article. The exploratory period begins on January 1 the year before the election in which the candidate may run for Justice of the Supreme Court of Appeals and ends on the last Saturday in January of the election year.
(6) “Financial agent” means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(7) “Fund” means the Supreme Court of Appeals Public Campaign Financing Fund created by section five of this article.

(8) “Immediate family” or “immediate family members” means the spouse, parents, step-parents, siblings and children of the participating candidate.

(9) “Nonparticipating candidate” means a candidate who is:

(A) Seeking election to the Supreme Court of Appeals;

(B) Is neither certified nor attempting to be certified to receive public campaign financing from the fund; and

(C) Has an opponent who is a participating or certified candidate.

(10) “Nonpartisan judicial election campaign period” means the period beginning on the first day of the primary election filing period, as determined under section seven, article five of this chapter, and ending on the day of the nonpartisan judicial election.

(11) “Participating candidate” means a candidate who is seeking election to the Supreme Court of Appeals and is attempting to be certified in accordance with section ten of this article to receive public campaign financing from the fund.

(12) “Person” means an individual, partnership, committee, association and any other organization or group of individuals.
(13) “Qualifying contribution” means a contribution received from a West Virginia registered voter of not less than $1 nor more than $100 in the form of cash, check or money order, made payable to a participating candidate or the candidate’s committee, or in the form of an electronic payment or debit or credit card payment, received during the qualifying period.

(14) “Qualifying period” means the period during which participating candidates may raise and spend qualifying contributions in order to qualify to receive public campaign financing.

For candidates seeking to be placed on the nonpartisan judicial election ballot, the qualifying period begins on September 1 preceding the election year and ends on the last Saturday in January of the election year.

§3-12-6. Sources of revenue for the fund.

Revenue from the following sources shall be deposited in the fund:

(1) All exploratory and qualifying contributions in excess of the established maximums;

(2) Money returned by participating or certified candidates who fail to comply with this article;

(3) Unspent or unobligated moneys allotted to certified candidates and remaining unspent or unobligated on the date of the nonpartisan judicial election for which the money was distributed;

(4) If a certified candidate loses, all remaining unspent or unobligated moneys;
Civil penalties levied by the State Election Commission against candidates for violations of this article;

Civil penalties levied by the Secretary of State pursuant to section seven, article eight of this chapter;

Voluntary donations made directly to the fund;

Any interest income or other return earned on the money’s investment;

(9) On or before July 1, 2010, and for two successive years thereafter, the State Auditor shall authorize the transfer of the amount of $1 million from the Purchasing Card Administration Fund established in section ten-d, article three, chapter twelve of this code to the fund created by this article;

(10) On or before July 1, 2015, the state Auditor shall authorize the transfer of the amount of $400,000 from the Purchasing Card Administration Fund established in section ten-d, article three, chapter twelve of this code to the fund created by this article; and

Money appropriated to the fund.

§3-12-10. Certification of candidates.

(a) To be certified, a participating candidate shall apply to the State Election Commission for public campaign financing from the fund and file a sworn statement that he or she has complied and will comply with all requirements of this article throughout the applicable campaign.

(b) Upon receipt of a notice from the Secretary of State that a participating candidate has received the required number and amount of qualifying contributions, the State Election Commission shall determine whether the candidate or candidate’s committee:
(1) Has signed and filed a declaration of intent as required by section seven of this article;

(2) Has obtained the required number and amount of qualifying contributions as required by section nine of this article;

(3) Has complied with the contribution restrictions of this article;

(4) Is eligible, as provided in section nine, article five of this chapter, to appear on the nonpartisan judicial election ballot; and

(5) Has met all other requirements of this article.

(c) The State Election Commission shall process applications in the order they are received and shall verify a participating candidate’s compliance with the requirements of subsection (b) of this section by using the verification and sampling techniques approved by the State Election Commission.

(d) The State Election Commission shall determine whether to certify a participating candidate as eligible to receive public campaign financing no later than three business days after the candidate or the candidate’s committee makes his or her final report of qualifying contributions or, if a challenge is filed under subsection (g) of this section, no later than six business days after the candidate or the candidate’s committee makes his or her final report of qualifying contributions. A certified candidate shall comply with this article through the nonpartisan judicial election campaign period.

(e) No later than two business days after the State Election Commission certifies that a participating candidate is eligible to receive public campaign financing under this section, the State Election Commission, acting in concert with the State Auditor’s
office and the State Treasurer’s office, shall cause a check to be issued to the candidate’s campaign depository account an amount equal to the public campaign financing benefit for which the candidate qualifies under section eleven of this article, minus the candidate’s qualifying contributions, and shall notify all other candidates for the same office of its determination.

(f) If the candidate desires to receive public financing benefits by electronic transfer, the candidate shall include in his or her application sufficient information and authorization for the State Treasurer to transfer payments to his or her campaign depository account.

(g) Any person may challenge the validity of any contribution listed by a participating candidate by filing a written challenge with the State Election Commission setting forth any reason why the contribution should not be accepted as a qualifying contribution. If a contribution is challenged under this subsection, the State Election Commission shall decide the validity of the challenge no later than the end of the next business day after the day that the challenge is filed, unless the State Election Commission determines that the candidate whose contribution is challenged has both a sufficient qualifying number and amount of qualifying contributions to be certified as a candidate under this section without considering the challenge. Within five business days of a challenge, the candidate or candidate’s committee who listed any contribution that is the subject of a challenge may file a report with the State Election Commission of an additional contribution collected pursuant to section nine of this article for consideration as a qualifying contribution.

(h) A candidate’s certification and receipt of public campaign financing may be revoked by the State Election Commission, if the candidate violates this article. A certified candidate who violates this article shall repay all moneys received from the fund to the State Election Commission.
(i) The determination of any issue before the State Election Commission is the final administrative determination. Any meetings conducted by the State Elections Commission to certify a candidate’s eligibility to receive funds under this article shall not be subject the public notice and open meeting requirements of article nine-a, chapter six of this code, but the commission shall concurrently provide public notice of any decision and determination it makes which impacts the candidate’s eligibility to receive funds pursuant to this article. Any person adversely affected by a decision of the State Election Commission under this article may appeal that decision to the circuit court of Kanawha County.

(j) A candidate may withdraw from being a certified candidate and become a nonparticipating candidate at any time with the approval of the State Election Commission. Any candidate seeking to withdraw shall file a written request with the State Election Commission, which shall consider requests on a case-by-case basis. No certified candidate may withdraw until he or she has repaid all moneys received from the fund: Provided, That the State Election Commission may, in exceptional circumstances, waive the repayment requirement. The State Election Commission may assess a penalty not to exceed $10,000 against any candidate who withdraws without approval.

§3-12-11. Schedule and amount of Supreme Court of Appeals Public Campaign Financing Fund payments.

(a) The State Election Commission, acting in concert with the State Auditor’s office and the State Treasurer’s office, shall have a check issued within two business days after the date on which the candidate is certified, to make payments from the fund for the nonpartisan judicial election campaign period available to a certified candidate.
In a contested nonpartisan judicial election, a certified candidate shall receive $525,000 in campaign financing from the fund, minus the certified candidate’s qualifying contributions.

(b) The State Election Commission shall authorize the distribution of campaign financing moneys to certified candidates in equal amounts. The commission shall propose a legislative rule on distribution of funds.

(c) The State Election Commission may not authorize or direct the distribution of moneys to certified candidates in excess of the total amount of money deposited in the fund pursuant to section six of this article. If the commission determines that the money in the fund is insufficient to totally fund all certified candidates, the commission shall authorize the distribution of the remaining money proportionally, according to each candidate’s eligibility for funding. Each candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate’s eligible funding.

§3-12-12. Restrictions on contributions and expenditures.

(a) A certified candidate or his or her committee may not accept loans or contributions from any private source, including the personal funds of the candidate and the candidate’s immediate family, during the nonpartisan judicial election campaign period except as permitted by this article.

(b) After filing the declaration of intent and during the qualifying period, a participating candidate may not spend or obligate more than he or she has collected in exploratory and qualifying contributions. After the qualifying period and through the nonpartisan judicial election campaign period, a certified candidate may spend or obligate any unspent exploratory or qualifying contributions and the moneys he or she receives from the fund under the provisions of section eleven of this article.
(c) A participating or certified candidate may expend exploratory and qualifying contributions and funds received from the fund only for lawful election expenses as provided in section nine, article eight of this chapter. Moneys distributed to a certified candidate from the fund may be expended only during the nonpartisan judicial election campaign period for which funds were dispersed. Money from the fund may not be used:

1. In violation of the law;

2. To repay any personal, family or business loans, expenditures or debts; or

3. To help any other candidate.

(d) A certified candidate or his or her committee shall return to the fund any unspent and unobligated exploratory contributions, qualifying contributions or moneys received from the fund within forty-eight hours after the date on which the candidate ceases to be certified.

(e) A certified candidate or his or her committee shall return to the fund any unspent or unobligated public campaign financing funds no later than five business days after the nonpartisan judicial election.

(f) A contribution from one person may not be made in the name of another person.

(g) A participating or certified candidate or his or her committee receiving qualifying contributions or exploratory contributions from a person not listed on the receipt required by sections eight and nine of this article is liable to the State Election Commission for the entire amount of that contribution and any applicable penalties.

(h) A certified candidate accepting any benefits under the provisions of this article shall continue to comply with all of its
provisions throughout the nonpartisan judicial election campaign period.

(i) A participating or certified candidate or his or her financial agent shall provide the Secretary of State with all requested campaign records, including all records of exploratory and qualifying contributions received and campaign expenditures and obligations, and shall fully cooperate with any audit of campaign finances requested or authorized by the State Election Commission.

§3-12-14. Duties of the State Election Commission; Secretary of State.

(a) In addition to its other duties, the State Election Commission shall carry out the duties of this article and complete the following as applicable:

(1) Prescribe forms for reports, statements, notices and other documents required by this article;

(2) Make an annual report to the Legislature accounting for moneys in the fund, describing the State Election Commission’s activities and listing any recommendations for changes of law, administration or funding amounts;

(3) Propose emergency and legislative rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, as may be necessary for the proper administration of this article;

(4) Enforce this article to ensure that moneys from the fund are placed in candidate campaign accounts and spent as specified in this article;

(5) Monitor reports filed pursuant to this article and the financial records of candidates to ensure that qualified
candidates receive funds promptly and to ensure that moneys required by this article to be paid to the fund are deposited in the fund;

(6) Cause an audit of the fund to be conducted by independent certified public accountants ninety days after a nonpartisan judicial election. The State Election Commission shall cooperate with the audit, provide all necessary documentation and financial records to those persons conducting the audit and shall maintain a record of all information supplied by the audit;

(7) In consultation with the State Treasurer and the State Auditor, develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the commission shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability and safeguards the integrity of the fund;

(8) Regularly monitor the receipts, disbursements, obligations and balance in the fund to determine whether the fund will have sufficient moneys to meet its obligations and sufficient moneys available for disbursement during the nonpartisan judicial election campaign period; and

(9) Transfer a portion of moneys maintained in the fund to the West Virginia Investment Management Board for their supervised investment, after consultation with the State Treasurer, the State Auditor and the West Virginia Investment Management Board.

(b) In addition to his or her other duties, the Secretary of State shall carry out the duties of this article and complete the following as applicable:

(1) Prescribe forms for reports, statements, notices and other documents required by this article;
(2) Prepare and publish information about this article and provide it to potential candidates and citizens of this state;

(3) Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and to explain the duties of candidates and others participating in elections under this article;

(4) Propose emergency and legislative rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code as may be necessary for the proper administration of this article;

(5) Enforce this article to ensure that moneys from the fund are placed in candidate campaign accounts and spent as specified in this article;

(6) Monitor reports filed pursuant to this article and the financial records of candidates to ensure that qualified candidates receive funds promptly and to ensure that moneys required by this article to be paid to the fund are deposited in the fund;

(7) Ensure public access to the campaign finance reports required pursuant to this article, and whenever possible, use electronic means for the reporting, storing and display of the information; and

(8) Prepare a voters’ guide for the general public listing the names of each candidate seeking election to the Supreme Court of Appeals. Both certified and nonparticipating candidates shall be invited by the State Election Commission to submit a statement, not to exceed five hundred words in length, for inclusion in the guide. The guide shall identify the candidates that are certified candidates and the candidates that are nonparticipating candidates. Copies of the guide shall be posted
(c) To fulfill their responsibilities under this article, the State
Election Commission and the Secretary of State may subpoena
witnesses, compel their attendance and testimony, administer
oaths and affirmations, take evidence and require, by subpoena,
the production of any books, papers, records or other items
material to the performance of their duties or the exercise of
their powers.

(d) The State Election Commission may also propose and
adopt procedural rules to carry out the purposes and provisions
of this article and to govern procedures of the State Election
Commission as it relates to the requirements of this article.

CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.

ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING
THE RIGHT TO HOLD OFFICE.

§6-5-1. When terms of office to begin.

The terms of officers, except when elected or appointed to
fill vacancies, shall begin respectively as follows: That of
Governor, Secretary of State, State Superintendent of Free
Schools, Treasurer, Auditor, Attorney General and
Commissioner of Agriculture, on the first Monday after the
second Wednesday of January next after their election; that of a
member of the Legislature, on December 1, next after his or her
election; and that of the justices of the Supreme Court of
Appeals, the judges of the several circuit courts, the judges of the
family and other inferior courts, the county commissioners,
prosecuting attorneys, surveyors of land, assessors, sheriffs,
clerks of the circuit, or other inferior courts, clerks of the county
commissions, magistrates, on January 1, next after their election.
Whenever a person is elected or appointed to fill a vacancy, his or her term shall be as prescribed by chapter three of this code.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-1. Magistrate court created.

There is hereby created in each county of this state a magistrate court with such numbers of magistrates for each court as are hereafter provided. There shall be elected by the voters of each county, at the general election to be held in 1976, and in every fourth year thereafter, such number of magistrates as is provided in section two of this article. The filing fee for the office of magistrate shall be one percent of the annual salary. The term of magistrates shall be for four years and shall begin on January 1, of the year following the year of election.

Effective with the primary election of 2016, all elections for magistrates will be on a nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held for magistrates and all elections for magistrates are to be held in the nonpartisan judicial election as set forth in article five, chapter three of this code. All indications of party identification on election ballots for magistrate shall be omitted.


Subject to the provisions of section one, article ten, chapter three of this code, when a vacancy occurs in the office of magistrate, the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, shall fill the same by appointment.

At a nonpartisan judicial election in which a magistrate is elected for an unexpired term, the circuit judge, or the chief
ELECTIONS

8 judge thereof if there is more than one judge of the circuit court, 9 shall cause a notice of such election to be published prior to such 10 election as a Class II-0 legal advertisement in compliance with 11 the provisions of article three, chapter fifty-nine of this code, and 12 the publication area for such publication shall be the county 13 involved.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-1. Justices.

1 The Supreme Court of Appeals shall consist of five justices, 2 elected and qualified according to the Constitution and the laws 3 of this state, any three of whom shall constitute a quorum. 4 Effective with the primary election of 2016, all elections for 5 justices will be on a nonpartisan basis by division. Beginning in 6 2016, there will no longer be primary elections held for the 7 office of justice and all elections for justice are to be held in the 8 nonpartisan judicial election as set forth in article five, chapter 9 three of this code. All indications of party identification on 10 election ballots for that office shall be omitted.

ARTICLE 2A. FAMILY COURTS.

§51-2A-5. Term of office of family court judge; initial 1 appointment; elections.

(a) Beginning with the election to be conducted in the year 2 2016, family court judges shall be elected. In family court 3 circuits having two or more family court judges there shall be, 4 for election purposes, numbered divisions corresponding to the 5 number of family court judges in each area. Each family court 6 judge shall be elected at large by the entire family court circuit. 7 In each numbered division of a family court circuit, the
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 family court circuit. The candidate or candidates receiving the highest number of the votes cast within a numbered division shall be nominated or elected, as the case may be. Effective with the primary election of 2016, all elections for family court judges in the respective circuits will be on a nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held for family court judges and all elections for family court judges are to be held in the nonpartisan judicial election as set forth in article five, chapter three of this code. All indications of party identification on election ballots for family court judge shall be omitted.

(b) The term of office for all family court judges elected in 2002 shall be for six years, commencing on January 1, 2003, and ending on December 31, 2008. Subsequent terms of office for family court judges elected thereafter shall be for eight years.

CHAPTER 104

(Com. Sub. for S. B. 249 - By Senators Trump, Blair, Ferns, M. Hall and Walters)

[Passed March 11, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2015.]

AN ACT to amend and reenact §3-4A-9, §3-4A-11a and §3-4A-27 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-6-2, §3-6-3, §3-6-5 and §3-6-6 of said code, all relating to disallowing voting a straight party ticket by one mark or punch in a general election.
Be it enacted by the Legislature of West Virginia:

That §3-4A-9, §3-4A-11a and §3-4A-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-6-2, §3-6-3, §3-6-5 and §3-6-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and design may not be approved by the State Election Commission or be purchased, leased or used by any county commission unless it meets the following requirements:

(1) It secures or ensures the voter absolute secrecy in the act of voting or, at the voter’s election, provides for open voting;

(2) It is constructed to ensure that, except in instances of open voting as provided in this section, the contents of a marked ballot may not be seen or known by anyone other than the voter who has voted or is voting;

(3) It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot as a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;

(4) It permits each voter to write in the names of persons for whom he or she desires to vote whose names do not appear upon the ballots;
(5) It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons and capable of tabulating all votes cast in each election;

(7) It contains two standard validation test decks approved as to form and testing capabilities by the State Election Commission;

(8) It correctly records and counts accurately all votes cast for each candidate and for and against each question appearing upon the ballots;

(9) It permits a voter in a primary election to: (A) Vote only for the candidates of the party for which the voter is legally permitted to vote; (B) vote for the candidates, if any, for nonpartisan nominations or election; and (C) vote on public questions; and precludes the voter from voting for any candidate seeking nomination by any other political party unless that political party has determined that the voter may participate in its primary election;

(10) It, where applicable, is provided with means for sealing or electronically securing the vote-recording device to prevent its use and to prevent tampering with the device, both before the polls are open or before the operation of the vote-recording device for an election is begun and immediately after the polls are closed or after the operation of the vote-recording device for an election is completed;
(11) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;

(12) (A) Direct-recording electronic voting machines must generate a paper copy of each voter’s vote that will be automatically kept within a storage container that is locked, closely attached to the direct-recording electronic voting machine and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article;

(B) The paper copy of the voter’s vote shall be generated at the time the voter is at the voting station using the direct-recording electronic voting machine;

(C) The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy;

(D) The voter may not touch, handle or manipulate the printed copy manually in any way;

(E) Once the printed copy of the voter’s votes is accepted by the voter as correctly reflecting the voter’s intent, but not before, it will automatically be stored for recounts or random checks and the electronic vote will be cast within the computer mechanism of the direct-recording electronic voting machine;

(F) Direct-recording electronic voting machines with a mandatory paper copy shall be approved by the Secretary of State. The Secretary of State may promulgate rules and emergency rules to implement or enforce this subsection pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code;
(13) Where vote-recording devices are used, they shall:

(A) Be durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;

(B) Bear a number that will identify it or distinguish it from any other machine;

(C) Be constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice and upon any public question; and

(D) Be accompanied by a mechanically or electronically operated instruction model which shows the arrangement of the ballot, party columns or rows and questions;

(14) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, they shall:

(A) Be constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(B) Be constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(C) Be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees
all of the ballot options on all pages before completing his or her
vote and to allow the voter to review and change all ballot
choices prior to completing and casting his or her ballot;

(D) Be constructed to allow election commissioners to spoil
a ballot where a voter fails to properly cast his or her ballot, has
departed the polling place and cannot be recalled by a poll clerk
to complete his or her ballot;

(E) Be constructed to allow election commissioners, poll
clerks or both to designate, mark or otherwise record provisional
ballots;

(F) Consist of devices which are independent, nonnetworked
voting systems in which each vote is recorded and retained
within each device’s internal nonvolatile electronic memory and
contain an internal security, the absence of which prevents
substitution of any other device;

(G) Store each vote in no fewer than three separate,
independent, nonvolatile electronic memory components and
that each device contains comprehensive diagnostics to ensure
that failures do not go undetected;

(H) Contain a unique, embedded internal serial number for
auditing purposes for each device used to activate, retain and
record votes;

(I) Be constructed to record all preelection, election and
post-election activities, including all ballot images and system
anomalies, in each device’s internal electronic memory and are
to be accessible in electronic or printed form;

(J) Be constructed with a battery backup system in each
device to, at a minimum, prevent the loss of any votes, as well as
all preelection, election and post-election activities, including all
ballot images and system anomalies, stored in the device’s
internal electronic memory and to allow voting to continue for
two hours of uninterrupted operation in case of an electrical
power failure; and

(K) Be constructed to prevent the loss of any votes, as well
as all preelection, election and post-election activities, including
all ballot images and system anomalies, stored in each device’s
internal electronic memory even in case of an electrical and
battery power failure.

§3-4A-11a. Ballots tabulated electronically; arrangement,
quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using
ballots upon which votes may be recorded by means of marking
with electronically sensible ink or pencil and which marks are
tabulated electronically shall cause the ballots to be printed or
displayed upon the screens of the electronic voting system for
use in elections.

(b) (1) For the primary election, the heading of the ballot, the
type faces, the names and arrangement of offices and the printing
of names and arrangement of candidates within each office are
to conform as nearly as possible to sections thirteen and thirteen-
a, article five of this chapter.

(2) For the general election, the heading of the ballot, the
type faces, the names and arrangement of offices and the printing
of names and the arrangement of candidates within each office
are to conform as nearly as possible to section two, article six of
this chapter, except as otherwise provided in this article.

(3) Effective with the primary election held in 2016 and
thereafter, the following nonpartisan elections are to be separated

*NOTE: This section was also amended by H. B. 2010 (Chapter 103),
which passed prior to this act.
from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the circuit court;

(iii) Family court judge; and

(iv) Magistrate;

(B) Nonpartisan elections for board of education; and

(C) Any question to be voted upon.

(4) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(5) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words “WRITE-IN, IF ANY” are to be printed, where applicable,
directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in section thirteen, article five of this chapter, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

§3-4A-27. Proceedings at the central counting center.

(a) All proceedings at the central counting center are to be under the supervision of the clerk of the county commission and are to be conducted under circumstances which allow observation from a designated area by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit observation. Those persons entitled to be present include all candidates whose names appear on the ballots being counted or, if a candidate is
absent, a representative of the candidate who presents a written
authorization signed by the candidate for the purpose and two
representatives of each political party on the ballot who are
chosen by the county executive committee chairperson. A
reasonable number of the general public is also freely admitted
to the room. In the event all members of the general public
desiring admission to the room cannot be admitted at one time,
the county commission shall provide for a periodic and
convenient rotation of admission to the room for observation, to
the end that each member of the general public desiring
admission, during the proceedings at the central counting center,
is to be granted admission for reasonable periods of time for
observation: Provided, That no person except those authorized
for the purpose may touch any ballot or other official records and
papers utilized in the election during observation.

(b) All persons who are engaged in processing and counting
the ballots are to work in teams consisting of two persons of
opposite political parties, and are to be deputized in writing and
take an oath that they will faithfully perform their assigned
duties. These deputies are to be issued an official badge or
identification card which is assigned an identity control number
and the deputies are to prominently wear on his or her outer
garments the issued badge or identification card. Upon
completion of the deputies’ duties, the badges or identification
cards are to be returned to the county clerk.

(c) Ballots are to be handled and tabulated and the write-in
votes tallied according to procedures established by the
Secretary of State, subject to the following requirements:

(1) In systems using ballots marked with electronically
sensible ink, ballots are to be removed from the ballot boxes and
stacked for the tabulator which separates ballots containing
marks for a write-in position. Immediately after tabulation, the
valid write-in votes are to be tallied. No write-in vote may be
counted for an office unless the voter has entered the name of an official write-in candidate for that office on the line provided, either by writing, affixing a sticker or placing an ink-stamped impression thereon;

(2) In systems using ballots in which votes are recorded upon screens with a stylus or by means of touch, the ballots are to be tabulated according to the processes of the system. Systems using ballots in which votes are recorded upon screens with a stylus or by means of touch are to tally write-in ballots simultaneously with the other ballots;

(3) When more than one person is to be elected to an office and the voter desires to cast write-in votes for more than one official write-in candidate for that office, the voter shall mark the location appropriate for the voting system in the write-in location for that office. When there are multiple write-in votes for the same office and the combination of choices for candidates on the ballot and write-in choices for the same office exceed the number of candidates to be elected, the ballot is to be duplicated or hand counted, with all votes for that office rejected;

(4) Write-in votes for nomination for any office and write-in votes for any person other than an official write-in candidate are to be disregarded; and

(5) Official write-in candidates are those who have filed a write-in candidate’s certificate of announcement and have been certified according to the provisions of section four-a, article six of this chapter.

(d) If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy is to be made of the damaged ballot in the presence of representatives of each political party on the ballot
and substituted for the damaged ballot. All duplicate ballots are
to be clearly labeled “duplicate” and are to bear a serial number
which is recorded on the damaged or defective ballot and on the
replacement ballot.

(e) The returns printed by the automatic tabulating
equipment at the central counting center, to which have been
added write-in and other valid votes, are, when certified by the
clerk of the county commission, to constitute the unofficial
preliminary returns of the county. Upon completion of the count,
the returns are to be open to the public by posting a summary of
the returns as have been tabulated at the central counting center.
Upon completion of the canvass, the returns are to be posted as
tabulated precinct by precinct.

(f) If for any reason it becomes impracticable to count all or
a part of the ballots with tabulating equipment, the county
commission may direct that they be counted manually, following
as far as practicable the provisions governing the counting of
paper ballots.

(g) As soon as possible after the completion of the count, the
clerk of the county commission shall have the vote-recording
devices properly boxed or securely covered and removed to a
proper and secure place of storage.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELEC-
TIONS.

§3-6-2. Preparation and form of general election ballots.

(a) All ballots prepared under the provisions of this section
are to contain:

(1) The name and ticket of each party which is a political
party under the provisions of section eight, article one of this
chapter;
(2) The name chosen as the party name by each group of citizens which has secured nomination for two or more candidates by petition under the provisions of section twenty-three, article five of this chapter; and

(3) The names of every candidate for any office to be voted for at the election whose nomination in the primary election, nomination by petition or nomination by appointment to fill a vacancy on the ballot has been certified and filed according to law and no others.

(b) The provisions of paragraphs (C) and (D), subdivision (2), section thirteen, article five of this chapter; subdivision (3) of said section; paragraphs (A) and (B), subdivision (4) of said section; and subdivisions (6), (7), (8) and (9) of said section pertaining to the preparation and form of primary election ballots shall likewise apply to general election ballots.

(c) (1) For all ballot systems, the ballot heading is to be in display type and contain the words “Official Ballot, General Election” and the name of the county and the month, day and year of the election.

(2) After the heading, each ballot is to contain, laid out in parallel columns, rows or pages as required by the particular voting system, the party emblem and the name of each party as prescribed in subsection (a) of this section.

(3) The party whose candidate for president received the highest number of votes at the last preceding presidential election is to be placed in the left, or first column, row or page, as is appropriate to the voting system. The party which received the second highest vote is to be next and so on. Any groups or third parties which did not have a candidate for president on the ballot in the previous presidential election are to be placed in the sequence in which the final certificates of nomination by petition were filed.
(4) For all ballots, any columns, rows or sections in which the ticket of one party appears are to be clearly separated from the other columns, rows or sections by a heavy line or other clear division. For each party, the offices are to be arranged in the order prescribed in section thirteen-a, article five of this chapter under the appropriate tickets, which are to be headed “National Ticket”, “State Ticket” and “County Ticket”. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the Secretary of State.

(d) The arrangement of names within each office for all ballot systems is to be as follows:

(1) In elections for presidential electors, the names of the candidates for president and vice president of each party are to be placed beside a brace with a single voting position, so that a vote for any presidential candidate is a vote for the electors of the party for which the candidates were named.

(2) The order of names of candidates for any office or division for which more than one is to be elected is determined as prescribed in section thirteen-a, article five of this chapter: Provided, That the drawing by lot is to be conducted on the seventieth day next preceding the date of the general election, beginning at 9:00 a.m.

(3) In any office where more than one person is to be elected, the names of the candidates for the office are to be staggered so that no two candidates for that office appear directly opposite any other candidate, as shown in the example below: Provided, That if the voting system cannot accurately tabulate any ballot due to this requirement, the ballot may be adjusted so that it is accurately tabulated. However, each candidate shall be separated by a thin line to distinguish between each candidate.
(4) Each voting system is to provide a means for voters to
vote for any person whose name does not appear on the ticket by
writing it with pen or pencil or by using stamps, stickers, tapes,
labels or other means of writing in the name of a candidate
which does not interfere with the tabulation of the ballot.

(A) In paper ballot systems which allow for write-ins to be
made directly on the ballot, a blank square and a blank line equal
to the space which would be occupied by the name of the
candidate is to be placed under the proper office for each
vacancy in nomination and for an office for which more than one
is to be elected, any vacancy is to appear after any other
candidates for the office. If no write-in lines are included on the
ballot, specific instructions are to be added to the top of the
ballot notifying the voter that a write-in vote may be cast by
writing the name and office on any location on the front of the
ballot.

(B) In machine and electronically tabulated ballot systems
in which write-in votes must be made in a place other than on the
ballot, if there is a vacancy in nomination leaving fewer
candidates in any party than can be elected to that office, the
words “No Candidate Nominated” are to be printed in the space
that would be occupied by the name of the candidate and for an
office for which more than one is to be elected, any vacancy is
to appear after any other candidates for the office.
Notwithstanding any other provision of this code, if there are
multiple vacant positions on a ballot for one office, the multiple
vacant positions which would otherwise be filled with the words
“No Candidate Filed” may be replaced with a brief detailed
description, approved by the Secretary of State, indicating that
there are no candidates listed for the vacant positions.

(5) In a general election in any county in which unexpired
terms of the board of education are to be filled by election, a
separate section or page of the ballot is to be set off by means
clearly separating the nonpartisan ballot from the ballot for the
political party candidates and is to be headed “Nonpartisan
Board of Education”.

(e) Any constitutional amendment is to be placed following
all offices, followed by any other issue upon which the voters are
to cast a vote. The heading for each amendment or issue is to be
printed in large, bold type according to the requirements of the
resolution authorizing the election.

(f) The board of ballot commissioners may not place any
issue on the ballot for election which is not specifically
authorized under the West Virginia Constitution or statutes or
which has not been properly ordered by the appropriate
governmental body charged with calling the election.

(g) A ballot may not offer a voter the option of voting a
straight party ticket by one mark or punch.

§3-6-3. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a
sample official general election ballot for all political party or
nominees with no party affiliation unless those persons have
actually been nominated by an independent party, nonpartisan
candidates for election, if any, and all ballot issues to be voted
for at the general election, according to the provisions of article
four-a of this chapter, and for any ballot issue, according to the
provisions of law authorizing the election.

(b) The facsimile sample general election ballot shall be
published as follows:

(1) For counties in which two or more qualified newspapers
publish a daily newspaper, not more than twenty-six nor less
than twenty days preceding the general election, the ballot
commissioners shall publish the sample official general election
ballot as a Class I-0 legal advertisement in the two qualified
daily newspapers of different political parties within the county
having the largest circulation in compliance with the provisions
of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper,
or having only one or more qualified newspapers which publish
weekly, not more than twenty-six nor less than twenty days
preceding the primary election, the ballot commissioners shall
publish the sample official general election ballot as a Class I
legal advertisement in the qualified newspaper within the county
having the largest circulation in compliance with the provisions
of article three, chapter fifty-nine of this code; and

(3) Each facsimile sample ballot shall be a photographic
reproduction of the official sample ballot or ballot pages and
shall be printed in a size no less than sixty-five percent of the
actual size of the ballot, at the discretion of the ballot
commissioners: Provided, That when the ballots for the precincts
within the county contain different senatorial, delegate,
magisterial or executive committee districts or when the ballots
for precincts within a city contain different municipal wards, the
facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot.

The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the Secretary of State, an official list of offices and nominees for each office which will appear on the general election ballot for each political party or as nominees with no party affiliation unless those persons have actually been nominated by an independent party and, as the case may be, for the nonpartisan candidates to be voted for at the general election:

(1) All information which appears on the ballot, including instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as his or her residence and magisterial district or presidential preference. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(2) The order of the offices and candidates for each office and the manner of designating the parties shall be as follows:

(A) The offices shall be listed in the same order in which they appear on the ballot;

(B) The candidates within each office for which one is to be elected shall be listed in the order they appear on the ballot, from
left to right or from top to bottom, as the case may be, and the
candidate’s political party affiliation or independent status shall
be indicated by the one- or two-letter initial specifying the
affiliation, placed in parenthesis to the right of the candidate’s
name; and

(C) The candidates within each office for which more than
one is to be elected shall be arranged by political party groups in
the order they appear on the ballot and the candidate’s affiliation
shall be indicated as provided in paragraph (B) of this
subdivision.

(d) The official list of candidates and issues as provided in
subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers
publish a daily newspaper, on the last day on which a newspaper
is published immediately preceding the general election, the
ballot commissioners shall publish the official list of nominees
and issues as a Class I-0 legal advertisement in the two qualified
daily newspapers of different political parties within the county
having the largest circulation in compliance with the provisions
of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily paper, or
having only one or more qualified newspapers which publish
weekly, on the last day on which a newspaper is published
immediately preceding the general election, the ballot
commissioners shall publish the sample official list of nominees
and issues as a Class I legal advertisement in the qualified
newspaper within the county having the largest circulation in
compliance with the provisions of article three, chapter fifty-nine
of this code;

(3) The publication of the official list of nominees for each
party and for nonpartisan candidates shall be in single or double
columns, as required to accommodate the type size requirements as follows:

(A) The words “official list of nominees and issues”, the name of the county, the words “General Election” and the date of the election shall be printed in all capital letters and in bold type no smaller than fourteen point; and

(B) The names of the candidates and the initial within parenthesis designating the candidate’s affiliation shall be printed in all capital letters in bold type no smaller than ten point and the residence information shall be printed in type no smaller than ten point; and

(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than twelve point. The text of the ballot issue shall appear in no smaller than eight point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, the ballot commissioners of any county may choose to publish a facsimile sample general election ballot, instead of the official list of candidates and issues, for purposes of the last publication required before any general election.

§3-6-5. Rules and procedures in election other than primaries.

The provisions of article one of this chapter relating to elections generally shall govern and control arrangements and election officials for the conduct of elections under this article. The following rules and procedures shall govern the voting for candidates in general and special elections:

(a) If the voter desires to vote for an official write-in candidate, the voter shall: write with ink or other means or affix
a sticker or label or place an ink-stamped impression of the name of an official write-in candidate for an office for whom he or she desires to vote in the space designated for write-in votes for the particular voting system or for paper ballot systems, write or place the name and office designation in any position on the face of the ballot which makes the intention of the voter clear as to both the office and the candidate chosen.

The Secretary of State may proscribe devices for casting write-in votes which would cause mechanical difficulty with voting machines or electronic devices or which would obliterate or deface a paper ballot or any portion thereof, but the Secretary of State shall preserve the right to vote by a write-in vote for those candidates who have filed and have been certified as official write-in candidates under the provisions of section four-a of this article.

(b) If the voter marks more names than there are persons to be elected to an office or if, for any reason, it is impossible to determine the voter’s choice for an office to be filled, the ballot shall not be counted for the office. The intention of the voter shall be deemed to be clear if the write-in vote cast for an office contains both the first and last name of an official write-in candidate for that office; and if no two official write-in candidates for that office share a first or last name, either the first name or last name alone shall be deemed to express the clear intention of the voter.

(c) Except as otherwise specifically provided in this chapter, no ballot shall be rejected for any technical error which does not make it impossible to determine the voter’s choice.

§3-6-6. Ballot counting procedures in paper ballot systems.

When the polls are closed in an election precinct where only a single election board has served, the receiving board shall
perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election and join in making out the certificates of the result of the election provided for in this article. They may not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall proceed to ascertain the result of the election in the following manner:

(a) In counties in which the clerk of the county commission has determined that the absentee ballots should be counted at the precincts in which the absent voters are registered, the receiving board must first process the absentee ballots and deposit the ballots to be counted in the ballot box. The receiving board shall then proceed as provided in subsections (b) and (c) of this section. In counties in which the absentee ballots are counted at the central counting center, the receiving board shall proceed as provided in subsections (b) and (c) of this section.

(b) The receiving board shall ascertain from the pollbooks and record on the proper form the total number of voters who have voted. The number of ballots challenged shall be counted and subtracted from the total and the result should equal the number of ballots deposited in the ballot box. The commissioners and clerks shall also report, over their signatures, the number of ballots spoiled and the number of ballots not voted.

(c) The procedure for counting ballots, whether performed throughout the day by the counting board as provided in section thirty-three, article one of this chapter or after the close of the
polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose, without unfolding it. Any ballot which does not contain the proper signatures shall be challenged. If an accurate accounting is made for all ballots in the precinct in which the ballot was voted and no other challenge exists against the voter, the ballot shall be counted at the canvas. If properly signed, the commissioner shall hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for election for any person other than an official write-in candidate shall be disregarded;

(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots as they are removed and whenever the number shall equal the number of voters entered on the pollbook minus the number of provisional ballots, as determined according to subsection (a) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same or allowing anyone to examine or know the contents thereof, and the number of excess ballots shall be recorded on the envelope;

(4) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose, so as to show the number of votes received by each candidate for each office and for and against each issue on the ballot; and
(5) When the reading of the votes is completed, the ballot shall be immediately strung on a thread.

CHAPTER 105

(S. B. 322 - By Senators Nohe, Boley, Palumbo, Leonhardt and Trump)

[Passed March 10, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2015.]

AN ACT to amend and reenact §3-4A-28 of the Code of West Virginia, 1931, as amended, relating to removing unnecessary requirement of mandatory electronic recount of ballots in recounts.

Be it enacted by the Legislature of West Virginia:

That §3-4A-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-28. Post-election custody and inspection of vote-recording devices and electronic poll books; canvass and recounts.

(a) The vote-recording devices, electronic poll books, tabulating programs and standard validation test ballots are to remain sealed during the canvass of the returns of the election, except that the equipment may be opened for the canvass and must be resealed immediately thereafter. During the seven-day period after the completion of the canvass, any candidate or the local chair of a political party may be permitted to examine any of the sealed materials: Provided, That a notice of the time and
place of the examination shall be posted at the central counting
center before and on the hour of nine o’clock in the morning on
the day the examination is to occur and all persons entitled to be
present at the central counting center may, at their option, be
present. Upon completion of the canvass and after the seven-day
period has expired, the vote-recording devices, test results and
standard validation test ballots are to be sealed for one year:
Provided, however, That the vote-recording devices, electronic
poll books and all tabulating equipment may be released for use
in any other lawful election to be held more than ten days after
the canvass is completed and any of the electronic voting
equipment or electronic poll books discussed in this section may
be released for inspection or review by a request of a circuit
court or the Supreme Court of Appeals.

(b) In canvassing the returns of the election, the board of
canvassers shall examine, as required by subsection (d) of this
section, all of the vote-recording devices, electronic poll books,
the automatic tabulating equipment used in the election and
those voter-verified paper ballots generated by direct recording
electronic vote machines, shall determine the number of votes
cast for each candidate and for and against each question and, by
this examination, shall procure the correct returns and ascertain
the true results of the election. Any candidate or his or her party
representative may be present at the examination.

(c) If any qualified individual demands a recount of the votes
cast at an election, the voter-verified paper ballot shall be used
according to the same rules that are used in the original vote
count pursuant to section twenty-seven of this article. For
purposes of this subsection, “qualified individual” means a
person who is a candidate for office on the ballot or a voter
affected by an issue, other than an individual’s candidacy, on the
ballot.
(d) During the canvass, at least three percent of the precincts are to be chosen at random and the voter-verified paper ballots are to be counted manually. Whenever the vote total obtained from the manual count of the voter-verified paper ballots for all votes cast in a randomly selected precinct:

(1) Differs by more than one percent from the automated vote tabulation equipment; or

(2) Results in a different prevailing candidate or outcome, either passage or defeat, of one or more ballot issues in the randomly selected precincts for any contest or ballot issue, then the discrepancies shall immediately be disclosed to the public and all of the voter-verified paper ballots shall be manually counted. In every case where there is a difference between the vote totals obtained from the automated vote tabulation equipment and the corresponding vote totals obtained from the manual count of the voter-verified paper ballots, the manual count of the voter-verified paper ballots is the vote of record.

AN ACT to amend and reenact §3-8-7 of the Code of West Virginia, 1931, as amended, relating generally to disqualification of nominees for general election due to failure to file campaign finance statements; providing that candidates who fail to file campaign finance statements by the eighty-fourth day before the general election are disqualified; clarifying that a disqualification under this section would create a ballot vacancy and permit the
replacement of a candidate on the ballot; permitting the replacement of a candidate on the ballot; defining terms; and authorizing the Secretary of State to promulgate legislative rules concerning providing written notice to a candidate prior to his or her disqualification.

Be it enacted by the Legislature of West Virginia:

That §3-8-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

(a) Any person, candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement required by this article within the time limitations specified in this article or who willfully files a grossly incomplete or grossly inaccurate statement is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 or confined in jail for not more than one year, or both fined and confined. Sixty days after any primary or other election, the Secretary of State, county clerk or municipal recorder, as the case may be, shall give notice of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement to the prosecuting attorney of the county where the person, candidate, financial agent or treasurer resides, is located or has its principal place of business.

(b) (1) Any person, candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement as required in this article or who files a grossly incomplete or grossly inaccurate statement may be assessed a
(2) A civil penalty assessed pursuant to this section shall be payable to the state of West Virginia and is collectable as authorized by law for the collection of debts.

(3) The Secretary of State may negotiate and enter into settlement agreements for the payment of civil penalties assessed as a result of the filing of a delinquent, grossly incomplete or inaccurate statement.

(4) The Secretary of State and county clerk may review and audit any sworn statement required to be filed pursuant to this article. The State Election Commission shall propose legislative rules for promulgation, in accordance with chapter twenty-nine-a of this code, to establish procedures for the assessment of civil penalties as provided in this section.

(c) (1) Any candidate, whether nominated by primary election or appointed by executive committee or executive committee chair, who has failed to file any sworn statement as required by this article, relating to the immediately preceding primary election for any office by the eighty-fourth day before the general election, is disqualified and may not have his or her name appear on the general election ballot. The provisions of subsection (d), section five-b of this article notwithstanding, any sworn statement filed after the deadline required by section five of this article must be received in the office indicated by subsection (a), section five-b of this article by the close of business on the eighty-fourth day before the general election.
(2) It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file any sworn statement required by this article and no person may enter upon the duties of his or her office until he or she has filed such statement, nor may he or she receive any salary or emolument for any period prior to the filing of the statement.

(3) The vacancy on the ballot created by the disqualification in this subsection is subject to section nineteen, article five, chapter three of this code.

(d) As used in this section, “grossly” means substantive and material, and specifically includes false or misleading representations and acts of omissions.

(e) The Secretary of State shall provide by rule protocols for written notice via certified mail, return receipt requested, to the person, candidate, financial agent or treasurer of a political party committee that is not in compliance with the requirements of this section. With respect to a violation of subsection (c) of this section, the notice shall be provided sixty days after any primary or other election.

CHAPTER 107

(Com. Sub. for H. B. 2157 - By Delegate Lane)

[Passed March 3, 2015; in effect ninety days from passage.]
[Approved by the Governor on March 11, 2015.]

AN ACT to amend and reenact §3-9-19 of the Code of West Virginia, 1931, as amended, relating to establishing that fraud associated with absent voters’ ballots is a felony; and establishing the penalties for fraud associated with absent voters’ ballots.
Be it enacted by the Legislature of West Virginia:

That §3-9-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-19. Violations concerning absent voters’ ballots; penalties.

(a) Any person who, with the intent to commit fraud, obtains, removes, or disseminates an absent voters’ ballot, intimidates an absent voter, or completes or alters an absent voters’ ballot, is guilty of a felony and, upon conviction thereof, shall be fined not less than $10,000 nor more than $20,000, imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(b) Notwithstanding subsection (a) of this section, any person who, having procured an absent voter’s official ballot or ballots, shall wilfully neglect or refuse to return the same as provided in article three of this chapter, or who shall otherwise wilfully violate any of the provisions of said article three of this chapter, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than two hundred and fifty dollars, or confined in the county jail for not more than three months. If the clerk of the circuit court of any county, or any member of the board of ballot commissioners, or any member of the board of canvassers shall refusing or neglect to perform any of the duties required of him by any of the provisions of articles three, five and six of this chapter relating to voting by absentees or shall disclose to any other person or persons how any absent voter voted, he shall, in each instance, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or confined in the county jail for not more than six months.
AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §29-3B-6, relating to
permitting licensing of any electrician who did not renew his or her
electrician’s license issued earlier by State Fire Marshal; and
renewing license without retesting if earlier license was not
revoked and renewal fee is paid for each year lapsed.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by
adding thereto a new section, designated §29-3B-6, to read as follows:

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-6. Relicensing without retesting after nonrenewal under
certain circumstances.

An electrician previously licensed by the State Fire Marshal
who did not renew his or her electrician’s license may renew the
license without retesting within three years of the date of the last
renewal: Provided, That the electrician’s license had not been
revoked and that the applicant pays double the current fee if his
or her license has been lapsed for two renewal periods, or triple
the current fee if his or her license has been lapsed for three
renewal periods.